

# **"TIMES REPORT."**

Entered according to Act of Congress, in the Year 1845, by George Roberts, in the Clerk's Office of the District Court of Massachusetts.

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## **TRIAL**

OF

## **REV JOY HAMLET FAIRCHILD,**

ON A CHARGE OF

## **ADULTERY**

WITH

## **MISS RHODA DAVIDSON,**

**IN THE MUNICIPAL COURT, BOSTON, MARCH TERM, 1845.**

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REPORTED FOR THE BOSTON DAILY TIMES,  
BY J. E. P. WEEKS, ESQ.

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## TRIAL OF Rev. JOY HAMLET FAIRCHILD. On a Charge of Adultery with MISS RHODA DAVIDSON.

REPORTED FOR THE BOSTON DAILY TIMES,

BY J. E. P. WEEKS. ESQ.

### Municipal Court.

[JUDGE WASHBURN, PRESENT.]

COMMONWEALTH, }  
vs. } On a charge of Adul-  
JOY H. FAIRCHILD, } tery with Rhoda Da-  
vidson.

MONDAY, March 24.

At quarter past 10 o'clock the trial com-  
menced.

S. D. PARKER, Esq, appeared for the govern-  
ment, and WM. BRIGHAM, Esq., has been asso-  
ciated in preparing the evidence for the gov-  
ernment. JUDGE WARREN and J. A. BOLLES,  
Esq. for the Defendant.

No 690. COMMONWEALTH.

vs  
JOY H. FAIRCHILD.

Bill found July, 1844.

COMMONWEALTH OF MASSACHUSETTS.  
Suffolk, to wit. At the Municipal Court of  
the city of Boston, begun and holden at said  
Boston, within and for the county of Suffolk,  
on the first Monday of July, in the year of our  
Lord 1844—

The Jurors for the Commonwealth of Mas-  
sachusetts, on their oath present, that Joy H.  
Fairchild, late a resident of said Boston, but  
now commorant of Exeter, in the county of  
Rockingham, and State of New Hampshire,  
Clerk, on the 19th day of December, in the  
year of our Lord 1841, at Boston aforesaid, did  
commit the crime of adultery with one Rhoda  
Davidson, then resident of said Boston, spins-  
ter, by then and there having carnal knowl-  
edge of the body of her, the said Rhoda Da-  
vidson, and criminal sexual intercourse with  
her, he the said Joy H. Fairchild, then and  
there having a lawful wife alive, other than  
said Rhoda Davidson, against the peace of said  
Commonwealth, and contrary to the form of  
the statute in such case made and provided.

A true bill,

THOS. RICHARDSON,

Foreman of the Grand Jury.

SAMUEL D. PARKER,

Attorney of the Commonwealth.

The jury after having satisfactorily answered

the usual statute questions in relation to having  
an opinion, were then empannelled, and con-  
sisted of the following named gentlemen, Tis-  
dale Drake, Benjamin M. Akerman, Thomas C.  
Baldwin, Joseph J. Bigelow, Geo. W. Bond,  
Henry R. Cazneau, David G. Collier, James  
W. Converse, Charles S. Ellis, John P. Fair-  
banks, Christopher C. Gore, and Samuel  
Vaughan.

Mr Tisdale Drake was appointed by the  
Court as Foreman of the Jury.

At 20 minutes to 11 o'clock, Mr PARKER  
commenced his opening to the Jury, and spoke  
substantially as follows. His remarks occupi-  
ed about half an hour.

### MR PARKER'S REMARKS.

In the progress of the trials at this term, gen-  
tlemen of the jury, we have now arrived at a  
prosecution of no ordinary importance. It de-  
rives its interest from the heinousness of the  
crime charged, and the previous respectability  
of the person accused. Indictments of this  
character are not indeed of unfrequent occur-  
rence, as the records of this Court, and the  
printed decisions of the Supreme Court attest;  
and in most of the recent prosecutions for this  
offence in this Court, the parties accused have  
pleaded guilty, and either forfeited the penalty  
of their recognizances, or quietly submitted to  
the punishment of the law. But we are now  
assembled for the solemn trial of an issue, in  
which the accused denies his guilt; and we are  
to proceed through a most painful investigation,  
deeply affecting from many circumstances, all  
who are to be engaged in it, and involving un-  
der all circumstances, some of the most import-  
ant interests of society.

It is my duty in opening the case, to state  
the law to you, and give you a brief outline of  
the evidence to be introduced.

The first section of the 130th chapter of  
the Revised Statutes is the basis of the  
prosecution; you perceive that though the  
punishment is prescribed, the crime itself is not  
defined; and it is a remarkable circumstance  
that it is very difficult, if not impossible, to find  
in the law books an exact common law defini-  
tion of Adultery. As to most offences the  
defects of the statute law are remedied by a  
recurrence to the common law, which our



progenitors brought with them to America, and are continued in force by the sixth chapter of our State Constitution; but as to the crime of adultery, this remedy fails, for, for some centuries, it has not been an offence recognized by the temporal courts of the common law of England, and is not indictable there. (See Salkeld's reports, 552) In very ancient times it was punished by special statutes in the temporal courts, but latterly (since the statute of 13, Edward the first, of *circumspecte agatis*) only in the courts christian [the ecclesiastical courts] by penance, *pro salute animæ*, perpetual exile, or perpetual imprisonment. [See Gibson's *Odex*. 1095.]

The name of the offence is said to be an abridgement of *Ad alterius thorum*, though some lawyers derive it from *adulterating* the issue of the marriage bed, an opinion that derives countenance from the fact that an unmarried woman cannot commit the crime. It is an offence which seems to have been well understood studied without a definition; it is prohibited in the Ten Commandments, and was punished quite severely in the Roman, and in the Jewish law, and also in some of the earliest laws of England. (See laws of King Edmund, ch 4; Laws of Canute, part 6, chap 2; laws of Henry 1st, chap 12.) It is punishable by indictment in all of the United States except South Carolina, (see 2, Bailey, 149,) and Virginia, (see 5 Randolph, 627 and 634,) and perhaps one or two other States, adhering to the common law. There have been periods in the history of some nations, when this crime was punished with death; for instance, among the Jews, (see Deuteronomy, ch 22, verse 22;) by the Julian law among the Romans; in England in 1650, (4 Blackstone, 65) and in the Colony of Massachusetts Bay, (see Colony laws, chap 18, sect 9.) But the punishment for this crime has been gradually relaxing for two centuries. Blackstone says, "in the year 1650, when the ruling powers found it for their interest to put on the semblance of a very extraordinary strictness and purity of morals, not only incest and wilful adultery were made capital crimes, but also the repeated act of keeping a brothel, or committing fornication, were upon a second conviction, made felony without benefit of clergy. But at the Restoration, when men, from an abhorrence of the hypocrisy of the late times, fell into a contrary extreme of licentiousness, it was not thought proper to renew a law of such unfashionable rigor, and these offences have ever since been left to the feeble coercion of the spiritual Court, according to the rules of the canon law, a law which has treated the offence of incontinence, nay even adultery itself, with a great degree of tenderness and lenity, owing, perhaps to the constrained celibacy of its first compilers. The temporal courts, therefore, take no cognizance of adultery, otherwise than as a private injury.

A mitigated punishment was also enacted in 1694 in Massachusetts, but it was still a severe one—sitting on the gallows with a rope around the neck for an hour, and in the way from thence to the jail, to be severely whipped, not exceeding thirty-nine stripes, and forever after wearing a capital A, of two inches long, cut out in cloth of a contrary color to the other clothes, and sewed outside on the back or arm, and if the culprit was found without the letter,

then he was to be publicly whipped, not exceeding fifteen stripes, *toties, quoties*. [See Province Laws, ch 28]

In 1763, the punishment was made still more lenient, a fine not exceeding one hundred pounds, or whipping not exceeding thirty stripes, or imprisonment not exceeding six months. After the Revolution, among the earliest laws of the Commonwealth, another Act was passed, (1784 ch 40) by which the punishment was sitting on the gallows with rope round the neck, whipping thirty-nine stripes, imprisoned, fined, and bound to good behaviour, one or all of these things; but in 1812, (chap 134) all corporeal punishments were abolished, and penitentiary discipline was substituted; and now by the Revised Statutes, the punishment is imprisonment in the State Prison, not exceeding three years, or in the county jail not exceeding two years, or by fine not exceeding five hundred dollars.

Such are the provisions of law relative to this crime. The facts in this case are few. It is not a question of paternity, but of mere adulterous commerce, and I beg you to make the distinction. The defendant, being a married man, living at South Boston, had in his family a domestic named Rhoda Davidson, a young unmarried woman. It is averred by the prosecutors that he solicited her chastity, and accomplished his wishes by a criminal sexual intercourse. The fact of the marriage is to be proved, and also the criminal connection. His being a married man, and having a lawful wife alive, will be admitted or proved, and I shall offer you a witness who must certainly know the fact if an illicit commerce occurred. As that witness will stand in the light of an accomplice, I shall deem it proper to corroborate her direct, explicit, positive, and, if believed, conclusive testimony, by other evidence. That evidence will consist of the confession of the accused, which I shall attempt to prove in three different ways, by his spoken words to different persons, by his voluntary payment of a large sum of money on account of the guilty intercourse, and by his written letter. After introducing this testimony, I shall wait for the learned counsel of the defendant to make his defence; and if in the course of the defence the credibility of the evidence introduced on the part of the Commonwealth is assailed, I shall offer several witnesses, and perhaps some documentary evidence to support it.

I am fully aware, that in a case which has excited so much public interest, there will be a temptation on one side or both sides, to introduce many collateral matters and circumstances, which may lead to a great waste of time, and perhaps divert your attention from the only issue now lawfully to be tried; but, intending myself to keep a close observance of the strictest rules of practice, I beseech my learned friends, who have the charge of the defence, also to endeavor to adhere to the known rules of evidence, and to avoid the introduction of facts which have no bearing on the precise question now to be tried.

We are entering, gentlemen, upon a most solemn and important search after the truth; and I hope the investigation will be confined to the right direction, and will be marked by candor, liberality, and a just regard of the rights both of the accused and the witnesses. I am sure I need not invite your most careful attention to the evidence, now so near the close of



your term of service in this court, as you have already given so many proofs here of your sincere desire to discover the truth, and so many creditable manifestations of your ability to find it, and your strict impartiality in declaring it when found. You are called upon today to perform a most important duty to the commonwealth to the party on trial, to the witnesses, and to society at large. The lot has fallen on you to discharge this duty, and you cannot avoid it, and your oaths bind you to discharge it conscientiously in the sight of God, and before your fellow citizens. I cannot doubt you all feel the great responsibility cast on you by the proceedings here today, and that you will summon the best faculties of your heads and hearts to perform your duty on this interesting occasion intelligently, honestly, fearlessly, and with a sincere desire to ascertain the truth by your patient investigation, and to proclaim it when discovered, as the result of impartial reason, unbiassed by prejudice or partiality, and as the dictate of an enlightened and scrupulous conscience, which will never reproach you hereafter for your righteous decision of this important issue. I will now introduce the testimony.

