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The Bible and our School System.

THE ARGUMENTS

IN THE CASE OF THE

ELIOT SCHOOL REBELLION,

BY

HENRY F. DURANT

FOR THE DEFENCE,

AND

SIDNEY WEBSTER

FOR THE PROSECUTION.

BOSTON:

HUBBARD W. SWETT & CO., 128 WASHINGTON STREET.

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ARGUMENT OF MR. DURANT.

May it please your Honor :

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

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

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

Under the wise and parental system of our public schools, our children were taught together as one free and happy family. The children of the emigrant and the alien sat side by side with the son of the free born American—they learned from the same book—they shared the same instruction—and they left the school together to enter upon the broad highway of life with the same lights of learning behind them—the same stars of hope and promise before them—free and equal under the laws. This was the story of yesterday; but to-day we find a sad and mourn-

ful change. Suddenly, at the absolute will of one man—by the exercise of a dark and dangerous, a fearfully dangerous power—hundreds of children of tender years, children who were living in the full enjoyment of liberty and of learning, are not only arrayed in open rebellion against our established regulations, and in open violation of our laws, but are deliberately taught that they are to sacrifice all the benefits and blessings of free education, and are led out by their priest from the protecting roof of the school-house to the temptations, the dissipations and crimes of the streets. This course is even now justified and persevered in; and we are told to-day by the advocate of those deluded children, that this dangerous and unscrupulous priest was in the right—that the laws under which my client justifies himself, are destructive of the liberty of conscience, intolerant, illegal, unconstitutional and void. Who is this priest who comes here from a foreign land to instruct us in our laws? For whom, and on whose behalf, is this charge of intolerance—this charge that we are violating the sacred liberty of conscience—brought against the people and the laws of Massachusetts? Can it be that one of the Society of Jesuits is the accuser? I wish to discuss this case as calmly as I may. I wish to say nothing to rouse feelings which cannot easily be allayed; but there are *memories* which we can never banish from heart or brain; there are records on earth and in heaven which can never be blotted out; there are pages of history written in letters of fire, and of blood; and the man who leads forth his flock of children, and boldly arrays them in open defiance of our established laws, who audaciously and ungratefully assails our established regulations as intolerant and unchristian, would do well to look behind him, as well as before—would do well to pause and reflect if he is in a position which authorizes such grave accusations, or justifies such violence.

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

My client is charged with an unlawful assault upon one of his pupils. There was a pretense

originally made, that he had been guilty of needless and unreasonable severity in enforcing the established regulation of the school, but that pretense has faded—and faded away into utter insignificance.

The evidence of the boy himself, and of the physician who saw him, showed that the punishment was neither unusual nor severe; but what can be said now, after we have proved by witness upon witness—that gross violation of the discipline of the school—the indecent and riotous conduct of the children—their wilful and openly concerted rebellion against the masters—that planned and arranged conspiracy among the scholars—that they would unite together and overthrow the authority of the teachers, and the regulations of the school?

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

The laws with regard to our public schools are so dear to every citizen, so important in our free government, that they are familiar to every one. Free schools are established and maintained at the public charge—the general nature of the studies is regulated by positive statutes, but the details of discipline, the selection of teachers, the choice of books, and the general management of the schools is given to school committees—which have large legislative, and almost judicial powers delegated to them by the laws. The general law which regulates the course and class of studies in our schools, is found in the Revised Statutes, chap. 23, sect. 7.

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

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

“The morning exercises of all the schools shall commence with reading a portion of Scripture, in each room, by the teacher, and the Board recommend that the reading be followed with the Lord’s Prayer, repeated by the teacher alone,

or chanted by the teacher and children in concert, and that the afternoon session close with appropriate singing; and also, that the pupils learn the Ten Commandments, and repeat them once a week.”

Substantially similar regulations, embracing a part or the whole of these recommendations, have always existed in our New England schools. These precise regulations have existed in our Boston schools for years. They were published widely, they were read in the schools, they were universally known, and universally acquiesced in. They were established, not for Catholics alone nor for Protestants alone—they were established for all, acquiesced in by all.

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

It was in opposition to these regulations so long obeyed, so long acquiesced in, that it has been found necessary to resort to open violence, to a deliberately planned and arranged rebellion against the discipline and authority of our schools.

And now, since it so plainly appears that my client was justified in punishing this deliberate and wilful rebellion against established rules, the counsel for the prosecution are forced to take the ground that these laws and regulations themselves are illegal and unconstitutional.

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

Our Constitution declares that every citizen shall have full liberty to worship God according to his own conscience. The statutes of 1852 require that children should for at least three months in the year attend some public school. All citizens are taxed for the support of public schools, and therefore have equal rights in them.

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

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

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

If a Catholic child not only has a right, but is bound by law to attend school; if because all citizens are taxed he has the rights which are now

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

This is indeed a great question—the *greatest* and *gravest* question, in my judgment, which this Court will ever be called upon to determine; and as it is now for the first time presented here, it is fit that it should be seriously and solemnly discussed, and that it should be met and decided upon those broad principles of justice and law which will satisfy all good citizens of every sect and race, all who love and are willing to obey our laws.

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

I appeal to them, to disabuse their minds of the prejudice that their liberty of conscience is to be invaded or violated. I appeal to their experience of past years, and to the bitter lessons of these past few days. I ask every parent to look back upon his own life, upon his own daily sorrows and regrets that a free school was never open to himself, and then to decide whether he will sacrifice his children also.

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

Every western breeze that finds its unseen path over the wide Atlantic, bears an invitation across the ocean, welcoming the exile and the alien, the poor and oppressed of every clime, to the land of the free. Our freedom is our birthright and our inheritance; broad is our land, free as the wind, which sweeps from one ocean to the other. And this our birthright and inheritance which our fathers purchased with their blood, we offer to all and willingly share with all. In the old world the inheritance of the

people is the heavy burden of that feudal system, under which the lands and the titles, the wealth and the power are held by the nobles, and transmitted to their children generation after generation. The sons of the soil are bowed down by labor, and the sweat of their toil drops upon fields they can never hope to claim as their own.

Learning there is the inheritance of the rich only, and is not for the poor; they must bend their backs and bow down towards the earth, nor dare to look upwards to the broad sunlight of God's eternal sky; they must bow down their hearts and minds to endless, hopeless toil, nor seek to share in the eternal light of learning and knowledge, which God has given for all his children. What wonder then that every white-winged vessel which leaves the Old World bears its band of emigrants and exiles, looking forward toward the promises of the West, the glory of the sunset—seeking a new home—a freer land—a brighter sky. And when at sunset, the stately ship furls its white sails in our fair harbor, they see before them the golden gates of their new world, the golden gates of the new El Dorado—not the fabulous clime of rivers flowing over golden sands which tempted avarice in earlier days, but the true El Dorado of men—a land where the soil is free—where the laws are equal—where the sunshine of liberty and of learning glows for all, blesses all. The emigrants of to-day do not bear the banners of Castile and Aragon. The Oriflamme of France does not float above their heads, nor does the meteor flag of England lead them onward now, but in the western sky float the banners of the Almighty, blazoned there in purple and gold, and inscribed thereon, in letters of living light, is the sacred word of liberty.

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

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

There is ample room beneath our wide, free sky for all races, for all sects, for all churches. The stately towers of the Roman Cathedral, and the plain white spires of our New England

Meeting-houses pointing from the quiet graves of our fathers heavenward, need never encroach one upon the other. There is room for all beneath our wide, blue sky.

We give the widest toleration to all nations, to all creeds, all opinions; but there is one power, one tyranny which cannot cross the ocean, and that is the tyranny of one man, whether his head is encircled with the monarch's crown, or the bishop's mitre.

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

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

I speak, then, to the emigrant and the foreigner, whom we welcome to our shores. I desire to show to them and to all who hear me that the use of the Bible in our schools—the teaching of the Commandments—the recital of the Lord's Prayer from it, are consistent with the true principles of religious liberty and toleration. I do not speak of casuistry, or of scruples more intolerant than intolerance itself, or of subtle and precious doubts. I speak of religious liberty in a land of law, and liberty of conscience in a government of freemen.