The quotation by Mr Parker from Deut, chapt 22, verse 22, is as follows—

"If a man be found lying with a woman married to her husband, then shall they both of them die, both the man that lay with the woman, and the woman; so shalt thou put away evil from Israel."

The first proof offered, was that of the marriage of Mr Fairchild, as follows:

This may certify that on the books of the 3d Presbyterian Church, Philadelphia, is the record of a marriage solemnized by Rev Stiles Ely, D. D, on the 18th of July, 1825, in the following words.

"July 18, 1825, Rev Joy H. Fairchild to Miss Mary Bradford."

Given under my hand at Philadelphia, July 5, A. D. 1845. THOMAS BRAINARD, Pastor of the 3d Presbyterian Church, Philadelphia.

*Rhoda Davidson* was first called as a witness. She is a young, rather good-looking girl of 23 years of age, with a light complexion, brown hair, and a low forehead. [The other witnesses were ordered to retire from the Court House, so as to separate them from Miss Davidson.] She was sworn and testified as follows:

I know the Rev Mr Fairchild—have known him since April 1840. I knew him first on Broadway in South Boston, and commenced living with him that year, I went there first to see if he wanted a girl at the request of Mr Thacher—I think I went there in May. I lived there till the spring of 1841. Nothing particular occurred there for some months, only Mr F. showed me more favors than other gentlemen in whose families I had lived. I did not suspect anything improper till he came to my room, about three months from the time that I came—Mrs Fairchild was then absent from home. About a week after her departure, I went to the Baptist meeting and returned. Mr F. was sitting in the parlor and wanted me to come in, as he wished to have a talk with me.

He first conversed about the meeting, how I liked it, how old I was, and wanted me to give him an account of my religious experience. I gave him my account, and he said he was pleased to see that I gave so good evidence of my being a christian—after some talk, I gave him my reason for becoming a baptist, and he said he was glad that he and Mrs F. had been so fortunate as to get so good a girl. He was pleased that I got along so well with his wife, and said she was mightily taken with me. They never had so good a girl as I was. He said I could get along with his wife well enough, if I let her have her way, although I might be obliged to stretch my conscience some times—he then said, perhaps I might think it strange that he took so much interest in me, and that he would explain himself by and bye—he then said, that he felt more interest in me, or different towards me, because I resembled, or was the image of the young lady whom he addressed or had regards for, when a young man, and before marriage, (Laughter in Court); he never had seen any one, he said, who looked so much like this young lady as myself. I was confounded to hear such remarks—he went on to state, that this lady was sick about a fortnight before she died, and that he never thought he could marry any one that did not look like her; he had seen such an one once in a church in Philadelphia, and followed her after church, but found she was married, and then felt very bad, (Laughter); he said he had married his first wife because other people got married—he then spoke of his present wife; he said she was a very amiable woman at times, and had known her only a fortnight before he married her; if he had been more acquainted with her he should never have had her; she was very good where she took, but when she was *miffed*, she was the most aggravating woman that he ever saw. He then spoke about my course which I was to pursue with her; he said, you see that I place great confidence in you, or I should not tell you this.

He told me never to tell of these things, for they might ruin him. He then stated the circumstances of a minister who had confided in a girl, who told of it, and it ruined him. I was sitting on the sofa, and he *came up and kissed me*. I asked him what he thought his wife would say. He said it was just as well, and she was just as happy as long as she knew nothing about it. Said he, how should I feel, if I knew all that my wife did when she was absent. I was sitting in a rocking chair first, and he wanted me to sit in his lap. I declined, and then sat on the sofa where he kissed me. He put his arms around my neck when he did so. I did not stay but a little while after this. Just as I was going out, he came to me, and said he loved me to distraction—and *hugged me very tight*. (Laughter.) No other person was in the house. I left the room to retire for the night, and went to bed immediately; I slept in the attic; it was on the roof. I thought of all these things, and if it had been any body but Mr Fairchild, I should have suspected evil, but I did not, as I always regarded him as a good, pious, devoted, and exemplary man—a christian. I thought Mr Fairchild's reason for making love to me, however, was not a good one. There was no fastening on the door, or only part of one. It was not fastened that night. I went to sleep, and at last I waked up, and saw Mr F. standing by my bed. Said



he, did you know, Rhoda, that it had been raining? My window was open, and he said it was very imprudent for me to sleep with my attic window open, and said he had shut it, as also some of the other windows.

He then lay down on the outside of my bed. I got under the clothes; I had no light in the room. He tried to get my head uncovered, but did not make much headway. He said I should stifle, and if I would not uncover my head, he should go down. Mr F. then left the room. I had requested him to go away before. In about a week, I slept below for a reason that I am not prepared to mention, or that I cannot account for. It was the L part of the house, in the second story, and connected with the nursery. It was a bright moonlight night; he was in his night clothes, and lay down on the outside of my bed. I was then asleep, and I don't know whether he laid down when he first came in. No one else was in the room. First I heard was, "*Chick, are you asleep.*" [Laughter.] I asked him what he was there for. He said he liked me so well, he could not keep away from me. I said I feared he had come for no good purpose; he wanted to know if he might not get into bed. I asked him if he wanted my bed—if he did, I would sleep in another room; he said it was rather chilly here, and asked if he might not get into bed; he said he would not harm me, for he loved me too well. I then perceived the bed clothes raised, and Mr F. getting into bed. I tried to get out, but he took hold of me, and asked where I was going; he said he felt no difference towards me than if I had been his lawful wife, and that there was no harm in his getting into my bed; that it was right in the sight of God that he should feel so: he manifested then some very improper conduct with me; I said rather than do anything like this, I had rather he would cut my throat.

He said he wished to do no harm, and would as soon cut his own throat as to cut mine. He then asked if I did not think David was a good man, and said that he had more than one wife. It was right in the sight of God that he should have more than one wife as it was for David; that God looked upon the laws of all countries as non essential, that he looked upon the heart, and that must be right; all he required in marriage was love. I asked Mr F. if God had not said that every man should have his own wife. He said, God had not said so, but Paul had said so. Mr F. said a great deal to convince me that it was right for him to have connection with me; he said a good deal, and then compelled me to yield to his base designs against my will; I made no outcry, for fear that I should disturb the neighbors, and because I felt that he was a good man, and the neighbors would think that he was a bad man. For this, I was willing to suffer this loss of my character. He had connection with me, and left before daylight it was near morning; I fell to weeping after this act, and he said he did not believe there was one girl in 500, of my years, that had not had a connection with a man; there were thousands like me, and I must not consider myself any worse for this. I told him I was disgraced in the eyes of the world, and that I had heard that a guilty woman showed this guilt in her countenance, and that I should be no more respected by the respectable. Mr F. laughed at this, and asked where I got this idea; said there was nothing in it. He laughed in the morning, and asked me

to look in the glass to see if I looked different. On the next day, I thought a good deal about the matter, and if I was not treated just so, I would not stay there. But I thought if I left, people would think strange of it and be suspicious of him, so I stayed. Nothing special occurred till 4 or 5 weeks, when Mrs F. returned from her journey. Before this he had intercourse with me once or more, besides; he was very successful in accomplishing his base design, although it was always against my will. After Mrs F. returned, she treated me kindly and was pleased to see every thing in so good order. She made me a present. Afterwards she came down in the kitchen, was displeased about something and made complaint. But I remembered what Mr F. had said, and did not mind it. I always tried to do what she told me. I felt very unhappy about these things and told Mr F. so, and said I wanted to go away. He told me to go up stairs and pray over it. I then thought, as I liked my work and wages, I would stay. I stayed till the spring.— This was the first part of the winter. I felt unpleasant about staying on account of Mrs F., and told Mr F. so. I wanted a new cloak, but had not money to get it, and told Mr F. if I was in the city I could get \$1,50 per week. I got \$1,25 at Mr Fairchild's. He and she talked together about it, and after a while he wanted to see me in his study. I told him I was going away. He asked why. I mentioned about his wife, and he asked if I expected to get more wages. I told him that I did, and that I had had more. He said, Do you want more money to get a cloak? I said I did; he then offered me \$1,50 per week, and agreed to advance me \$10 to get a cloak. He said his wife did not want me to go away, and that she liked me better than any one she had ever had.

I concluded to take the \$10 and \$1,50 and get a cloak and stay a little longer. I did so. I and Mrs F. had frequent difficulties after. I got a cloak. In the spring of 1841, Mrs F. talked of being absent about 3 months. I desired to get a milliner's place, if I could get one so as to pay my board. Mrs F. wanted me to come there, when she came back, and was willing to give me three months board. When she went, I had got a dress cut, but not made. She said I might stay a few days after she left, and then finish my dress. She then asked her husband about it. She said he objected, because he should have to go to market. I thought his was a very trifling reason, after all his professions of love to me, and I resented it. I don't know what was said further, but recollect being there afterwards, and finishing my dress. Mrs Cooper came there to wash, but no one lived there but myself and Mr F. I was then introduced to Mrs Usher, who kept a boarding house at South Boston, and had a conversation with her about working for my board there while I learned my trade. After this, in May, I left, and spent some time among my relations in the city, Mrs Kelly, Mrs Hoit &c. In June I went to Brooklyn. I went to Mr Shalers's in Brooklyn. He said he believed Mrs Loker wanted a girl. I went there and stayed till September or October. When at Mrs Loker's, Mr F. came out and wanted me to go back there and live. He said, they had an Irish girl there, but did not like her. I declined going back, as I had lived so unpleasantly there before. I did go at last, and said I would stay till they got a girl that they did



like. I stayed with Mr F. 5 or 6 weeks. I was solicited by Mr F. one or more times, and wanted to leave. When he went to the city, I asked him about getting a girl, as I did not like to stay. I put on a long face, and appeared to be affronted, but I was not angry.

I told him, if he did not get one, I should leave soon. He got an Irish girl, that had lived with Deacon Lovejoy's. When I left there it was almost dark, and I don't remember where I went that night, whether to Mrs Usher's or to Mrs Kelly's. Afterwards I think I went to my cousin's, Mrs Hoit, and paid my board for 3 weeks by work &c. This was in West Centre street. I wanted to get a place again, and went to Mrs Green's corner of Derne street. Then I went to Mrs Woods in Chamber street. I then returned to my cousin's, Mrs Hoit. I heard then of Deacon Tenny of Salem, that he wanted a girl, and that it was a good place. I inquired about it, and found that they wanted a stronger girl. I next heard of Dr Chapin's of Abington, and also that they had been missionaries to the Sandwich Islands, good pious folks, and concluded that it would be a good place for me. I went to Dr Chapin's about the first of January 1842. After a while I thought I would go to Mrs Fairchild's, and make a friendly call, thinking that she had got over her unfriendly feelings. I also thought I would tell her I was going to Abington. I thought, on going there, that Mr F. might solicit me, and determined in my mind that I would resist him with all my strength. Mr F. came to the door. I asked for Mrs F: he said she was absent, and asked me to go up in his study; I had considerable confidence in myself, and went up there; he asked me to take off my shawl and bonnet, and stay till she returned. I told him I did not intend to stop. I don't recollect the conversation much, but he was sitting beside me on the sofa, took off my things and induced me to stay; he then began to manifest some improper things towards me, but I told him he should never have his will of me again, if it was in my power to resist him; he finally succeeded in accomplishing his designs.

Before this, I had got away from him, and as far as the outside door. I had left my things behind, and sat down and cried. He came down and expressed his regret. He did not want me to go off in this way. I supposed that the affair was all over, and went back to the study to get my things. I had not been there but a little while before he conducted as he did before, and succeeded in accomplishing his designs. Mr F. wanted to know when I was to call again. I said I didn't know, as I was going soon to Abington. I went in about a week. I lived next at Rev Mr Waterston's, and stayed there a fortnight. I next went to Edgecomb, Maine, my home. After about three weeks I found that I was with child. The child was born on the 18th day of September, 1842. Before I went home I saw Mr Fairchild. On returning from Abington, I went to Mrs Kelley's, in Porter st, and also to Mrs Hoit. I had taken a cold on returning from Abington, and feeling unwell, traced my sickness to this. I also went to Mrs Greenes's, in Derne street. I got some medicine of Mrs Weeler, which I threw away at the request of Mrs Waterston, when I was staying there. I saw Mr Fairchild once after returning from Abington, having gone over

there on account of feeling some doubts about my situation. This was on a Sunday. Mr F. appeared to be glad to see me. Mrs F came and saw me also. This was in the Nursery. He asked me how I had been since I left. I said that I had not been well, and had been taking medicine all winter. This was said to give him an idea about my situation. He got up and looked sideways at me, evidently desirous that I should say nothing more about it then. Mrs F. invited me to dinner. Afterwards my sister, Mrs Esty, came to Rev Mr Waterston's, and said, if I was a married woman she should think something was the matter with me. This was after my conversation with Dr Channing, and after I had taken the medicine. After much persuasion and much fear, I told my sister of it. She asked me who it was. I said he was a man of high standing, and that it would ruin him to have it disclosed. After a while she guessed that it was Mr Fairchild, and I said that it was him. She gave me no peace till I told her. She then told me to go directly to South Boston, and see Mr F. about it. I got leave of Mrs Waterston to go out, saying that my sister was going out of town soon, and that she wanted me to go out with her. I went that afternoon to Mr Fairchild, and began to relate the matter to him. Said he, don't talk so loud, for my wife is in the study, and will hear you. He then said this was no place to talk, and asked me to go over the old bridge, and he would see me. I went out and met him on the old bridge. He asked me what I meant, and said what I feared was the case, *could not be the case*, and I knew that he would not do such things. He offered to give me \$200, and wanted me to go home and say nothing about it to Dr Channing, or any one else. He asked if my sister was a Universalist, and what she would do. He then agreed to meet me and my sister on the Common, at Park street Mall, that evening, at a quarter before or a quarter past 8. I told my sister, and she agreed to go. We saw Mr F. there. He was alone, and we were alone. We all walked to the large tree, near the Frog Pond, and then towards Belknap street. The conversation was addressed chiefly to my sister. He said to her when we first met, I am sorry, Mrs E. to meet you on such an occasion. He went on to say that what I had told *was true*. He said he was very sorry, and hoped God had forgiven him. He told my sister when I called at his house, but I don't recollect it. He said he thought I could not be in this situation, and hoped I was not. If I was, I never should want for anything, and he would rather stint himself of his tea and coffee. He said the devil had influenced him to do what he had done, and hoped he would be forgiven of God. He was willing to aid me, but he wanted it kept a profound secret. For the sake of the cause of Christ, and his dear wife and children, he hoped it would be kept still. He took out some money, and said he was going to give me \$100.

I then said, what excuse can I make to Mrs Waterston for going home, as she knows I have no money. Mr F. said, I can give the money to your sister and she can give it to you, and then you can say so to Mrs W. He then said, "You solemnly swear before God, that you will never divulge this, and I hope you will improve the first



opportunity to go home." He agreed to give my sister \$10 a year, and me \$90 a year, provided I was in this situation. I was to receive the money through the Post Office, and in October. I think this was on Friday night, because the next day was Saturday. I didn't know how much Mr. F. gave my sister. I received \$100, and as I learned afterwards, he gave my sister \$5. I gave her \$10 in addition. I did not see Mr. F. the next day. I went to Edgcomb, I believe the next Friday night, in the John W. Richmond.

#### AFTERNOON.

*Rhoda Davidson*, (examination resumed.) I arrived at home Saturday afternoon, and received a letter the next day from the Post Office. It was destroyed. A second was received and not preserved. A third was received. This is the one, (a letter shown in Court.) This letter had the Boston post-mark. Mr. Parker then read the letter, which was admitted to be Mr. Fairchild's, although anonymous. It was addressed to Miss Rhoda Davidson, Edgcomb, Me.

#### LETTER.

"I now write you another letter, not for the purpose of denying what you say I have done, for that denial I have made from the beginning. I wish to say nothing more upon the subject; what has been done cannot be undone. I have not heard one word said about the matter by any body; but it is possible that I may have some enemies who would be glad to injure me by exciting suspicions against me, if they should hear what has happened to you.

The possibility of this gives me pain.—On this account I now write. You and your father are under the strongest possible obligation to protect me from all harm; you are bound to save me from all suspicion; you are never to mention my name in such a way as to lead any one to suspect me. Your father must never let it be known that he has ever seen me or spoken to me on the subject; and you must do the same. If any question should ever be asked me respecting the matter, I shall be ignorant of the whole subject, and so must you be. I shall never let it be known that I know any thing about it, and I shall expect you to do the same. It was solely on this condition that I agreed to what I did. I should not have done any such thing if you and your father had not given me your solemn oath before God, that you would see me harmless, that you would save me from being suspected. In order to do this, you are never to let it be known that I have ever exchanged a word with you on the subject. Your father told me that he considered it his duty to save me from harm as much as it was to seek the salvation of his own soul—and your duty is the same. Tell your father not to talk about the matter to your neighbors or to

anybody, for he may let drop some expression which will excite suspicion.

A wise head keeps a close mouth. If you write any letters to your friends, never allude to me in any way. You must never write me at all. If people should ever guess about the matter, tell them to guess till they are tired of it. Say nothing to them, but if they should happen to guess me, then your oath binds you to clear me. The same is true of your father.

I hope what is past has been forgiven of God, but if you violate your oath to me, you must expect the curse of God upon you. Think of the consequence of doing so. It would not only ruin me, but it would greatly injure you. I should then never be able to do any thing more for you. I have always treated you kindly, and can you have a heart to ruin me? I do believe that you will never break your promise, and never give me any more pain and distress. I have suffered beyond expression already. Don't add anything to it; tell your father that I consider him bound never to let any mortal know that he has ever seen or spoken one word to me on the subject, for I shall never let it be known that I have seen him. If any person should ever ask him whether he did not suspect me, his oath binds him to clear me at once. He must never tell what my business is, or where I live; tell him to say nothing about money. If you and he will thus fulfil your promise, you may be sure that I will fulfil mine. Let me charge you before God never to violate your oath and promise.

After you have read this letter to your father, you must burn it immediately."

These three letters were all received between the middle of summer and September or October. My father was absent when I returned home. He returned, and then went away again, fishing. I did not communicate my situation to him before he went. He returned again on the 1st of September, went to Boston, and came back after the birth of the child. I have had no conversation with Mr. Fairchild since. The witness being desirous to make an explanation about her evidence, was allowed to do so. I have made a different statement now, in some respects, from what I did before. Now I have placed the scene *below*, instead of in the *attic*, as I testified before. I state it now as it was. My reason is, that you may have the whole truth, and simply the truth. I placed it before in the *attic*, and blended both scenes together, for the purpose of making the story shorter, (she described the scene at Exeter as having occurred in the *attic*.) (Great sensation in Court.)

*Cross Examined.* I stated before that Mr. F.'s connection with me was in the *attic*. I was under oath. I also stated then, that his connection with me first, was



when he came to shut the attic window. I slept there about a fortnight. It was fronting the garden. All the other statements that I made are true. I think there was a bolt on the door, and not on the door post, and there was no catch. I take my oath of this. There was a lock on the door of the chamber below. Mrs F. was gone that summer, about 6 weeks. As to favors received, Mr F. said he was willing to advance me money, and he often gave me omnibus tickets and rides. He made the work easy for me. I did not state this at Exeter, because I thought it was not necessary. I was told to tell the whole truth, and I did all I thought bore on the subject. I did not think of this. I don't recollect whether I said any thing at Exeter about money. I did about omnibus tickets. I think I have stated many things here that I did not state at Exeter. I remember now many additional facts that I did not remember then, or before the Grand Jury. I don't know that I stated many things at Exeter that I have not stated here. At Exeter I remembered the scene as having occurred above, but did not mention it for the reason stated. I said at Exeter that the first communication was in the attic. I also stated it so before the Grand Jury, being some agitated. On reflection, I thought it best to tell the truth, as it was, so as not to have it give the lie to what was actually done. Now I recollect it as I have stated it last, and state it as I recollect, (all this was pretty pointed.) I stated at Exeter, that when he came into the attic, it was so dark I could not see whether he was in his night clothes or not. I did not tell then about covering up my head, because I then placed the two scenes together, and because I did not think it was necessary as I told the story at Exeter. I could not find a place to have this come in. Now it comes in right. I thought it did no hurt to place the scene in the attic, although it occurred below, because I thought morally, it was immaterial. When he came into the attic, it was dark, and I heard a voice, but saw no man. I did not state at Exeter about covering up my head, on account of having left it out in order to make it *blend* right.