Let us go back for a moment to first principles; let us endeavor to get clear ideas, and examine

briefly what is the meaning of these noble words—a government of freemen—freedom of conscience—liberty under the laws. The truth is, that our people are so wholly free that we hardly realize or appreciate what is meant by government and law. Our consciences are so untrammelled that we are unaccustomed to reason or reflect upon what freedom of conscience is, and in what it consists. We forget that the very essence and foundation of all government is religion, and yet the truth exists as old as the primal stars, that a government without religion is as impossible as a universe without a God. This is the united voice of all true philosophy, of all true statesmanship—it is the lesson and warning of history, and the universal experience of the civilized world. Need I remind you, Sir, of the latest, the darkest lesson of the eternal truth—that a government without religion, is a hopeless impossibility. Need I remind you of that government without religion, founded only upon pure reason, based upon the laws of man—that government inaugurated with more than bridal pomp and festivity, with songs, and feasts, and dances, when the Goddess of Reason was the symbol and the representative of a new era, and in triumph led on the choral dance, which ended in the red dance of death—in the fearful night and darkness of the "Reign of Terror."

May it please your honor, our government is based upon religion, upon the Christian religion, and it is a vital and essential part of the law of the land. Not the Christianity of any particular sect or creed, but the broad, pure, living Christianity of the Bible; we cannot open our statutes without meeting with the proof of it. The bill of rights, to which the prosecution appeal, commences with a solemn appeal to the Christian's God—the observance of the Christian Sabbath is enjoined, and profanation of it is forbidden by numerous statutes. Blasphemy against God and our Saviour are crimes punished by law. The oaths which are the protection of property recognize it, and all our laws flow from it, and are consistent with it. I might quote from our law books; I might read Blackstone and Story; but I have a higher authority to which I wish to refer. Let me ask you, Sir, to hear a voice from the dead, the fittest oracle of this great living truth. I desire to read the solemn and eloquent words of that great statesman, who sleeps well after his long labor, with the solemn voice of the ocean he loved, as his requiem—on the lonely shores of Marshfield:

"There is nothing that we look for with more certainty than this general principle, that Christianity is part of the law of the land. This was the case among the Puritans of New England, the Episcopalians of the Southern States, the Pennsylvania Quakers, the Baptists, the mass of the followers of Whitfield and Wesley, and the Presbyterians; all brought and all adopted this great truth, and all have sustained it. And where there is any religious sentiment amongst men at all, this sentiment incorporates itself with the law. *Every thing declares it.* The massive

cathedral of the Catholic; the Episcopal church, with its lofty spire pointing heavenward; the plain temple of the Quaker; the log church of the hardy pioneer of the wilderness; the mementos and memorials around and about us; the consecrated graveyards, their tombstones and epitaphs, their silent vaults, their mouldering contents—all attest it. *The dead prove it as well as the living.*"

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

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

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

Need I multiply instances? The Hindoo and the Mahomedan, the Pagan and the Atheist, all can be citizens, all are entitled to freedom of conscience; and yet in every transaction of life, in every function of government, in every act of obedience to the laws, they are obliged to submit to and obey the rules of that Christianity which is an offense to their conscience. Is there any inconsistency in this? Is this inconsistent with true religious toleration? By no means. The answer to the question lies plainly before us. Every man may *worship* God according to his own conscience; for his religious *belief* or *disbelief* he is not accountable to any human tribu-

nal. The laws impose no form of faith upon his conscience, he is to subscribe to no articles of belief, he is to surrender his faith to no creed, he is to join no sect. Atheist or Pagan, Catholic or Protestant, he is free to believe or disbelieve according to his conscience, and for his faith or his infidelity there is equal toleration. But apart from this and beyond this, he must submit to the general laws of the land, and just in the same manner that which we declare that every citizen, although free, must submit to numerous laws which do interfere with and infringe upon his liberty; so does every citizen find in the operation of general rules, in the compromises of life, in a society regulated by general laws, much that is offensive to the scruples of his conscience, much that he must submit to and obey, although no laws compel him to believe.

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

I repeat, that it is idle and in vain to say that liberty of conscience in one citizen means the submission to his scruples on the part of all others. It is in vain to say that in a country of free but divided opinions, nothing shall exist which is not offensive to the consciences of many. But I must not dwell too long upon the examination of those general principles, which demand more ample illustration than the present discussion will allow. I wish to come more closely to the particular question which is to be decided by the light of these general principles.

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

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

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

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

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

If my first proposition is true, that our gov-

ernment is based upon religion, that Christianity is an acknowledged and recognized part of our law, does it not follow, as of inevitable necessity, that in every school founded by government, established and supported by government, religion should be recognized, and piety should be taught? I need not repeat, Sir, that I speak not of any sect or creed, not of any form of faith. I speak of those principles of true piety, which have existed from the hour when the morning stars sang together—from the hour when God said, “let there be light”—piety eternal as the stars, pure and holy as the light of Heaven.

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

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

Will your Honor allow me to detach two or three thoughts from that powerful argument, which are particularly appropriate to the subject

of our discussion? He says with great emphasis, “I do say, and do insist, that there is no such thing in the history of religion, no such thing in the history of human law, as a charity, a school of instruction for children, from which the Christian religion and Christian teachers are excluded as unsafe and unworthy intruders.”

Again he says: “This scheme of education is derogatory to Christianity, because it proceeds upon the presumption, that the Christian religion is not the only true foundation or any necessary foundation of morals. The ground taken is, that religion is not necessary to morality; that benevolence may be insured by habit, and that all the virtues may flourish and be safely left to the chance of flourishing, without touching the waters of the living spirit of religious responsibility. With him who thinks thus, what can be the value of the Christian revelation? So the Christian world has not thought; for by the Christian world throughout its broadest extent, it has been and is held as a fundamental truth, that religion is the only solid basis of morals—and that moral instruction, not resting on this basis, is only a building upon sand.”

I might multiply authorities of wise and learned men upon this question; but it is not necessary. Can it be argued for a moment, that in educating a child, to whom God has given an immortal soul, as well as intellectual faculties, it is the duty of the State to cultivate the one and leave the other in darkness? Above all things, in a republic which exists only, which can be maintained only, by the *virtue* of its citizens—can it be argued that it is the duty of the State to teach every thing but these very *virtues* upon which its existence and well being depend? But I must remember that I cannot discuss this question here, as a question of morality, of philosophy or of religion. I am here only to defend and justify an ancient law of the Commonwealth, which prescribes, in so many words, that *piety shall be taught in our public schools*.

The principles for which I contend would justify laws far more general and comprehensive than this; but this is the law, and I believe that no one will be bold enough to deny its obligations or its justice.

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

May it please your Honor, we have advanced thus far in the argument, and we find that it is a *positive law, which neither teacher nor scholar can evade, that piety shall be taught in our public schools*, and I turn now to my adversaries, to ask the question that terminates this controversy forever—From what book is *piety* to be taught in the Republic where Christianity is a part of the law of the land? Is it to be taught from Confucius, or from the Vishnu Parana of the Hindoos? shall Plato be our instructor in piety, or shall we go back to Zoroaster? No, Sir, there is but one answer that can be given. No skill of the opposing counsel can evade it. No craft of the Jesuit can

avoid it. No form of words can conceal it. The answer comes from every lip, Catholic as well as Protestant—it comes from the altar, from the pulpit, and from the statesman's closet—from the street and from the fireside—from the heart of every mother, from the lips of every child. There is but one book from which we dare teach piety, and that book is God's Holy Bible. And here I might well pause, if this great point is established—for when this is settled all the conclusions follow, of necessity—but there are many points raised, many arguments advanced, which I must attempt to answer.