I did not lock my nursery chamber below. When Mr F. came to the attic, I did not think he meant anything improper, even when he went away. I said at Exeter, as I remember, that I slept in the attic. I don't recollect about the question, being twice put and answered, about the connection in the attic in connection with that in the study. After he had connection with me in the room, I left the door unlocked. I don't know that I ever thought of securing my door by locking it. I can't tell anything about it. I was awake by

Mr F, saying—"Chick are you asleep?" He often called me by that name, though I don't know that he did before: He laid down on the outside first. I asked him what he was there for. He said he wanted to be where I was. He also said he regarded me very much. He then got into my bed, seized my wrist and *ravished me by force*. I thought my last resort was to scream, but I did not. I resisted all I could, and *could* do nothing but scream. This was not done. I was afraid to scream, because I thought it would wake the neighbors, and his character would be injured. It might have been half an hour, before he fully accomplished his purpose. I don't know as it was more than quarter of an hour. I can't state it more definitely. It was probably, however, in about 10 minutes. *This was my first connection with any man.* He remained with me about an hour, I think, after having connection with me. He did not repeat the act. I did not cover up my head below. I did it in the attic, because I felt ashamed. I did not suspect anything wrong of Mr F. when he first came in. And yet I said to him, according to my evidence this morning—that I was afraid he had come there for no good purpose. If I said this, it was only to deceive him. I was not confounded when he came into my room in his night clothes, although I was confounded when he told me about my resembling that young lady. I then thought he was making too much love to me. When he began to get into my bed, I thought there was something wrong. I thought he wanted to be in my company. He said so, and I believed him till afterwards. I do not state things in their order but as I recollect them, as near as I can. Mr F. overcame me, and I resisted as long as I could do. *I did not state at Exeter that Mr F. did not use force with me, but overcame me by persuasion.* I answered then, that I did not know as I understood what force was. I have heard from some individual that it is not force unless the woman screamed. (Laughter.) It was some man, not a lawyer, but who he was, or where he said it, I can't tell. (Laughter.) I think I said at Exeter, that I was not afraid to go into Mr Fairchild's study, because I thought I could have my way with him. I think so now. He used the scripture argument with me in the room below. I thought he was the best scholar, but I was not deceived by his arguments. He used these arguments before he resorted to force. I have signed two statements in writing about this affair. One was at Mr Robbins in Taunton. (Considerable discussion here ensued about this paper, and William Brigham, Esq, was sworn, it being understood that he had this paper in possession. He was directed by the Court to bring it in tomorrow.)



I was more willing to lose my character than to have Mr Fairchild injured. Mr F.'s house formed one of a double house. Some conversation took place after he accomplished his purpose. One time he stated that any lady of his Church would think his connection an honor. I forgot to state this this morning. He had family prayers with me after he ravished me, and he and myself constituted the whole family. I swear about his telling me to pray over the subject of my going away. In his wife's absence he occupied a room over the front entry. I still thought him a good man, after he had done all this. I thought him a Christian, but with wrong views. I stayed to avoid suspicion of him, and because I thought him a Christian. If I went away in his wife's absence, people would have supposed he had done something wrong, and I should be obliged to explain the whole matter to Mr Fairchild. After the first difficulty with Mrs F. I stayed because I chose to.

As to the number of the intercourses, I stated only what I thought appeared to be real. At the third interview, he used scripture too; he used physical force, and I tried to resist him. The third intercourse was one Saturday night in the attic, after his wife returned; I don't know as it occurred to me to fasten the door. This was about a week after his wife returned. In a week or two he had another intercourse with me. In all, he might have had 15 or 20 connections with me; I wanted to leave for this reason, and partly on account of my trouble with Mrs Fairchild; sometimes she offended me without any good reason; I felt kindly to both, when I did leave; I told Mr F. I and his wife did not get along well. The longer I stayed there, the more unhappy I felt about it.

During this and a large portion of the preceding cross-examination, the witness was much agitated and troubled, and at last cried for a considerable time.

I remained till May, and Mr Fairchild treated me in the same way, and Mrs F. had the same difficulty with me. I remained three days there after Mrs F. went away. Before she went, I became angry about his remark in relation to the market, and then told Mrs F. that I would not stay there any way—but I did—don't recollect whether he committed the outrage on me or not these three days; I then went to Mr Shaler's; was a member of his church, and had been a professor for 3 years; I said at Exeter, that I believed he had a connection with me as often as once a fortnight as long as I stayed there. But now, I am not prepared to alter my statement; he proposed it every Saturday night, after Mrs Fairchild's first return. I think he might have stayed with me once a

fortnight, but I don't recollect now certainly. When he proposed every Saturday night, I shook my head and replied no. His habit was to come on Saturday night. I expected him, and sometimes I avoided him by sitting up in my attic, where he was in the habit of coming; he found me sometimes sitting up; he had no connection with me then; I did not always use this precaution, being tired. I stated at Exeter, that no man but Mr F. ever had carnal connexion with me, and I state so now. When Dr Chapin took me to Abington, I was at Mrs Hoyt's. I was there when I called last on Mr Fairchild; I occupied the attic, and I was obliged to go through a room where the journeymen bakers slept. This room joined on mine; I never slept with my door unfastened.

On Thanksgiving, I slept at Mrs Hoyt's; I recollect putting on some gentleman's clothes in the parlor—no one was there—they were Mr Hoyt's; I went down to the kitchen; Mr Hoyt and Mr Brown were there; Mr B. worked about the bake shop. I returned to the same room, and took my clothes off there, I found a man under the bed there; there was no one there besides; I found him under the bed, because I looked under; the door was locked when I dressed; when I had dressed I unlocked it; I have had a pin cushion at Edgcomb, with the pins in it so arranged as to represent the father of the child; I have showed it to one of my neighbors at the time, Ann Kenney. There were two initial letters on the cushion, one being the christian name of the father, and the other a fancy name. The two initials were W. H. I know a man with those initials; he resides in Brooklyn, and is a young man; this was shown to Ann Kelley about six weeks before the birth of the child; this cushion was arranged in my father's house, about 6 weeks after I got home; I don't recollect any conversation with Ann Kelley at the time; I swore before the Grand Jury, that the time at which the intercourse in the study took place, was the time that the child was begotten, and that this time was near the 19th; but I am not sure that it was near the 19th, it was some between that and my going to Abington; I can't tell the number of weeks between the 19th of December, 1841, and the 18th of Sept 1842. On Christmas that year, 1844, I was at Mrs Hoyt's. I believe I was there at dinner. I don't recollect of going to church that day, or of leaving Mr Hoyt's house. I heard of Mr Chapin's wanting a girl one or two weeks before I went to Abington. I made the call at Mr Fairchild's after I saw Mrs Johnson. I had not engaged to go to Abington when I called on Mr Fairchild.

I don't recollect of stating at Exeter that Mr F. never had intercourse with me



but once out of the attic. I did not feel afraid to go to Mr F's study, because I felt that I could have my own way with him—and I so stated at Exeter. He obtained his will of me then by force; I did not scream because I did not think of it; I never said at Exeter that I did not scream because I was afraid of alarming his wife and children. I think Mr F. is a vicious man now, and that his conduct was vicious then. I reasoned out that adultery was a crime afterwards; I lived at Mrs Twombly's six months. My father came to see me twice at Mr F's; he was kindly treated; Mrs Esty also came; I never told either of them that I had been ravished. My sister Ann also came to see me. I never told her. When I went out this forenoon, I staid in the Grand Jury room. I stop at my sister's in South Boston.

TUESDAY, March 25.

[EXAMINATION OF EVIDENCE CONTINUED.]

CROSS EX. Rhoda Davidson recalled. My idea of the first letter is that it covered a page of the letter sheet, and a little more. I received the second letter about the middle of July, I don't recollect about the post mark on the date; I told my father something about the bargain, but not the whole; I don't recollect definitely; don't know that I had any reason for not telling the whole; don't recollect whether I told father that Mr F. agreed to pay anything, but think I did; the bargain with Mr F. and myself and sister was, that he was to pay me \$100 per year in October, and my sister \$10; my sister said she didn't care so much about the money, as she did on account of my sister; don't recollect that my sister refused the money; after we got home, my sister said she had received from Mr F. \$5; I gave her \$10 more; don't know how much I carried home; think I carried over \$20, \$30, \$40; can't say whether it was more than \$50; paid some money away before I went home.

Question. To whom did you pay any?

Mr Parker. I pray your Honor's judgment.

Court. I think it would be competent to trace the money.

Witness. I can't state to whom I paid money. Don't recollect of owing any body. I bought several articles.

Question. Whom did you buy of?

Mr Parker. I pray your Honor's judgment.

Judge Warren, for Deft. It is evident that there has been a conspiracy, and we wish to show what became of the money. You may test her accuracy.

Question. What articles did you purchase and pay for?

Ans. I can't tell without spending a great deal of time.

Warren. You need not be afraid of wasting time, Rhoda.

Ans. I bought a gown, shawl, bonnet, and some smaller articles—all not amounting to \$50.

Bolles. State the contents of the third letter. [Witness related some of its points.]

Witness. I read this letter last summer—not since. I told my sister the secret. When I received this third letter, I communicated its contents to my sister, who was in Billerica. When I received it, I was in Edgecomb, Me. I destroyed the two letters after I read them. I kept the third for my safety.

There was a change in my feelings about this between July and October. As to the other \$50, I told father that I must have lost some of it, although I kept it under lock and key. I could not account for it exactly. There was actually between \$40 and \$50. The last letter requested me to read the contents to my father. Mrs Esty told me in Boston to go directly to Mr F. and if he didn't do something about it, to expose him. Can't tell exactly how it was, but she told me to tell him so. Mrs Esty didn't like to go with me on the Common, but said she would do so. (Witness related the interview at Mr Fairchild's, at the time spoken of. I dined that day, (Sunday) at Mrs Gurney's. I am more doubtful about stating this at Exeter, than I am of the fact. I don't know about the back door, but the front parlor door was open. Don't recollect of saying to any one that I was dissatisfied with Mrs F. or left the family because I could not see my beaux. If I did say so it must have been a falsehood. Don't recollect how many times I went to Mr F. Never laid up any thing against Mrs F. Think I called there more than once before the interview in the study. That was the last case at that particular period. Don't recollect what medicine I took at Dr Chapin's, but it was pills. When I left Dr Chapin's, it was *Elixir Pro and Steel Dust*.

This was prescribed by Dr C. at my request. I understood it was good medicine for my complaint—my disease having been *suppression of the menses*, which I described to Dr C's wife. I did not tell her I had been troubled so for 3 or 4 months. Stated to Mrs C, that I had been troubled with this complaint since I had been at Abington. Before that I felt well. I don't know that I stated positively at Exeter that I did not apply to Mrs C, about medicine. Don't recollect about having said at Exeter, that Mrs C. remarked that if I was a married woman she should laugh at me. I asked Dr C for an emetic. I visited Boston before going to Abington—4 or 5 days. I stayed chiefly at Mrs Hoit's. Can't say that I have taken the *tincture of steel* for medicine. (Witness stated before the Grand Jury that she was impregnated between the 19th of December 1841, and 1st of January 1842, and a short time afterwards at Abington she states about her having been troubled with the *suppression of the menses, and takes steel dust and Elixir pro*, for her complaint.) I went to Abington in January. I told my mother that it was in December, according to Dr Chapin's notes on his book. Did not learn about these minutes till last summer. My child was born about the time I expected it. Think, thanksgiving that year, 1841, was latter part of November. I passed thanksgiving at M where I dressed up in men's cloth the time Mrs Esty said she should think something serious of my situation, if I was a married woman; I left the impression that there had been only one connect-



tween her and Mr F. I spoke of showing my pin cushion to Ann Kenney; don't recollect of doing so to others.

*Bolles.* What color was your child's hair?

Question objected to; Mr Parker said he could offer the child in evidence, if it was necessary.

*Bolles.* Did you not say at Exeter, that Mr Fairchild's hair was light, when young, and that he colored it black every morning? [Objection made, and question ruled in.]

*Ans.* I stated at Exeter that Mr Fairchild's eyes were blue, and that he might have colored his hair black every morning.

I wish you, about the money, to understand that the arrangement on the Common was, not to have the money sent to my father.

*Warren.* Did you not tell Miss Trask that you liked living in Boston, because you could walk with as many beaux as you pleased on the Common.

*Ans.* I never told any one so.

*Witness continued.* Before the birth of my child, I told my father something about the bargain. I did not state at Exeter that I told him all. I think I did, now.

[The main and cross examination, so far, occupied 7 1 2 hours.]

Witness, at request of Mr Parker, related the story about her putting on men's clothes. Mr Hoyt said he would give me a nine-pence to do it; I did so, and Mr H. said I was a very good looking man; he went out, and I said to his wife, I hope he is not about to call in the journeymen. I then went up stairs to undress, tearing some one might come in. I locked the door; before taking off my pants, I looked under the bed and saw something white; I examined further, and saw Mr Hoyt's leg. Said I here you are, and if you dont go down I'll scream; he laughed, got up and went out. About the pin cushion, the H. stood for one of the names of the father of the child, which I intended to give to the child; I intended to call him William Hamlet. The W. H. whom I know has no reference to the father of the child. I didn't say what name I intended to give to the child if it was a girl.

*Cross examination resumed.* I looked under the bed thinking to find Mr Hoyt, as he went out of the kitchen. (There was quite a discussion between counsel as to whether Rhoda should remain in Court while Mrs Esty and other witnesses testified. The Court allowed her to remain where she chose.)

*Mrs Mary Esty called.*

I know Rhoda; she is my sister. She lived at Edgecomb Me. She came to Boston in May 1840. I lived then at South Boston not a great way from Mr F's; I lived at South Boston at the first period when Rhoda lived at Mr F's; I came to Boston in 1841, and lived with Mrs Hooper in West Centre street; I learned about Rhoda's trouble after I returned from New York, in April 1842. She afterwards requested me to meet Mr Fairchild with her. I gave her the advice on the day that I met Mr F on the common; I met him at the bottom of Park street mall. Had seen him; he came up, shook hands, and said I try to meet me on such an occasion. I supposed my sister had told him about the affair—and that it was the truth. He had connection with her he said, in Dec, 1841. The DEVIL must have had influence over him. He thought it hardly possible that

she could be with child; that he was a minister and poor man, but he would do all he could for her. I told him I considered them both to blame. He said if his crime was exposed, he should be turned out of the ministry. He hoped God had forgiven him for his sin, and said he would give Rhoda \$100, if she would go directly home, and also give me \$5 a year while he lived.

Rhoda asked what she should say, if it was known she had so much money. He said you can say your sister gave it to you. Fairchild then put the money in my hands. During this time I walked from Park street mall, by the Pond and Beacon street mall. We went towards Belknap street. Rhoda and I parted at Mr Waterston's. I saw Mr F. in October, with my father. Father came to see me in Billerica, where I lived. We came to Boston. My father stopped near the Old Bridge, and I went to Mr F's house. Mrs F, came to the door, and I said I wanted to see Mr F. alone. He came down to the parlor, and inquired for Rhoda.

We went up into the study, and he said Rhoda had imposed upon him, and he was not the father of the child. Said I, Mr F. you said to me that you had connection with Rhoda; you are the father of the child, and what are you going to do about it; I said my father had come to Boston to see about it.

He denied being the father, and I told him father would bring Rhoda to Boston, and have the child sworn upon him. He said he would see my father the next day, at 11. I said my father wanted to see him right away. He said he would meet him in half an hour, and then gave me \$5. They then met on the bridge. I don't know the conversation that took place between her father and him. He said he supposed I did not want to hear the conversation. I said no, and he told me I might go somewhere, and see my father afterwards. I told him I should tell the matter to no one, and he need not fear. I went to see my sister then in Suffolk street. I agreed to meet Mr F. afterwards, between 1 and 2 o'clock in the afternoon, on the Common. I met him, but do not bear the conversation in mind. We walked down Tremont mall and met my father. Mr F. spoke to my father, and gave him some money. I have seen Mr Fairchild at Exeter. He cross-examined me at the trial. My sister gave me \$10 out of the \$100. I don't know how long she remained in Boston after this affair.

*Cross Ex.* Rhoda gave me that \$10 in Mr Waterston's nursery that night; I have told this story under oath before; never testified that I received the \$10 the next morning; I read a newspaper report this morning in the Grand Jury room before my father, sister, and Mr Thomas Dunham of South Boston; I read it myself; Mr Dunham read the newspaper trial and my father too: Rhoda went to see Mr F. the day that I advised her; Rhoda said she had one intercourse with Mr F.; witness said Rhoda told some of the particulars; that it was in the study, that Mr F. put his arms about her, &c. After the birth of her child, my father told me Rhoda had had intercourse with Mr F. more than once as he expected. I have stated that my father told me Rhoda said Mr F. was the father of the child. If there is any written statement of this under my signature



it is false—I have never signed any paper about this matter.

Think very likely I told my father that Rhoda had imposed upon me. The time that I went to my cousin's in Suffolk street, was the only time that I went there. A cousin of mine lived in George street; can't recollect what I stated at Exeter about the money Mr F. gave; I think I have been asked to sign a written statement; I always had in my mind what Mr F. said on the Common. So far as I stated, his words I think, are nearly exact, or the substance of them; can't state the particulars. When I gave Rhoda the advice, I mentioned Mr Fairchild's name first. From what Rhoda told me, I expected it was a minister. Rhoda said it was some one in high standing, and this made me think it was a minister; my father told me Mr F. paid him money and I saw him besides; I made Mr F. a promise to keep the secret; I didn't think I was taking a solemn oath; I don't know that Mr F. told me about the arrangement. Father said, Mr F. was to give him \$50 a year till the child was 7 years old. Father did not tell how much cash Mr F. gave him; don't recollect any agreement that was made on the Common, only that he said he would do all he could for Rhoda. I have stated the language of Mr F. generally, as I state it now; have never been at loss about it.

Mr Warren here called for the statement purporting to have been signed by Mrs Esty. (Paper shown to Mrs E.; she said, "I did sign this paper. I didn't recollect this before." Paper was dated July, 1844.)

Judge Warren then stated to the Court that he had an entirely different statement from this. He asked witness about it, who said she didn't recollect now signing any more than one paper.

*Alvin Simonds* called. I have in my possession a paper signed by Mrs Esty. (This was dated June 11, 1844.)

*Mrs Esty* called. I signed this paper too; have no doubt of it; I can't swear about having signed any others; two persons were present when the first paper was drawn; I meant to tell both stories alike; had no object in signing them but a right one; I signed them both between 3 months and 3 days; I boarded at Mrs Hooper's in West Centre st several weeks; I also lived with her in Sea street; there were 2 young gentlemen there that boarded; Mr Thos Dunham was not there; he was not a stranger to me when I saw him this morning in the Grand Jury room.

*William Davidson* called, (Father of Rhoda, and rather a plain citizen) I live in Edgcomb; was formerly a blacksmith and farmer; have been fishing for three or four seasons back; my wife has a daughter named Rhoda Davidson, I suppose it is mine (laughter); she came to Boston to live in 1840; I went to fishing in the sum-

mer season of 1841; in the Spring of '41, Rhoda was at Mr Fairchild's; I saw her there about the last of March or the first of April; I went South afterwards, and returned in April or May 1842; I called on my return at Mr F's. to hear of her, not having any certain news where she was; he said he saw her a few evenings since; that she was unwell; that he advised her to go home, and presumed she had gone home. I then went home; can't fix the date, but it was about the middle of May; I saw my daughter and she said she was unwell; I stayed home 3 or 4 days; I next went fishing on a 4 months cruise; returned in September; daughter was at home; my wife told me soon that she was pregnant; saw her next afternoon in her room; she appeared with child; she was confined about a week or fortnight after this; after the child was born I came to Boston, about the last of September; I talked with Mr F. about the 10th, having called at Billerica to see my eldest daughter, Mrs Esty, when I took to Boston. The next day Mrs E. went to see Mr F. at my request; he met me on South Boston bridge, at 10 o'clock, A. M. I and Mrs E. met him alone; Mr F. came up to me and said—"Good morning, Sir." I didn't return the word; I then said a very disagreeable subject has brought me to see you; he said—"yes, no doubt it was disagreeable to me as it was to him." He then said, you have me in your power, what are you going to do with me? I replied, that I didn't know what I should do; I wanted to do what was right; I did not wish to afflict the afflicted, I said; Mr F. turned to my daughter and asked if she couldn't go to some place, where she would not be suspected, while he conversed with her father, and they would meet on the common; Mrs E. said yes, and retired.

We then walked over the bridge, and in a new street, conversing; Mr F. then said if this comes out, it will be the means of ruining me, also depriving me of the means to support the child. My property, said he, is mostly in the house where I live, and if I am deprived of the ministry, I shall lose my living. I then spoke about the agreement between my daughter and him, and said it should be kept secret if the agreement should be made. I told him I was willing on account of his wife and children. Mr F. said he was willing to make an arrangement on reasonable terms, although I don't think it possible that I can be the father of the child. I then looked at him as I do now, [witness looked at Mr F.,] and said you have owned to Mrs E, and she is willing to testify it. He then made a short pause, and said, no matter, your daughter has laid it to me and I must do all I can to make satisfaction. He then spoke about my keeping the secret, and keeping it away even from



my wife. I promised I would. He then asked me about the terms. I told him he must then give me \$100, and then \$50 a year till the child was 7 years of age. He then cast up the amount and said it was a hard sum for him to pay.