It will be said, perhaps, we do not object to your use of the Bible—we object only to the common English version of it. I feel constrained to say that I cannot believe this is the true question. Unless I misunderstand wholly a late letter from the Bishop of Boston, if our regulations required the pupils to read the Douay Bible together, to recite the Ten Commandments together, to repeat the Lord's Prayer, or chant the Psalms of David, it would be a "brotherhood in a simulated union of prayer and adoration, which his church expressly forbids"—but I will attempt to answer the suggestion that our common version should give place to the Douay Bible. And the first answer is, that as some version is to be taken; as the Bible in some translation must be used; as there is difference of opinion, as to which is the best, the question must be decided by that tribunal to which the laws have intrusted the decision. The school committee are by law required to select and decide upon the question of the books to be used, and they have determined this question. I uphold and justify that decision upon many grounds: and I say first to these gentlemen who are so earnest for toleration, who are so fearful of sectarianism, that I object to their Douay Bible because it is avowedly a *sectarian book*, written and published with that acknowledged object. Our Bible never has been, never can be sectarian. Nay more—it is well known there are more real and essential differences of opinion between the various Protestant sects, as to the correct translation of various important texts, than between the Catholics and the Protestants. But for all that, this version is accepted by all sects of Christians but one who speaks the English tongue, as a translation sufficiently correct—not for sectarian arguments—not for disputes upon points of doctrine—not for creeds or schisms—but for the common and daily use of Christians for instruction in *piety*, in morality, and in that pure religion which is high above sects and doctrines, as the stars are above the earth; and for this very reason—because the Christian sects who differ upon so many points, are, with one exception, willing to unite upon this version—is it fitting and proper that this should be adopted. There are reasons also for the use of our Bible which will, I am sure, appeal to the heart and the brain of every foreigner who sends his children to our public schools.

I appeal to their gratitude now, to their sense of honor now, as I would appeal to their generosity, if it were necessary, and ask them if they would wish to come here to share our liberties, to

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

May it please your Honor, I ask now for a single candid objection to the use of King James' Bible—not the Protestant Bible, but the Christian Bible—the Saxon Bible, which we love. Are the particular portions of it which are used in the schools objectionable? Our children are to learn piety from it, not sectarianism, not creed; but pure religion, undefiled before God. They are to learn from it piety, a sacred regard to truth, justice, chastity and humanity. Was it from sectarian views that the Lord's Prayer and the Ten Commandments were selected as fit lessons of these cardinal virtues? What sect, Catholic or Protestant, has received the monopoly of these portions of God's Word? Are they indeed offensive to the tender consciences of children? Is it indeed dangerous that they should hear and repeat them?

Can it be that even bigotry and fanaticism would take exception to the prayer which Christ taught us—to the tables of the law, which Jehovah himself gave to his children on Mount Sinai? Is it one of that order of priesthood which has assumed the name of the "Society of Jesus," who has found it a necessity of Christian duty to forbid his followers from repeating the Lord's prayer? Has he forgotten that our Saviour who said "*suffer little children to come unto me and forbid them not*"—our Saviour who bade his disciples go forth into every land and teach the Gospel to every creature—that he dictated to his disciples the lofty worship, the simple beauty of that miraculous prayer, in which all the nations of the earth might together lift up their hearts to God without remembering any distinction of sect, or race, or creed? Subtle and artful as men have been in raising doubts, untiring as they have been in creating differences of opinion—no sect, no dogma, has yet been founded upon that marvelous—that inspired prayer, which embraces in itself the whole Christian religion—and the universal worship of God. Was that priest unwilling that his flock should unite with the children of heretics, and joining their hands and their hearts, say with them, "*Our Father which art in Heaven, hallowed be thy name*?" Was he unwilling that the children of the Huguenots and the Puritans—the children of those Protest-

ants who remembered the mountains of Piedmont and the Waldenses—who remembered the night of St. Bartholomew and the fires of Smithfield—should join with his flock, and say “forgive us our trespasses as we forgive those that trespass against us?” But it is said there is a difference between the Catholic and Protestant version of this prayer. I have not forgotten it, it will be very long I think before I shall forget it, or forget that in the book which was produced here in Court, the hands of some little fanatic, who had been taught hatred and bigotry under the name of Christianity—or of some priest who feared for the tender consciences of his flock, had carefully and industriously obliterated the closing words of the prayer, “For thine is the Kingdom, the power and the glory forever. Amen.”

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

How vain and how shallow are such pretences. How trifling and immaterial are the verbal differences which are now insisted upon. Does any one fail to see that this movement is only a settled, and determined, and preconcerted opposition to our Holy Bible? Does any one fail to see that it is because the prayer is read with Protestants that the Catholic children are forbidden to join in it—that the Catholic priests are resolved to banish it from our schools? Can there be any more sincere grounds of complaint because the children were called upon to repeat the Ten Commandments? Are the lessons of piety and morality which they teach offensive to the conscience or sinful to hear? Have these divine commands lost any thing of their obligations in the progress of civilization? Has their sublime morality lost its virtue?—is there one commandment which to-day a Christian dare disavow?

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

Has that Divine injunction lost its force? Is it useful at this hour to teach those Divine commands? Who that has watched the signs of the times—who that has watched the winds, and the waves, and the dark clouds which drift along our stormy sky, fails to see the object and end of all this movement? No, no, there is no fear for

the consciences of the children; the real objection is to the Bible itself, for, while that is read daily in our schools, America can never, *never* be Catholic. I am told that the most zealous of English Catholics acknowledge that England can never be Catholic so long as they keep their Saxon Bible. Of its power over the hearts of the people, an Englishman has most truly and eloquently said: “King James’ version lives in the ear of a Briton, like music that can never be forgot; like the sound of church bells, which the convert hardly knows how he can forego. Its felicities seem to be almost things, rather than mere words. It is part of the national mind, and the anchor of national seriousness. The memory of the dead passed into it. The potent traditions of childhood are stereotyped in its verses. The power of all the griefs and trials of man is hidden beneath its words. It is the representative of his best moments, and all there has been about him of soft, and gentle, and pure, and penitent, and good, speaks to him forever out of his English Bible. It is his sacred thing, which doubt has never dimmed, and controversy never spoiled. In the length and breadth of the land there is not an English Protestant with one spark of religiousness about him whose spiritual biography is not in his Saxon Bible.” Yes, all that is true! And does any one dare to hope that this Book will be driven from our schools? Never! *never!* The sun may turn back in its course, the stars may fall as the leaf falleth from the vine, and the heavens may be rolled together as a scroll, but until we have sold our birthright of freedom, never, *never* will the descendants of Englishmen consent that the Saxon Bible shall be banished from their free American schools. But I may be told that our fears are groundless; that they do not object to our Bible, but to the particular use made of it in this particular case. We are not to be deluded by such specious arguments. We well know the foe with whom we deal; they will be content with any step in advance of it, be it the thousandth part of an inch, and bide their time for the next step. Their objection is to our Bible, and they cannot consistently stand upon any other ground. Why do you object to the Lord’s Prayer, and to the Decalogue, and the reading of the Scriptures? Because you say it offends our consciences. We believe it is not the true version of the Word of God; that version is “used as a means of attack upon our tenets.” “The form and words are offensive to the conscience and belief of the Catholics.” Be consistent now, gentlemen, if you object to reading that Bible or reciting from it. Is it because it is offensive in form and words to your Catholic consciences? Will you be any better satisfied if it is daily read to your children by their teachers? Will any Bishop, any priest, tell me that he is *willing* to have that *untrue* version of God’s word, so offensive to Catholic conscience and belief, read daily to his flock by their heretic teachers? No, if it is intolerant to ask the children to read or recite that Bible, it is intolerant to read it to them; if it is intolerant to ask them to recite the Ten Commandments, it

is intolerant to teach it to them. If to ask the Catholic children to join in repeating the pure religion, the simple and pathetic supplications of the Lord's Prayer, offends their consciences, then any instruction in piety from a Protestant is offensive, and the Bible must be banished forever from our schools. I appeal from Bishop and Priest to the unfettered intelligence of our adopted citizens; I appeal to the countrymen of Burke, and Sheridan, and Grattan, and Curran. Do you, who wish to become American citizens, you who wish to draw closer the bonds of a common country and a common freedom, fear that your children will suffer because they, with united hands and hearts, lift up their tender voices in common prayer to that God who is the Father of all, whose rain falls alike upon the just and the unjust, who is the God of all nations, of all races, all climes?

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

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

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

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

They say that the regulations of the school

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

May it please your Honor, I cannot admit that the pretended objections raised by the Catholic pupils are "not mere fetches and pretences devised for the purpose of creating a difficulty." This case fortunately, very fortunately, is full of conclusive evidence to the contrary, and I beg the attention of the Court to it. No one can fail to remember the manner in which this case was originally brought before the court. It was pretended that an intelligent and interesting little boy, religiously educated, was bidden with threats to violate his tender conscience; that in vain he pleaded the commands of his parents, the solemn lessons of his religious instruction; his prayers and appeals were all in vain; he was ruthlessly beaten, until his wicked persecutors, frightened and shocked at their own cruelty, ceased their stripes, and endeavored to hide the bleeding evidence of their pitiless tortures. Has your Honor forgotten that picture of religious fanaticism and persecution, that touching picture of the infant saint and martyr? I am half inclined to believe that my learned friend, who opened and tried the case so ably and so well, had worked himself up to the faith that this small citizen had the already sprouting wings of a cherub under his waistcoat. He was a saint in embryo,—a small sized martyr in jacket and trousers. I confess that I could not but sympathize with my friends, when all the poetry, all the picturesque charm and color of this picture was banished so rudely, on the last day of the trial. What a shocking blow was given to our sensibilities! what a ludicrous "behind the scenes" appeared when we heard that this small saint, who was willing to be "kilt" for his conscience; who vowed with infinite pathos that he would never be a coward to his religion; when we heard that this very small and somewhat dirty little martyr was out on the streets where the boys were playing marbles, declaring with the true fervor of a pious Catholic, "Faith and I warn't agoin to rapate thim damned Yankee prayers." What a very abominable and altogether absurd little cherub, to be sure! I would have given *money* for one peep into the breasts of my friends on the other side at that precise moment. I wonder if, as they heard the poetry of their case, the glory and the beauty of their dream, vanish forever in the irrepressible titter

which no one in the court house could resist when that evidence was given. I wonder if they did not say to each other, that Father Wiget's bogus bread and butter saint and martyr ought to have been whipped once more, and more thoroughly. This, may it please your Honor, is the delicate, the tender, the more than feminine purity of conscience, which cannot submit to say "hallowed," instead of "sanctified," which does not revolt from the words of our "Ten Commandments," which accepts them all, acknowledges them all; but flies as from impurity, which shuns as sacrilege the repeating those very words, unless they are *divided* according to the holy dictation of Father Wiget. What a volume of the benignant teaching of the Jesuit, what touching pathos, what sweet infantine love of God, what tender delicacy of conscience, spoke in these words, "Faith and I won't agoin to repate thim damned Yankee prayers." Was it for that pious ejaculation that Father Wiget gave the boy that symbolic medal of brass, whitewashed with silver, in that very memorable interview at the Jesuit's house, of which the boy, although it took place but the night before he was called as a witness, was really unable to remember a single word excepting the important, the saintly, the pious instruction to "go home to his supper."

I remember, Sir, that I was assailed somewhat rudely by the able and eloquent senior counsel, who told us that after my terrible cross-examination of his rather blasphemous and very profane little saint in jacket and trousers, he nearly, or perhaps quite fainted away. Perhaps it was the attempt to find out and confess what that very suggestive and significant and quite symbolic whitewashed medal was given to him for, which weakened little Saint Tom's tender frame. I remember that it was a question very general, very often asked—never answered—a question which has been asked a great many times since by persons who take an interest in this trial—What the priest did give that medal for, the night before the boy was to be a witness? This was on the first day of the trial. May I ask my eloquent friend if that very interesting and quite painfully honest little martyr fainted away after that other very striking scene in court, on the last day of the trial, of which he has not yet spoken? I desire to recall that scene, with somewhat of form and precision, to the mind of the court, for a flood of light is thrown from it all over the case—all over the manner in which a religious persecution question—a question of suffering for conscience sake—has been gotten up, (in a very bungling, not to say stupid manner, I must be allowed to suggest,) by the pious Jesuit of St. Mary's. It cannot be forgotten that we have proved by the testimony of the respected principal of the Eliot School—Mr. Mason—by the young lady assistant in his room—Miss Marsh—whose intelligence and candor spoke in every line of her fair face—that the father of the boy, when he had been dismissed, the Monday previous to the day of the rebellion, had brought him back, and had heard from Mr. Mason a full

explanation of the rules of the school, and of the precise differences between the Catholic version of the Ten Commandments and that which was printed in the boy's books. It was proved that he ordered his boy to say them, and directed his teacher to punish him severely if he did not obey; that he took pains to say that *the boy was not to be sent home, that he was not to be expelled from school*, but was to be made to say the Commandments, and to be punished severely if he did not. I am quite sure that no one who heard these witnesses, no one who heard the very long and elaborate, and very skilful cross-examination to which they were subjected, could doubt for one moment their entire truth. It was with a good deal of surprise, I think, that your Honor heard the boy and his father called to contradict this clear and positive evidence; and yet they had the folly to come upon the stand and wilfully and audaciously deny it altogether. I believe that no one who heard them, no one who witnessed that scene when, more plainly than I ever before saw it in a court of justice, deliberate perjury was proved out of their own mouths; when the boy, conscious of his falsehood, stood mute, but confessing his crime by his silence, with the fraud and the crime so obvious, so awful, that in those moments of suspense you could hear the very silence in the crowded court room. No one who heard the boy that day, would say that it is unnecessary, or would be useless to repeat weekly or daily to *that son of that father* the awful command, "Thou shalt not bear false witness."

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

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

This question, whether Wall and his son are false or not, is very vital to this cause, as I will presently show; and I therefore ask the court to remember the father's evidence and the boy's. The court will remember that it was proved that this boy, and the other Catholic boys, had been in the habit for years of repeating the Ten Commandments without objection—a very material fact bearing upon the same vital question, to which I am presently to ask your Honor's attention. I have not only proved that this boy had done so, but that in particular, since September last up to the week of the rebellion, he had done it constantly; and yet in the face of this proof, the boy dared to stand up here and swear boldly

under "medal," or other influences, that he had never once repeated them. His father dared to swear to the same thing, and he swore that for the last six years, ever since his boy was four years old, he had forbidden his boy to say the Protestant Commandments. Had he really been obliged to tell his son so? Sure he had; and he and the priest both had forbidden his boy to say them a thousand times. "What, a thousand times?" "Yes, faith, and more than that; five thousand times over, he forbid him and me both." Please to remember that you are on oath Mr. Wall, before you repeat that. "Faith and it was over five thousand times?" "What, you yourself have been forbidden five thousand times by your priest to say the Ten Commandments?" "Yes, and indeed I have, and more too." "Well, now, Mr. Wall, please to remember that you are upon oath, and tell the court of even *one* time when any body asked you to say the Ten Commandments, and when it was necessary even *once* for the priest to forbid you?" Thomas was in difficulty. "Oh! that's no matter," says he. "Pray tell me, Mr. Wall; name one time out of the five thousand."

"Oh! I didn't mind when it was," says he. "Can't you tell once out of all the five thousand?" A light of inspiration suddenly flashed upon him, and then with a cool impudence, and a ready lie—which he enjoyed as much as any one—which no one could hear without a smile, "Faith, it was in the *ould counthry* they did it," says he. He evidently thought he could get out of the way of cross-examination, if he could but take refuge in his native bogs. But it was all in vain. "So it was in old Ireland that you were told five thousand times by your priest that you must not say the Ten Commandments, was it?" "To be sure it was, your Honor; whoever supposed it was any where else?"

"But who asked you to say the Protestant Commandments there?" "Nobody asked me to say them; we weren't bothered with them things there." "But the priest told you five thousand times to be sure and never repeat the Protestant Commandments?" "To be sure he did, ain't I telling you so?" "But why should he tell you not to, if nobody asked you to say them?"

He was evidently stuck in his own native bog. But it was only for a moment. With the same gusto, with the same enjoyment of the lie that helped him, as he thought, out of his difficulty, he said, "Wasn't it them botherin tractmen, to be sure?" "Oh! the tractmen wished you to say the Protestant Commandments, did they?" "To be sure they did." "What, nothing else but the Commandments!" "To be sure not." "And did they really ask you five thousand times to repeat them?" "And more too, for the mather of that." And the priest forbid you all of five thousand times to repeat them?"—"That he did, to be sure."

Poor Tom Wall, no wonder he emigrated, with five thousand Protestant tractmen at one ear shouting the "Ten Commandments," and five thousand priests, shaven and shorn, at the other, shouting to him, "be kilt for your religion, Tom,"

No wonder he was obliged to emigrate. Now that may be Catholic honesty, but it is what we should call very like downright Protestant lying.