I told him I was not willing to take anything less, and take the responsibility and keep it secret for a less sum than that. There was some more conversation and finally he said, the people of So Boston wanted him to settle there again, spoke of his prospects, and at length agreed upon the arrangement. I spoke about his sending me the money and good money. He said it should be the money on the Merchant's Bank. I agreed to receive in a letter on that bank. Mr F. then wished me to be always as good as my word, and keep the secret. He then said, he hoped God had forgiven all that had been done, and hoped I would forgive him. He hoped I would consider the money paid that day, and to come as full compensation for all injury done to me, and mine. I then told him I could not receive it so, for I considered the character of my child as undone—but I would receive it towards supporting the child. Nothing more passed of importance. He then agreed to meet me on the Common at 2, and to pay me the money. He met me, and gave me two \$50 bills on the Merchants' Bank. I did not count it, but took it, and afterwards found it correct. I then pledged my word and honor to keep it secret, he having spoke of it. Have not seen him since till yesterday. This was Friday. I went to Billerica Saturday, and started for home on Tuesday.

*Parker.* Have you seen that paper before. (Letter of Mr Fairchild shown to him.)

*Ans.* This is the letter my daughter read to me about a fortnight after I got home. I took it out of the Post office at Edgecomb, on Sunday. I received \$50 from Mr F. in a letter—there was no writing on it. It was only directed to me on the outside. I paid 18 3-4 cents postage. I thought the writing resembled that of the other letter. This was about the 20th of October, 1843. It was to be paid to me about the middle of October.

*Cross ex.* Rhoda told me that she saw Mr F. on the Common, and think she said she received \$90 from him, and that that sum was to be sent, and also that she was never to suffer for want of it, if that was the case.

I don't recollect that Rhoda told me that there had been more than one intercourse. I felt delicate about asking her. When I first went home, Rhoda never told me that Mr F. was the father of the child. I don't know how much R. brought home. I chalked up with R. to see how much she

had spent. She bought several things, and I made up \$85 out of the \$90. She said she must have lost the \$5. I arrived in Boston a fortnight since—have lived all around. Stayed with my daughter, and also with Mr Josiah Dunham. My wife went to South Boston too, with the child. Have talked with Mr Dunham about it. Saw Mr Thomas Dunham also at South Boston, and here in the jury room to day and yesterday. Have seen a paper in there, but did not read it. Mr Dunham had it. Thomas Dunham boards at his father's. My wife did not come with me. I object to stating how I came here. That is my business. My wife got to Mr Dunham's, at South Boston, between the evening and 9 o'clock. *I have had some money given or presented to me.*

I have not been in Edgecomb for four weeks. Don't know who brought my wife to Boston; saw Thomas Dunham at his father's when I got there the first night. In Oct 1842, when I received money from Mr F, I don't know as I received any money from any body else, here. I carried home, I can't say how much. Can't tell how much I carried home, but think it was rising \$50. I never paid Mr James Philbrook \$175 then, but paid him five years before for a farm, having paid it in two years. I paid a man in Wiscasset, Mr Young, over \$40 after I got home. I don't like to tell how I got here. When I left E. I was going to the West Indies. Did not hear before I left home, about Mr Fairchild's surrendering himself up. I heard of it though in Wiscasset, but I was under contract. I put into Cape Ann, on account of a storm, and then came here. I was a steward on board. I walked from Cape Ann. I received only a part of my advance. *I objected to answering because I run away from the vessel.* I considered it my duty, indispensable duty, to come here. Have seen Mr Josiah Dunham very frequently.

Court at 2 o'clock, adjourned to half past 3 o'clock, P. M.

IN THE AFTERNOON, at half past 3 o'clock, the trial proceeded. The Government rested their case with the conclusion of Mr Davidson's evidence in the forenoon session.

JOHN A. BOLLES Esq, then opened for the defence.

#### MR. BOLLES' REMARKS.

##### *On opening the Defence.*

The importance of this cause was strongly stated by the learned counsel for the government, who commented upon the heinous nature of the offence charged, and the previous respectability and high standing of the defendant.



The offence charged is *adultery*, and no one more than this defendant's counsel, would wish you to ponder well its character, not only in relation to human society and human laws, but in relation to the laws of that Divine Being whose special minister and servant the defendant professed to be.

No learned definitions of the offence, however proper they may be, as the foundation of this procedure, are needful to impress a jury of Massachusetts with a deep sense of its enormity. It is enough for us to be reminded that it is the violation of the marriage vows—the defiling of the marriage bed.

But add to this the previous high character and holy vocation of the defendant; that he was a minister of the Gospel—devoted to the service of God—for more than 20 years the spiritual guide and religious teacher of various churches and congregations, whose great end and aim it was by voice and life

—“to point to Heaven.

And lead the way.”

that such is the man now accused of adultery—and nothing, it would seem could be required to enlist your feelings and secure for this trial your most devoted attention.

There are other circumstances connected with the charge, which contribute unspeakably to the interest which you must feel in this trial.

Some of these were alluded to by the prosecuting officer, and some remain for me to enumerate.

And one of these circumstances stated is that very few cases of adultery arise in our Courts, and that upon most indictments for this offence, the party accused, either pleads guilty, or avoids a trial by forfeiting his bail and leaving the jurisdiction.

The learned counsel might have added that my client so far from leaving this jurisdiction to escape trial, has voluntarily come hither from another State to ask for a trial upon an indictment found, as its terms allege, while he was a resident of another State.

At the former term of this Court, Mr Parker very honorably stated, that such were the facts, and that Mr Fairchild comes here not merely of his own accord, but comes with a full knowledge that the Governor of New Hampshire had refused to issue a warrant to deliver him up—so that he was certain of an undisturbed asylum in that State.

Such is the fact—but my client desiring no such asylum—appears here amidst his former neighbors and parishioners, and asks no other protection, safeguard or asylum, than those very laws which he, by the indictment, is declared to have offended by a transgression so heinous.

In all cases, the most ordinary as well as the most extraordinary, the law charita-

bly—justly also—presumes the defendant innocent until he is proved to be guilty and throws upon the prosecution the burden—the legal burden of that proof.

But to this legal presumption, what weight and force are added by the circumstances to which I have alluded, by the fact that the defendant is thus voluntarily here for trial; that he is a consecrated minister of that gospel which declares that whosoever looketh on a woman to lust after her is already an adulterer; and finally by the fact, so fairly and properly admitted in the opening, by my learned brother, that up to the finding of this indictment, the character and standing of the defendant was irreproachable.

And here I should do injustice to my feelings, and those also, I am sure, of my learned associate in the defence, if I did not acknowledge the entire fairness and candor of the prosecuting officer, displayed thus far in the conduct of the trial. He seems to know and feel that we come here to try this cause in no narrow or merely technical view of it, but broadly, fully, and without reservation. We thank him, that by his admission of previous good character, he has shortened the case, by saving us the necessity of an array of witnesses on that point. In the same spirit, we have admitted those points of proof relating to marriage, handwriting, &c, which are sometimes difficult, but always indispensable.

So also have we declined to avail ourselves of that rule of law applicable to indictments for this offence, by which the Commonwealth is restricted to the proof of one single act of adulterous intercourse. We did not desire thus to restrict the limits of inquiry. Our honest and earnest desire was and is, and herein we act under express instructions from our client, as well as in accordance with our own wishes, and our own sense of the importance of this case, our honest and earnest desire was, and is, to meet the charge of illicit intercourse with Rhoda Davidsan, whenever and wherever it might be said to have occurred, and to leave not one single day or night of Rev Mr Fairchild's acquaintance with that girl unexamined by the fullest light that legal process can concentrate upon it.

We have, therefore, most cheerfully suffered the examination, and caused the cross examination to sweep broadly and fully across the whole period of more than four years, from May, 1840, to July 1844.

We have felt, and you will feel, that even a verdict of acquittal to a defendant, situated as our client is, would be of no value, unless it covered the whole ground. That with a verdict of acquittal, obtained upon a narrow view of the case, and upon nice points of law, the defendant could not return to his pulpit and people at



Exeter with any satisfaction, or any hope of future usefulness. And we should feel, you would feel, and the whole community would join us in the feeling, that a verdict of not guilty, thus obtained upon a partial examination, even rendered by the jury without leaving their seats, would not place the clerical character of the defendant, upon that broad, solid and impregnable basis upon which it ought, if he be innocent, to rest.

For these reasons have his counsel not merely acquiesced in but sought the widest scope of inquiry. And we pray you to take with you from this moment throughout the trial on our part this honorable wish of the defendant, to be subjected to the most particular and most thorough examination.

Another feature of the cause will not fail to strike you as worthy of attention, and as furnishing one of those facts which the opening counsel for the defendant is bound to suggest.

And that is that the accusation is not made, or the prosecution instituted at the time, or near the time when the offence is said to have been committed. That years have been suffered to elapse—that defendant residing long after this crime was committed, if at all, in this very county—that the accuser having herself been here or hereabout, ever since September following the birth of her child, and her sister Easty having always lived here, no accusation is made till defendant has removed out of Massachusetts, nor till after such a period of time has elapsed as to render it hopeless, or almost hopeless for him to encounter such a charge, brought forward and sustained by cunning and unscrupulous conspirators.

Another circumstance which renders this case of remarkable interest, shall be alluded to, and then I will proceed to a brief statement of the facts which we expect to prove by way of defence.

You have observed and will observe that though my client stands alone in this indictment, he sits not here alone; he is charged with the grossest infidelity to the wife of his bosom; to her whose eye would have been the first to detect any departure from love or duty,—to her who had ever the most ample means of observing and of knowing, and who, had one solitary fact awakened suspicion, would have been the most prompt to suspect and doubt;

—“for trifles light as air  
Are, to the jealous, confirmation strong,  
As proofs of holy writ.”

She, the injured wife, the outraged partner of his wedding covenant, she who if he be guilty, has more than any other person been wronged; She, with a love that defies all peril, whether of the land, or on the deep, or among “false brethren,” “with a love stronger than death,” and “which many waters have not quenched;” She, thank God, is by his side, and ever has been, as full of love and faith I trust, as well assured of his purity, of his inno-

cence, as when she walked with him to the altar and received his vows.

A fact like this, must afford to every heart, and contains a logic, a proof, which the darkened understanding, and the blunted moral sense of the most depraved of his persecutors, cannot but perceive and acknowledge, as well as comprehend.

It may, to one who has not watched and studied well the operations of calumny, seem surprising that a man of high character and clerical rank, should be accused of so gross a crime unless he were culpable. But it is precisely that description of people who are certain to be assailed.

“Be thou as chaste as ice —”

says the great poet of human nature,

“Be thou as chaste as ice, as pure as snow,  
Thou shalt not escape calumny!”

And it has always been so. It is the “tall the wise, the reverend head” at which the envenomed arrows of the slanderer are ever pointed. Look into the history of the Scottish worthies, and see which of the Camaronian preachers was not thus assailed.

[Mr. Bolles here instanced a case in this connection in Scotland, that of the Rev. Alexander Peden, a learned Cameronian, who on the eve of his ordination, was maligned by a base married woman, who afterwards confessed her guilt and committed suicide.]