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

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

If so, they were disappointed. The boy was not whipped; he was simply told that he must obey the general regulation, or he must bring his father there and have the matter explained. He was sent home. That was on Monday. He did not return, as his father swears, until Wednesday. Why was that delay? Was there any consultation with the priest going on? What followed is very strange. The boy is brought back. The teacher is told with great care and plainness that the boy must say those very Commandments. He is told that the father wants the boy kept at school, and not dismissed if he refuses to respect the commands; but that he must be punished, and punished severely, if he refuses. How did the father know before hand that the boy would refuse? Why did he wish him *punished severely* if he did?

What follows seems to explain the reason of this. On the following Sabbath, the same priest instigated nine hundred pupils to break into open rebellion. The boys go to school, they stamp on the floor and make a disturbance by whistling, loud mutterings, and scraping their feet while the Lord's Prayer is repeated. This Wall boy makes himself the most forward, he is the ring-leader to whom all the other boys turn. He cannot be sent away, for his father earnestly requested that he should be kept in school and *punished severely*.

I think we begin to see the clouds breaking away a little. I think we understand something about the reason of those mysterious visits after dark to the Jesuit's house, the night before the

boy was to be a witness. I think we begin to know now how it came to pass that the father should know beforehand that the boy would refuse; why the father was so anxious, and why he called the second time to repeat that he wanted the boy *kept in school and punished severely*.

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

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

I very respectfully beg leave to end this part of the case, with the parting advice to Father Wiget—that the next time he gets up a sacred drama for public exhibition in our courts, he would remember there is an American institution called cross-examination, which sometimes operates as a "free pass" behind the scenes. I would also affectionately caution him to waste no more medals on doubtful saints, or on those precocious but profane little martyrs, who are ready to die for their religion in the school-house, but in the streets—"Aint sgoin to repate thim damned Yankee prayers."

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

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

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

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

taught—where law and religion walk hand in hand.

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

And now in closing, there are a few words more to be spoken. It may be said, it has been said, that this question is met with too much of earnestness and zeal. I trust that it will never be met otherwise. I would wish to avoid all that can give offence, all that can cause heart burnings or alienation to the emigrants who we admit as free citizens; but they must remember that they come to *learn* as well as to enjoy our institutions.

They know not what they do, or they would never dare to attempt, as they have done, to violate our household gods. This is no question of politics or for politicians—the people will never intrust it to them. It is a question for every fireside, for every heart. I know that there is not a mother throughout our land, from one ocean to the other, who did not feel a sudden thrill of indignation and horror when she first heard that the Catholics were attempting to drive our Saxon Bible from our free schools. Little do they know the spirit of American liberty who think that this can ever be accomplished. Timid men may be found to consent to submission—politicians may be found who wish to conciliate foreign voters—but until liberty ceases to be any thing but a shadow and a name, that Saxon Bible will be the compass of the American free-man—the pillar of cloud by day, the pillar of fire by night.

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

Never, *never* can man or priest put asunder those whom God has joined together. Banish the vain delusion forever that our Saxon Bible can be taken away; neither foreign tyrants or foreign priests have that power.

Until America ceases to be a republic, until the warnings of Washington and the wisdom of Webster are forgotten, until religion and freedom are banished from the land, it will remain as the rule and guide of our faith, the great charter of our liberties.

ARGUMENT OF MR. WEBSTER.

May it please the Court:—

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

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

The pertinent facts which surround this case are not many and not complicated. With your Honor's permission I will relate them as they have been made apparent in the testimony of the witnesses sworn and examined.

The Eliot School is one of the public schools of the city of Boston, established and supported by a portion of the public revenues of the city. The respondent is a sub-master in that school, and the second person in authority there. Thomas J. Wall was, on Monday, the 14th inst., one of the pupils of the school, but under the immediate instruction of Miss Sophia Shepard, an assistant in the Eliot School. On Monday morning, the 14th inst., the day of the beating and wounding of which we complain, Thomas J. Wall, the beaten and wounded boy—a child of the tender age of ten years—left his father's home for the school-house, arriving there some twenty minutes before the school began, and spent the time, before the opening of the exercises of the school, in playing horse with his little brother of eight years of age. When the school was opened at the usual hour, it is not denied that the boy Wall was quietly and promptly in his place. It is not alleged that he had up to that hour and minute been any thing but the gentle and affectionate child he is. The

exercises of the school commenced with reading a portion of the Scriptures by the teacher. It is not intimated that Wall was not attentive and respectful, as he was, during that exercise. After reading from the Scriptures the teacher next directed the Lord's Prayer to be chanted by the scholars. There is no insinuation, direct or indirect, from witness or counsel for the defence, that the boy Wall was not, in every outward appearance, a devout pupil during that manifestation of religious devotion. After singing the Lord's Prayer—that sweetest and dearest and best of all attempted forms of imploration to our Divine Master—that prayer made doubly sacred by the teaching of a pious mother, and the memory of an indulgent, Christian father—that prayer hallowed to me by all the dear memories of a happy home, and which the counsel for the defence say that I, and my associates, are conspiring to banish forever from the schools and firesides of New England,—after chanting that prayer, I repeat, by the children, Miss Shepard directed the boys to take the position of body prescribed for the solemn religious exercise of repeating the Ten Commandments. The pupils all complied. They were directed, Miss Shepard swears, to recite them separately. She commenced by calling on Mason, a boy at the head of the row of seats on her left hand, at the foot of which sat Wall. Mason repeated the Commandments. So did the boy next to him. The third boy refused. The fourth repeated the Commandments. The fifth, sixth and seventh refused; the eighth repeated them, and the ninth and last boy in the row, the boy Wall, also refused, as four boys out of eight had done before him. On inquiry of Wall, by the teacher, why he refused to repeat the Commandments, Miss Shepard testifies he replied that he did not know them and thus could not repeat them; that his father had told him not to repeat them; and that the priest had counselled him not to repeat them. There is no suggestion that Wall refused in an impudent or unbecoming tone, as the teacher is careful to swear another boy (Rohan) did, and, with the thought of impudence thus in her mind, is careful to omit to swear of Wall. A large number of boys in that room of the school, and at that time, refused, for similar reasons, to join the religious exercise of repeating the Protestant

version of the Ten Commandments as did Wall.

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

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

The boy was then sent home; a physician, among the most respectable in the city, was called, who prescribed for the bruised, swollen and bleeding members. The physician has been before us and states upon his oath that the hands of the boy had a swollen and sodden habit; on

inner surface were livid spots where blood was extravasated; the skin broken in places; there was irritability of muscles; that marks upon the hand were distinct and real; that cold water tended to prevent vesication or raising of blisters. He also explained to your Honor, what we all know, and this respondent by his education as a physician knew, how very tender is the skin of a child like Wall.

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

Such, may it please the Court, is the simple record of the events of that fatal Monday which have made so many thousands, as they have read the details of this long trial spread before them by the gentlemen of the press about us,—which have made so many countless thousands of the wise and good to mourn, not only for the torture and sufferings of the poor boy; not only for the anguish of the toiling yet affectionate and loving mother who had reared her child to love and adore his Creator God, and to obey "his father and mother;" not only for the boy, the mother, and the father, but for the cruel recklessness of the teacher. The tones of condemnation of this cruel beating, which have come back to us from the public press outside of this city, are alike honorable to the manhood and the affections of those who guide and control those potent engines of public opinion.

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

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

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

Now, in relation to all that, and in complete abounding refutation of the argument of defendant's counsel on this point, we have, first, the testimony of the boy Thomas. We have evidence of the conspicuous fact that Thomas told Miss Shepard and Mr. Mason, both of them, on the first Monday, that his father was not willing to have him repeat the Ten Commandments of the spelling book. Miss Shepard even goes further, because she cannot say but that the boy used the stronger word *learn*, instead of the word

repeat. Then Miss Shepard testifies that on Wednesday the boy was unwilling to repeat them. Then on the next Monday the boy again tells Miss Shepard his father is unwilling to have him repeat them. Then on the next Monday the boy again tells Miss Shepard his father is unwilling to have him repeat them. She also swears that the boy, on that day, told Mr. Hazelton,—this ubiquitous Hazelton heard everywhere but on the witness stand, because the defence dared not put him on,—he would not say them “on account of his religion.” The boy also told Mr. Mason, that day, in Mr. Cook’s room, that his father was unwilling to have him say the Protestant Commandments. He also repeatedly expressed to Mr. Cook, during the castigation, his entire willingness to comply with the rules of the school, and say the Protestant version if his father would allow him. So we have the boy, from the first Monday to the last Monday, on every occasion, and in every form, protesting that *his father was unwilling to have him say any Commandments but those of the Catholic Church*. Thus much for the boy.

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

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

The vigorous, searching, rude cross-examination of the counsel for the defence would, as it has done before, have perplexed stronger and better educated men. But notwithstanding all that, despite what the counsel for the defence have said of his testimony, one great central fact was, and is now, I am sure, apparent to your

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

The counsel for the defence has found it necessary in the course of his argument to apply dishonoring insinuations to all persons opposed to him in the present case; not only to the Catholic Church as a body, which is not in this case, but to its individual members, and to none more distinctly and offensively than the members of that Society of Jesus established more than three hundred years ago. Whenever he had occasion to speak of that holy brotherhood, he applied to them qualities of craftiness, deception, and falsehood. It occurred to me that if I would follow out the cue thus given me by the counsel, I could fasten upon his witness, Mason, all the vicious qualities which he ascribes to the Jesuits. Did your Honor ever hear or look upon more

craftiness, more adroit management than was evinced by Mason in his management of this ignorant Irishman, Wall, when, on Wednesday, he came to inquire why his son was expelled from school? Observe Mason's opening speech to Wall, as reported by himself upon the witness stand! See how artfully he seeks to allay all the Catholic apprehensions of the father, who can neither read or write, but who believes it a sin for his boy to learn and repeat our version of the Decalogue! Let me recall to your Honor, Mason's testimony. He says:

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

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

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

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

But assuming that the counsel for the respondent is exact in his representation of the conversation between Mr. Wall and Mr. Mason, what of it? Mason admits, as we have seen, that he held out to Wall inducements to believe that he would make changes in the words of the Commandments, but there is no where a *scintilla* of proof that Mr. Mason ever told either Miss Shepard or Mr. Cook of those inducements he had thus held out to the father, and which moved the parent to bring his boy again to the school. It cannot be denied that Mason and Wall had on Wednesday a consultation, an agreement, over the Commandments, which resulted in a yielding of something, no matter now how much, to the religious convictions of the latter—but there is no evidence that Mason ever mentioned or suggested the agreement—the compromise, if com-

promise it was, to either Miss Shepard or Mr. Cook. So that, as far as this case is concerned, the interview is not material or pertinent to the issue. Of what avail to Mr. Wall was the agreement with Mr. Mason, if the latter would not and did not communicate it to his assistant, Miss Shepard, and his sub-master, Mr. Cook. Even when Mr. Mason looked in and saw the beating, he neither then, nor at any other time, spoke of the agreement with Wall. There was not a word about hallowed and sanctified. So, I repeat, that the case, as far as justification of this respondent is concerned, stands as if Mason and Wall had not had any conference.

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

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

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

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

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

But I am told that here is a case of conflicting authority. Supposing there is! That is nothing new in public affairs. The great business of leg-

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

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

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

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

The problem is, I repeat, how you are to educate these eight thousand Catholic children, and not offend their religious prejudices.

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

That question is nowhere considered in genera

terms. Is there not in that relation, may it please the Court, a distinction to be drawn between private and public schools? Is not in the former the authority of the teacher more certainly a delegation of a portion of parental authority than the latter? Leaving that, however, and assuming that the authority of the teacher in our public schools is from the State, and that, as in the case at bar, the authority of the parent, as exercised by him, conflicts with that exercised by the teacher, what is to be done? What, in the consideration of an enlarged statesmanship and devotion to the public interests, is the duty of the school committee or of the legislature? Is it not a narrow, a superficial, a reckless view of the matter, to say, as did the counsel for the defence, in his opening, that the authority of the parent is to give way, or to be overridden by the authority of the teacher, the school committee, or the legislature? Is that the doctrine of the wisdom of this our Commonwealth of Massachusetts? Is it true, as Mr. Mason said, that the father has nothing to do with the school? The public heart of the people of the United States has within a few months been shocked by the narration of an event of recent occurrence in Italy. What were the facts in the case of the Mortara boy which so enlisted popular sympathy? They were that a Jew parent employed a Catholic nurse to attend his Jew child. There was and is a law in the Papal States forbidding a Jew to employ a Christian servant in his family. The law was passed to prevent attempted proselytism by over-zealous domestic servants. The nurse, thus employed contrary to law, either surreptitiously or otherwise, procured the child, so placed in her charge, to be baptized according to the rites of the church. There is also a law in those States that a child thus baptized shall, by the authorities of the State, be removed from the parents, and educated as a Christian, and the Mortara boy was, for that purpose, taken away, much to the sorrow of the bereaved mother. That was the Mortara case, and the legal doctrine of the defence justifies and upholds the act of the Papal authorities. Is that to be the accepted public law of this Commonwealth?

What is the problem now presented to the city of Boston for solution? It is this: we have among us, I suppose, eight thousand Catholic children, who are taught by their parents that the Protestant version of the Ten Commandments is not the version pronounced by inspiration or anointed by the church. How are you to educate these children, and so keep them from ignorance and crime, and not infringe upon their religious convictions, prejudices, if you please? This talk about driving the Bible out of the schools, so enlarged and amplified by the opposing counsel, is an absurdity, and nobody knows it better than himself! The real question is a practical business question. The great purpose of his city is, among other things, to educate these children so that they will grow up to be intelligent, loyal citizens. The whole theory of republicanism reposes on education of the masses. The whole theory of our public law takes start from

that. So we have established schools, and what should be their aim? Why, just to teach boys and girls arithmetic, geography, grammar, and those other secular branches, useful and prudent. Perhaps in this Commonwealth we have pushed the matter full far enough in the matter of branches of study. But let that pass. Our schools are maintained, or should be maintained, to teach secular branches. We have provisions elsewhere to instruct the young in those matters which concern another and, we fondly hope, a better world. We have the church, the Sunday school, and, better than all, the mother's knee, where the future sovereigns of America are taught to lisp the name of a crucified and divine Redeemer. We do not send children to public schools to learn Biblical doctrines.

The opposing counsel has, in his argument to-day, not to your Honor, but to "the aliens, the emigrants and the exiles," as he himself was careful to announce, quoted and dwelt at much length in an argument of striking felicity of diction, upon the seventh section of the twenty-third chapter of our Revised Statutes, which, he says, regulates the course and class of studies in our schools. It provides that "*piety*, justice, a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry, frugality, chastity, moderation and temperance, should be taught." All these are to be taught, he adds, but *first* of all, *piety*. He gave such emphatic distinction to the word *piety* throughout his elaborate and carefully prepared argument, to which I am compelled to reply without deliberation or preparation, that my able and astute associate, who conducted the case for the complainant by putting in testimony, making the opening presentation of the case to your Honor, and examining the witnesses for the defence, was led to consult authorities for the definition of the word *piety*. He has placed on the table a number of dictionaries, from which, with your Honor's permission, I will read.

Webster defines *piety* to be—

"Reverence of parents or friends, accompanied with affection and devotion to their honor and happiness."

Worcester says it is—

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

Sam Johnson—

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

And Dr. Jamieson defines it to be—

"Pity; compassion; clemency."

Now if the opposing counsel will only have such *piety*, such devotion to parental authority, neither my client nor any just man like him will ever complain.

But we are told that there was a conspiracy, a rebellion in the school; that this ten years old boy, who fell fainting under the cross-examination of the defence, is the ringleader, the head of it, and that he was whipped to beat out of him criminal conspiracy and rebellion, and not to make him repeat the Ten Commandments. The

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

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

Your Honor heard how on the previous Sunday the boy cried for fear he should be compelled to say the Commandments on the following Monday; *how there is not one scintilla of evidence that he ever spoke to a single boy to inspire him to disobey the rules of the school*; how he was quiet and respectful during the reading of the Bible, and chanting the Lord's Prayer; now the teacher skipped him by accident, not at first seeing him in his place, an act of sublime disregard of one who was to be the destroyer of liberty; how Wall was not the first, but the fifth, on that fatal Monday, to refuse; how he did not answer impudently as Rohan did; how he protested during the cruel beating that he would repeat the Commandments if his parent would allow! Your Honor heard and made note of that, and I need not consume the flying hours of twilight to dwell upon it. They might as well contend that they whipped this child for the breaking of the Atlantic Cable as for either conspiracy or rebellion.