Turn your eyes to England and among all her pure and pious divines, what name has come down to us more bright and spotless than that of Richard Baxton, the author of two works, the “Call to the Unconverted” and “the Saints Rest,” which are now read and studied by all good men with undiminished delight; yet Richard Baxter was accused of licentiousness. Look at our own country and the case is still the same. A case occurred near this vicinity, and a reverend gentleman was not ashamed to be seen walking arm in arm at Exeter with an abandoned girl, quite forgetting her guilt in his enmity to her supposed paramour.

The late Rev Dr Nettleton, of whose character and of whose good works I need not speak, was often the object of these scandalous assaults,—and found favor only in his grave.

So—to name one other signal example—of Dr Payson, a man of purity so apostolic that he might be truly said ‘to walk with God’ At one time in his ministerial cause we find him accused by one of those same wantons who find their way by steam-boat and by packet from Boston to Maine.

These base girls gloried in such things, for it lifted them up and got them into good company. Said old Mrs. Davidson “*Rhoda never kept such good company in the world as she had done since she had this baby.*”

Why are such men chosen as the subjects of calumny? for the obvious reason that they, above all men, are sensitive in regard to reputation, and shrink from accusation with a repugnance only less to



their abhorrence for crime itself; because, moreover, the crafty accuser, as well as the trembling accused is aware that by reason of one of the most singular and deplorable, but at the same time most common infirmities of our nature, we are prone to believe the accusation just, in proportion to the exalted standing and professed moral purity of the party assailed.

Let such a person then be thus accused, or threatened with prosecution, and the scandal of a public exposure, and you can readily imagine that he will feel willing to escape the peril at almost any pecuniary sacrifice.

As to the payment of money: The prosecuting officer will not ask you to regard it as equivalent to an admission of guilt. His professional observation, his familiarity with cases reported in works of authority, both legal and literary, would prevent his offering such an argument. And accordingly, in his opening, he stated it as a circumstance tending to corroborate the testimony of the witness. I say, his professional knowledge would prevent his taking the ground, that payment of money is an admission of guilt.

You all know, gentlemen, how often in civil matters, unjust claims are paid, or admitted, for the sake of avoiding litigation, expensive and troublesome suits; and the perplexity and vexation, than which none is greater, of being dragged into Court, and harassed by protracted conflict. So in criminal matters, though, perhaps to a less extent, false accusations are often made and silenced by the payment of whatever the unscrupulous accuser may see fit to demand—or to avoid the trouble, the scandal, the distress of a criminal prosecution.

A host of such cases were recently stated or alluded to in the House of Representatives, on the discussion of a bill for the punishment of seduction. Mr Parker, in the course of a long experience in our criminal court, cannot have failed to learn, that one of the most common iniquities of the prostitutes and abandoned women of our cities, is to bring false charges of this kind against innocent persons, for the purpose of extorting money, and that this infamous trick is so successful, as to yield them one of their most fertile sources of income.

Every professional man knows that our bastardy laws furnish the easiest and most ready instrument in the hands of unscrupulous and immodest women.

A country girl comes into the city, and resides in the family of some pious man. She falls into bad companionship—loses her chastity amongst her poor and worthless associates. The easiest expedient to hide her shame, or make profit of her sin, is to accuse her master. Her knowledge of his family customs, of his peculiar temper or temperament, enables her to invent a plausible lie,—and then if she have but

some older sister in sin to suggest, to stimulate, to guide and support her, she is sure of her victim.

I could point out a merchant on Long wharf, who has paid \$1200 on such a charge, and afterwards found for his consolation, but not to prove his innocence, for he knew that before—that he was the third person who had been charged in this manner by the same individual. I hold in my hand papers relating to a case of this sort, which occurred in this city—where this very Court in 1807, was the unconscious agent in helping forward the iniquity.

A RESPECTABLE girl made an affidavit against a mechanic, and he was convicted on her testimony. She afterwards confessed, that Mr French was not the father of the child and never approached her. Her father made him compensation and induced him to go away, in order to save his daughter from the State Prison. These girls were better acquainted with the bastardy law than any lawyer in Court. It was their practice. There were other cases, which he had not time to particularize fully. Clergymen were more frequently selected.

Another more recent case is within my knowledge, where three different individuals,—every one of whom was innocent, were compelled by threat of complaint and procedure—to pay heavy sums to a wanton accuser.

I feel that I can safely appeal to the jury, in regard to instances coming within their own observation or neighborhood, of just this kind of payment to avoid scandal. And I am willing to hazard my professional judgment on the assertion that these cases of payment, instead of forming the exception, do, in fact, constitute the general rule of practice, in the cases of parties innocent—and wrongfully accused. In regard to offences of this disgraceful character in particular, the very suspicion or whisper of which, is so fatal to reputation,—to social standing,—to family peace,—is this sad fact most true.

By this means I have known innocent men of moderate means stripped of their hard-gained stock of money. (Mr Bolles here stated the case of Henry L. Currier, a servant of Dr Hayward, a case well known to our legal practitioners.)

But it is usual for the conspirators, or the accusers, to select some shining and conspicuous character. Some man whose profession renders his reputation especially valuable and peculiarly dear to him, and whose usefulness would be destroyed by the poison breath of calumny. Men who feel vitally, and most sensitively, in regard to their characters as Cesar did of the chastity of Calpurnia; that it must be beyond suspicion.

I need refer to but a few signal instances of this, some of recent date and others more remote. The case of Rev Dr Parkinson of New York is, I know, familiar to some of you who are Baptists, like myself. It occurred some 30 years ago.

The more recent case of Rev Dr Phillips, also of the city of New York, is yet more remarkable. In that, payment after payment was demanded, and made upon a false accusation of illicit intercourse, until the frequency and extent of these drafts



on the Dr's resources could no longer be met, and he was compelled to seek the protection of the law, and did so to the full exposure of the villainy to which he had so long submitted for the purpose of avoiding scandal.

One other remarkable case I will read to you from a volume kindly furnished for this purpose from the library of one of the most respectable citizens of Boston. It was of the Archbishop of York, and formerly Vice Chancellor of Cambridge, in Wilson's *Memorabilia Cantab.*

It occurred in Doneaster, and he was innocently found in bed with the inn-keeper's wife. It turned out that she was placed there, in pursuance of a plot laid by a personal enemy, and that he was asleep at the time. Large sums of money were extorted from him, till at length he succeeded in getting the parties all convicted. The principal one was fined 5,000 pounds, and I hope some of our South Boston friends would not be obliged to suffer quite as much as this.

I might refer to multitudes of other cases, but it is not needful to corroborate our doctrine, which is that the payment of hush money, by no means amounts to an admission of guilt. I now come to a brief statement of the facts which we expect to prove in our defence.

Facts that we expect to prove.

1st, and generally, that this whole charge against the defendant is false

2d. That he has been made the victim of a wicked conspiracy to extort money and to blacken his character. More particularly, that Rhoda's own declarations upon this point have been, from the beginning, false and contradictory. That after she went to live at defendant's, being a professing christian, she openly and constantly professed that her christian character was improved, and her enjoyment of religion increased. That while living there the first time, and after leaving there in May, 1841, and while living there the second time, and after she left there the last time, up to her leaving Dr Chapin's, in April, 1842, she always professed the highest respect and admiration for his purity, piety and excellent character. That during the whole of her living at defendant's, and years before, she was, by her own confession and declarations, addicted to and practicing illicit intercourse, with many persons, and not with defendant. That, by her own confession, she has had, or by improper means got rid of illegitimate children more than once. That she has, in one instance, when once pregnant, consulted a doctor, and was told how to get rid of the unborn child, and did so. That she has often ridden into the suburbs with infamous characters, and has by her own confession,

prostituted herself on Boston Common. That she did not sleep in the attic at all during Mr F's absence. That after leaving Mr F's in May, 1841, she expressed regret that she had left so good a place.

That Mrs F. did not request her to stay, nor did she stay at Mrs F's. 3 days to make her dress, as she says, and put the house in order. But that after Mrs F. had gone, being turned away for loose conduct from Mrs Usher's, she came to Mr F. with tears and begged him to let her stay there a few days, and told him she dared not go to her sister's, Mrs E's house, because she was a bad woman, and kept a bad house, and she dared not trust herself there. That when she came to live at Mr F's, the last time, it was with the intent to stay, and not to leave, all that winter. That she was dismissed finally at deft's own request made to his wife in R.'s presence, in consequence of her not doing well. That the girl who took her place came in the A. M. and R. took her own time in the day to go. That after she went away she always spoke highly of Mr F. and said she could live with him forever. That there was a good secure fastening on the door of the back attic where she lodged. That after leaving Mr F. in Nov. '41, she never again came into his house when he was there alone, or there without his wife. That she did not go there, as she has stated, on Sunday noon, in April. That she has said the only objection she had to living at Mr F's was, that she could not see her beaux alone as much as she wished.

That her conversation with divers persons who met her while at Mr F's, was always that of a lewd and lascivious person. That she invariably called Mrs E. a bad and unchaste woman. That she had been hired by the offer of large sums of money to accuse Mr F. That she has said she had secured to her for accusing him twice as much as he was to pay. That large bribes have also been offered by some of the conspirators—in particular, that one of them offered \$200 to a woman to sign a false statement that she had known Mr F. and R. locked up together. That R. lived at Hoyt's in November and December, 1844, and January, 1842, under circumstances which are irreconcilable with chastity then. That she did, and confessed she did, about that time, have illicit intercourse, while dressed up in men's clothes, with a married man. That she has said the father of her child was a married man, whose wife was dying of consumption, and who had promised to marry her when his wife died. That she confessed that so many men had a hand in the pie, that it would puzzle a Philadelphia lawyer to tell who the child belonged to.

The defendant from this expects to satisfy you by the admissions of W Davidson, the



father, that Mr Fairchild always denied his guilt and asserted his innocence. That Davidson since extorting the money from him has repeatedly declared that he thought Mr F. an innocent man, a good man, and a true christian.

What we expect to prove concerning Mrs Esty, I shall leave you to anticipate from what you have seen of her testimony today. Thrice perjured within an hour, her character cannot be mistaken, and requires no comment.

Not to detain you longer by a more extended statement of what we expect to prove, let me conclude by reminding you, gentlemen, that your verdict, if it is what I think it will be, will not only send my client good deliverance, but restore him to his clerical functions, to that flock who are longing for him at Exeter, and some of whom I am happy to see, have rallied around him on this occasion, and given him their countenance and support.

He would now offer the evidence in the case.

On motion of Mr Parker, and at the suggestion of the defendant's counsel, the trial was here closed, and at 6 o'clock, for the day, the COURT ADJOURNED.

WEDNESDAY, March 26.