I come now to my second point, which is—

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

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

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

I do not propose to dwell upon it further, because I am conscious that I am addressing an intelligent Court, that has heard all the facts of the case—except to suggest, that under no circumstances, in my opinion, is it justifiable for a teacher to whip so young a child with a rattan nearly three feet long, upon the bare hand. The

and is too important a member to be endangered in that way. Under the practice in England it never happens that the scholar is punished upon his naked hand—other parts of the person there where punishment may be inflicted.

In my view, and in consideration that this teacher is an educated physician, it makes no difference whether he put the hand of the boy in water before or after the swelling; because if he put it in before, it shows that he knew that the punishment had been so severe that the hand would swell; and if he put it in afterwards, it shows that the punishment was so bad that he did not wish the boy to go out of the school-house in that condition. But the counsel say the boy didn't want his hands put in water for he wanted to show them! Is not that very natural or a boy whipped as he was? Would he not very much desire to show to his mother and father how he had been treated by an imprudent teacher? Is not that another of the hundred other acts which make apparent the honesty of the boy?

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

Again, may it please your Honor, has it not occurred to you that if this boy had been the child of some person less humble than this complainant; if he had been your son, if your Honor will pardon the personality of the appeal, and he had stated, as did this boy, that his father did not desire him to repeat the Commandments, that the punishment would have been postponed for conference with you? But no time, no delay, no respite could be afforded to this humble laboring man! There was no self-willed personal disobedience by the boy Wall. He was willing to repeat either version if his father would say so. If any one was morally culpable it was the father and the priest, and they should have been whipped, and perhaps Mason, Cook & Company would have better success in beating out their heresies than our forefathers had with the Quakers. Let some one suppose a case in illustration of my line of thought. Suppose the manufacturing interests of Lawrence, in this Commonwealth, were in full prosperity; suppose that fact gave the municipal government to citizens of the Catholic church, and then that the school committees were Catholics, and the teachers of the public schools. Suppose, then, that those Catholic authorities should recommend

that the pupils leave the Ten Commandments and repeat theirs once a week, and the two Commandments should be contrived to mean the Catholic version, and a pupil, a son of a Protestant clergyman, refused, by command of his parent, to learn and repeat the Catholic version, and that thereupon, without inquiry or with it, the teacher should beat that boy thirty minutes! Would there not be a popular indignation in this State that would shake the Commonwealth from end to end?

I pass now to my third point, which is this:—

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

The opposing counsel in his argument has laid much emphasis upon section 5, chapter 8, of the rules of "the school committee, and regulations of public schools of the city of Boston, and characterizes it as passed in execution of the statute of 1855, which requires the school committee of each town and city in this Commonwealth to require daily reading of the Bible in the common English version." The section of school committee regulations is as follows:—

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

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

From this let me ask your Honor's attention to my first proposition in regard to those recommendations of the school committee. We say :

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

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

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

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

"It is the right, as well as the duty, of all men in society publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and seasons most agreeable to the dictates of his own conscience; or for his religious professions or sentiments, provided he doth not disturb the public peace, or obstruct others in their religious worship."—*Massachusetts Declaration of Rights. Art. 2.*

"All religious sects and denominations demeaning themselves peaceably and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.—*Amendments to the Constitution of Massachusetts. Art. 11.*

"All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to and expended to no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect, for the maintenance, exclusively, of its own schools."—*Const. Mass. 18th Art. Amend.*

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

"SECT. 1. In determining the qualification of scholars to be admitted into any public school, or

any district school in this Commonwealth, no distinction shall be made on account of the race, color or *religious opinions* of the applicant or scholar.

SECT. 2. Any child who, on account of his race, color, or *religious opinions*, shall be excluded from any public or district school in this Commonwealth, for admission to which he may be otherwise qualified, shall recover damages therefor, in an action of tort, to be brought in the name of said child by guardian or next friend, and in a court of competent jurisdiction to try the same, against the city or town by which said school is supported."—*Stat. 1855, chap. 256.*

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

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

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

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

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

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

"The Bible was used merely as a book in which instruction in *reading* was given. But *reading* the Bible is no more an interference with religious belief, than would reading the mythol-

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

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

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

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

Again, on page 408, the Court say—

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

Pressing on, then, I submit my second point, which is that—

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

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

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

My next point is—

III. The compelling of boys thus to repeat the Ten Commandments is, when taken in connection with another statute in the Commonwealth,

a hardship which no religious government could ever tolerate. I desire to call attention in vindication of my third point to chap. 240 of Supplement to Revised Statutes. It is as follows:—

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

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

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

SECT. 4. If, upon inquiry by the School Committee, it shall appear, or if upon the trial of any complaint or indictment under this Act it shall appear that such child has attended some school, not in the town or city in which he resides, for the time required by this Act, or has been otherwise furnished with the means of education for a like period of time, or has already acquired those branches of learning which are taught in common schools, or if it shall appear that his bodily or mental condition has been such as to prevent his attendance at school, or his acquisition of learning for such a period of time, or that the person, having the control of such a child, is not able, by reason of poverty, to send such child to school, or to furnish him with the means of education, then such person shall be held not to have violated the provisions of this Act.

SECT. 5. It shall be the duty of the town or city to prosecute all violations of this Act.

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

The counsel who has argued this case so elaborately for the defence, came late in the course of his remarks to consider the Ten Commandments, and to lay great stress upon the assumed triviality of the Catholics having conscientious convictions in that relation. Now, may it please your Honor, this matter of conscience is not a matter for phi-

philosophers nor for astute lawyers to judge. Conscientious convictions being alike to educated and to uneducated people. And the more uneducated the person, the still more dangerous and more likely to be wrong, is his conscience.—For there is, of all things on the earth, nothing so bad, nothing so deleterious to public or private welfare as an uneducated conscience. The counsel says that there is no material difference between the Protestant version of the Ten Commandments and the Catholic version. Now I venture to suggest, there is a substantial difference, and to state what I understand to be the difficulties which Catholic priests and Catholic parents have with the Protestant form of the Ten Commandments.

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

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

3. Catholics object to the division of the 1st Commandment, as it is contained in the Catholic Catechism, into a 1st and 2d Commandment, as it is made in the Protestant Ten Commandments, as strengthening the idea forbidding the veneration of images. "Thou shalt not make graven images unto thyself," means either in order to adore them, or in order to venerate them. Now, if it only means that they should not be adored, then it is a mere explanation of "Thou shalt have no strange Gods before me," and forms no separate Commandment. Therefore the Protestant, says the Catholic, dividing it into a separate Commandment, wants to convey the idea that also the veneration of images is forbidden.

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

The division of the Protestant 10th Commandment into the 9th and 10th, made by the Catholics, is natural, as the objects forbidden in the 9th and 10th are different—the 9th referring to the 6th, and the 10th to the 7th of the Catholics.

I do not know how it impressed your Honor,

but to me it was an unpleasant spectacle to see the opposite counsel endeavor to ridicule the convictions of so large a body of Christians as those bound together by that Church which Macaulay tells us has seen the beginning of all governments and may see the end; an organization with a faith its members believe to have been once delivered to the saints, and with a worship consecrated by a long line of saints and martyrs; a religion that is a reality, and is making its voice heard in every part of the habitable globe, and working out its destinies in every phase of outward manifestation. I would not have arraigned for triviality the religious convictions of the members of that Church. This question of what shall be or what shall not be a matter of conscientious conviction, may it please your Honor, is not one for philosophers, or astute lawyers to determine for every body else. It is a question which, in this country of all others, every man must and will decide for himself. Indeed, when we draw back the folded curtains of time, and look upon ages long gone by, and come thence, from point to point, to our own day, we see that it is those questions of conscience which, in our judgment, are the most trifling, which have established, and then convulsed and upturned, empires. Take, for example, the Reformation in England, and we have a striking example that it is often the symbol of a doctrine, and not the doctrine itself, upon which the controversy turns, and which is made its critical point; just as in this case the repeating the Ten Commandments is made the symbol of a great principle of religious faith. The Ten Commandments are not doctrines in the opinion of Mr. Mason, they are symbols of doctrines. Now the assumed great truths which underlaid the separation of the Church of England from the Catholic Church had doubtless for years been seething in the brains of the Reformers, but how strange, how apparently trifling was the issue which the great movement at last presented! I remember to have read in a very interesting book entitled the "Chief of the Pilgrims," a life of Brewster, by Steele, and to have been struck by a statement that in the year 1562, or fourth of Elizabeth's reign, the matter of separation was regularly and ably discussed in the National Convention of Clergy, and that these were the points debated and insisted on by the Reformers:—

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

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

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

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

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

VI. That the use of organs be removed.

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

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

If you run through the history of the world you will find that nearly all the martyrdoms have been upon those trivial matters. We have had within a short time a most significant example. The adoption by the English of the Minie rifle in India compelled soldiers to bite the end of the cartridge in loading. The Hindoo troops objected because they said their cartridges were greased with fat from beef and the beef was with them a sacred animal. And so they revolted. The Mahomedans objected because they said their cartridges were greased with pork. And so they revolted. And that matter of greased cartridges nearly cost the English government the loss of 150,000,000 of subjects in the East.

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

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

All the martyrdoms of the time of Henry VIII. and Mary, were for what may appear to those of us not interested, especially to be trivial things. So all those of the Roman Empire. And now when these things so slight to us, have

taken such hold of the hearts and consciences of men as to change the destinies of empires, shall not we, of this Commonwealth, at least look with respect and consideration, upon what is avowed here in relation to the Protestant and Catholic versions of the Decalogue? Is it not a case for mutual sacrifice and mutual gain? Is not the public good to be preferred over our own prejudices, and by our own—I mean the prejudices both of Catholic and Protestant.

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

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

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

I wish to say, once for all, that it was the determination and purpose of my associate and myself, when this case commenced, to treat it purely as a case of assault and battery. We supposed it would be a case which, like other cases before your Honor, would be disposed of justly, but speedily. Mr. Wall desired that the respondent should be brought up, and dealt with according to law. But so far did I suppose that this case was to be disposed of in a short time, that on the first day of the trial only my associate appeared for the complainant. But when the defence claimed that it was a case involving civil and religious liberty, I felt that it was important to meet it, and place it properly before your Honor. It would have been my wish to have

left out altogether this sectarian emotion. So far was that the case, that it was agreed with my brother not to formally open the case, but to put on the boy Wall, the other two boys, and the physician, and there to rest. But when we had done that, the opposing counsel rose, and in a tone of complaint, said, "We do not know upon what ground the prosecution intends to stand." My associate then explained to your Honor the points of law upon which we relied, and in words, not one of which was directed to the inflammation of sectarian emotion.

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

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

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

My brother has had a great deal to say about Irishmen. He has had a great deal to say about people who came from Europe. He has a great deal to say about the glories and imperial destinies of our own country. He has told us what these people receive when they come to this land. They do receive much; but when they came here, they had reason to think they came to a land of civil and religious liberty. There is a

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

The counsel for the defence, in his elaborate argument, saw fit to enlarge upon the advantages to this Commonwealth, and to every Christian community, of the Bible. I take it that nobody denies that, and that nobody thinks of denying it. He went on to enlarge upon the Protestant Bible, and to compare it with the Douay version of the Bible. He averred that there was the purpose, not to introduce the Douay Bible into the schools of the Commonwealth, but to drive out every Bible. I wish to answer that suggestion, so far as I am concerned, by a word which is expressed in a monosyllable.

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

Cuvier, the great naturalist, says that whatever else may be said of the Catholic Church, it preserved the Christian Scriptures during the darkness of the middle ages. My brother talks as though there was a conspiracy among the Catholics to drive the Bible away, when their missal, their whole service is made up from the Bible. They would have no worship were it not

for that Bible. If the counsel will go to any of the Catholic bookstores and will make inquiry, he will find that the Catholic booksellers publish and sell in the United States, in proportion to the population of Catholics and Protestants, as many Bibles as Protestant booksellers. And yet we are told there is a dark power endeavoring to drive the Bible from the Commonwealth! The Bible is the foundation of that Church. I happen to have in my hand an article in the *Christian Examiner*, an ultra Protestant magazine, written by Mr. George Livermore, of this city, a Protestant by birth and education, who has devoted much time to the subject of different editions of the Bible, and who makes abounding refutation of the absurd assumptions of the counsel upon the other side. It is unjust to say that the Catholic church does not recognize and protect the Bible, that holy and sublime word of God, over which saints have meditated in cells, around which her scholars have wreathed commentaries of priceless value, and from which virgins and monks have chanted in the breathless hours of midnight; the Bible, that gem of matchless price, reflecting the might, the sweetness, the anger, the love of God; the Bible, that noblest, greatest, dearest of books!

My brother, in the course of his argument, had a great deal to say, commencing with George Washington and coming down to the day of the Know-Nothing organization—an unfortunate association, as I think,—had a great deal to say about opinions—of the great men of the republic who have passed the narrow pathway which separates the known from the unknown. He laid much stress upon those undying words of the great statesman who sleeps by the side of the Pilgrims upon the sounding shores of Marsh-field.

If the counsel intended to adduce his great name in this case, by way of any rebuke to the ground which we have taken, it was not only ill judged, but illogical. I can only say that every word I ever read that Mr. Webster ever uttered in relation to the Bible, I would have written in characters of living light, all over the Commonwealth of Massachusetts, and I am ready to assent to them, line by line. But a suggestion is made in connection with the Girard Will case, and although Mr. Webster then uttered those sentiments, he lost his case. The Supreme Court decided the case against him, and perhaps his remarks were not pertinent to the matter before the Court. So the remarks of the gentleman here are not pertinent. The question is this simple question, whether the respondent did unlawfully beat the boy Wall?

I am proud of my noble, manly, generous Protestant faith, and by reason of my confidence in its strength, I am not afraid of that other faith of which mine is in a Christian sense an offshoot, and which starts from the same foundation stone. I am not afraid to see in our busy streets, nor upon the boundless domain of the United States beyond the Mississippi those Catholic churches rise, which bear upon their topmost spires and towers that symbol of a living God and of an un-

dying faith. If my brother will but pass into that Indian country, which has been the field of the Jesuits' labors, untrodden by the foot of other white men, unvisited by Protestant missionaries, he will find there among those Indians the little chapel with the cross; he will find the impressive ceremonies of the Catholic Church; he will find that intelligent, educated members of the Society of Jesus have been distributing this blessed Bible of inspiration, and laboring there for years to convert the red men to the Gospel of Christ. If I had time I would like to discuss the subject of how successful has been the care and culture of the Jesuits over the Indians.

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

When the counsel makes so dishonoring remarks about the Jesuits and the dark power at St. Mary's, does he happen to know who is the head of that parish of St. Mary's; that venerable, pious, pains-taking man, one of the most estimable that it has ever been my fortune to meet; who has attested his devotion to the United States in every manner in which patriotism can be put to the test. When my brother arraigns that man does he know that Father McElroy, when our arms were contending upon a foreign field, left his church, and volunteered as an humble minister of the Gospel, to follow our victorious troops and bestow upon them the blessings of that Bible which my brother now says the Catholics would drive out of Massachusetts.

Sir, is this Father McElroy who so followed the flag of his country, with the Bible in one hand and the cross in the other, to be brought into a court-room and arraigned for want of patriotism and fealty to our great Republic?

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

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

I submit to your Honor another point, and because the case has taken a relation which lifts it a little out of the routine of judicial determination and makes it a public question. It is suggested that there is to be commotion grow-

ing out of this case in the city of Boston. If then, the welfare of the city is at stake, what is the surest and best way of protecting it—not only to satisfy persons who may be interested in the fortunes of Mr. Wall—who is to have the protection and advantages which the law gives to the most humble citizens, but to conciliate all interests?

Therefore, I suggest to your Honor, whether as a matter of public policy—whether as a matter for the welfare of the schools of Boston—whether as a matter for the consideration of all of us,—if your Honor should be of opinion that you cannot inflict the highest punishment

which the law requires, but that you should diminish it somewhat,—whether in that case it is not the duty of your Honor to give this complainant the benefit of a trial by a jury of his country; whether in the complicated questions which have arisen—large questions of constitutional law; whether by reason of the multitude of avocations pressing upon you,—whether, I repeat, it would not be better upon the whole, in case this large punishment cannot be inflicted, that the case be sent where the respondent can have the benefit of a trial by a jury of his country.