#### EVIDENCE FOR THE DEFENCE.

Wm P. Haines Esq, of Saco, sworn. I reside in Saco, Me. I was a delegate from the church at Saco to the Council in Exeter. Heard Rhoda D. and Mrs Esty testify there. Rhoda said that some days after Mrs F. went on her journey, Mr F. came to the attic, to shut the sky light, and came to the side of her bed, that she jumped out, and he seized her wrist—that a long conversation ensued, that it was right, as he said, in the eye of God, to indulge their love—that David did so. He quoted Paul's words; and after that he had criminal intercourse with her in the attic.

This was the first interview in the attic and the first act of criminal intercourse. She said this was the first time she saw him in the attic, also that there was no fastening on the attic door; she testified distinctly that he never had any other intercourse with her than this in the attic, except in the study. The interview in the study, she said took place in December, or first of January. The question was put to her more than once. As to violence, she replied in different ways, and at different times, that she was overcome by scriptural arguments or otherwise. She spoke of his seizing her by the wrist. No other act of violence was spoken of. At other times, she said, she always had her way when she saw him, or similar language. About the interview in the study, she said in evi-

dence, she was not afraid of Mr Fairchild, and could have her way. About the parlor interview, her story at Exeter was similar with some exceptions. One exception was as to the position of the parties, that he was on the sofa and she was in the rocking chair; another is about wife and his talking about her character. This she did not there state; There was nothing said about "*stretching the conscience*," I think. She did not tell at Exeter about *covering up her head*. She did state that he had criminal intercourse with her in the attic, and said nothing about having successfully resisted him. She spoke of two favors only, one about omnibus tickets and the other about work in the house. In regard to the study interview, she stated that *she ran down stairs with her bonnet and shawl on*, that her first thought was to run in the street, but she did not, as she thought she might expose him; (Mr F.) but that she ran into the parlor crying and sobbing, and then went up to the study, where he took off her bonnet and shawl and had criminal intercourse with her. I heard her speak of visiting Mr F. on Sunday. She mentioned at Exeter about going over to South Boston on the Sabbath. About the agreement on the Common she stated that \$200 was to be paid, that \$100 was paid at night in cash, that in future, \$100 per year was to be sent, and that Mrs E. was to have \$10 per year; have heard Rhoda's and Mrs E. statement here about Mr F's giving Mrs E. \$5. She did not say that Mr F. paid Mrs E. \$5, but that Rhoda paid her \$10 next day. I understood that the money was counted that night. When Rhoda was testifying about her interview with Mr F, and the engagement to pay \$200, on the injunction of secrecy, Rhoda said that she had told her sister, and Mr F must satisfy her. She was inquired of by me as to the contents of the second letter, and she replied first that she had burned it, and then said she remembered one sentence in it. It was this: "*I have denied the charge from the first, I deny it now, and shall till I die.*" She said repeatedly that this was in it.

*Cross examined.* At Exeter she spoke of her resistance of him, seizing her by the wrist, and her jumping out of bed. She said she objected by words, and I have spoken of the long conversation about David and Paul; she said he used scriptural arguments, and she also. He argued that it was all right. She spoke of crying at the study interview. Have conversed with Mr F. about the case at Exeter, after the testimony was in. Think I did not converse with him about the facts at all. There was an allusion merely to the evidence. Somethings took place on the last evening of the Council's session, and I thought he might become insane. Interested in the family, I called the next day, and we spoke



of the case in the way of allusion. I recollect the circumstances from my own memory, as well as from minutes. I have not looked at my minutes till this trial for months. This had no influence as to my judgment. Have looked at my minutes here, and made suggestions from them to his counsel. Have heard casual observations from Mr F about the case. Have corresponded with him some, and have seen him at Sa-co. He came about his case. Have assisted him as a friend, but not as counsel. Have let counsel see my minutes. There were frequent interruptions at the Council in Ex-eter, but R: was not interrupted so as to prevent her giving her narrative. It was given very much at her leisure. On the second day she was examined. Her term of investigation was some eight hours, and occupied part of two days. Have not been to Bath and other places to get testimony, or written letters to witnesses. Mr Riddell generally conducted the examination on the part of the Council. R. was cross-examined by Mr F. and Phelps; different questions were put by members of the Council. Before the Council sat, I never was personally acquainted with Mr F. Had heard of him through the public prints.

*Stephen B. Robbins.* I reside in Taun-ton. Rhoda Davidson resided in my family 10 days or a fortnight early last summer. She made a communication to me about Mr F. After being at my house about 10 days, Mrs Shaler came out there with a *written statement*, or confession, for Rhoda to sign. My wife was called to witness the statement, and she refused till she saw me. Mrs Shaler would not show me the writing. After Mrs S. left, I settled with Rhoda, and asked her some questions. She was to go in the morning. I told her I was surprised to hear these things, and of the course which my wife had told me she had taken. I told her I did not see how, at so late a day, she should destroy herself before the public, for the sake of injuring Mr F.

I said Rhoda, if Mr F. has done this thing, has he not done everything in the way of compensation like a man? she said yes. I then said, how are you so willing to throw yourself away—"you might make something out of it yourself," without injuring him. Said she—"They give me as much agin as Mr Fairchild." Said I, who in the deuce are they? Said she, "Mr Shaler and the deacons at South Boston." [Slight applause.] I said to her they would make a tool of her, and not give her one cent. Said she, "they secured it to me when I went to Boston with Mrs Shaler, PROVIDED I SECURED A CONVICTION OF MR FAIRCHILD." She left in the morning, and I settled with her that night.

*Cross Ex.* She came I think in June 1844. It is on my book, I found her in an Intelligence office in Boston, never knew

her before. I think I told it to Field first in Tremont street, agent of Mr Wright's pills. I told it afterwards to Mr Roberts of the Times, after he was introduced to me by Mr Field, at the office. Have not told it to him since. (This was after the trial at Exeter.) The paper was signed when Mrs Shaler was there. R. left because we did not want her there. I don't know that she ever lived in Taunton before.

*Main Ex* resumed. Never knew Mr Fairchild before this affair. I am an Episcopalian.

*Elizabeth G. Randall.* I resided in South Boston in 1840—1. 2. I kept a shop there. I knew Rhoda Davidson; I first saw her early one morning, when she came up to my door. This was in 1840, before she went to Mr F's. She spoke very familiarly. She inquired for a boarding place for females. I told her of Mrs Usher's as a very respectable place. I asked her where she came from, and she said, Marblehead, and that she came to South Boston that morning. She wished, she said, to obtain a boarding place for the purpose of working at dress-making. I thought her to be a dress-maker. I spoke of Mrs Usher's, as being a place where she might board. She went away and came again in some 3 weeks. I did not recognize her at first till she alluded to the other time. She said she was boarding at Mr Fairchild's.

She was in the habit of coming to my shop at different intervals all one summer and winter. She went away and then come again. I inquired of William Fairchild about her, and he said she was living there. After some weeks, she said she was a Baptist, and that she had told Mr F. so. Said he, very good, we have a good Baptist minister here. Rhoda thought this was curious, for ministers generally always wanted every body to come to their church, (laughter); after two or three months she spoke of religion, and said she felt religious, but never thought of attending to it, every day, till she went there. She said it was a very exemplary family and though she did not have so much, by a quarter, as she had elsewhere, yet it was pleasant to stay there on account of its being so good a family. She always spoke particularly of his prayers, and alluded often to her wages. The effect of these exercises, she said, on her own religious feelings was good. She brought her father to see me; she introduced her father; he said he was happy that she had got into so good a family; he had never been satisfied about her before, since she left home, she was so young; Rhoda had then been living there about six months; I reprimanded her first of the winter about her not being so religious as she was; I told her, she showed too much vanity. She asked



where; I told her about her shaving *a circle around her forehead*, and that no christian would act so. I told her she looked like a scorched cat, [great laughter]; she always wanted me to trust her, I did sometimes; she said she had got some \$8 or \$9 in advance, and he was afraid she should affront Mr F. if she asked too often. *She would not affront him for anything, for fear she might lose her place.* After the interval when she was absent, she came back and spoke well of Mr F.; said that she did pretty much as she had a mind to when Mr F. was absent, *for madame was pretty easy*; she said, he would look around occasionally with his eyes, and she was afraid of them; he always spoke pleasant, but she expected some complaint—she said he reprimanded her for her vanity and extravagance, she having asked him for money 5 times one week; he told her, she ought not to spend all her money that way, but ought to lay it aside; she spoke of his rules and orders as systematic and more regular than other christian families; she said when she came back, she was going to stay; she said her cake was dough when she went away, and she was not satisfied when away.

She said she enjoyed her religious advantages. Was afraid she should lose her place on account of keeping her sister there. When she was going away for the last time, she said she wanted more money, and wished she could work some stratagem to get 25 cents more from Mr F. When she went away, it seemed as though she went from some bad advice. Spoke of the place as being good, and was afraid she should not do well. Saw old Mr Davidson in the fall of 1841, and in the month of October, 1852, the last of it. He came into my shop. He spoke about Mr F. and Rhoda. Mr Davidson inquired about his daughter Ann, had been in pursuit of her and could not find her. He had been to Mr F's, and could learn nothing of her since Rhoda left. He then said Rhoda was at home, and had left Mr F's, that he was sorry for it and that she had not done so well since. He then dropped his head, and tears were in his eyes. Said he, you know how kindly I was treated there, and what good place it was. Although I had old clothes, and was dirty, they treated me like a gentleman. He said Rhoda had never had a good place before, and F. was a real gentleman. Mr D. had been in my shop before. Mrs Esty had been in my store. Rhoda and I talked about her, and her character.

(Mr Warren here proposed to offer the declarations of Rhoda in evidence as to the moral character of Mrs Esty, but Mr Parker objected and the evidence was ruled out.)

The Court here took a recess, and we took the opportunity to look at the child of Rhoda, which was in Court. It has a chubby, short face with close twinkling hazel eyes, like the mother's—(not large eyes like Mr Fairchild's,) and *light hair*. It looks no more like Mr F. than it does like Mar Yohannan, Bishop of Nestoria. We would say here that Mr F's hair is very black, and that he has large open dark blue eyes. His son William, who was in Court, much resembles him, having hair coal black.

*Ex. Resumed.* Cross Ex. Witness described how she recollected the date in October when Mr Davidson called. People came and went; he was there 3-4 of an hour, and I am sure he was in my place talking about his daughter Ann. I am sure this conversation was when he called last, and after the birth of the child, as I can satisfy you by circumstances, if you are not satisfied. (Mr Parker declined to ask further questions.)

*Hannah Gurney.* In the year 1840 while Rhoda was at Mr F's. I knew her; Mrs F. went a journey in the summer of 1840, and I was there when she went. While Mrs F. was gone, *Rhoda slept in the room connected with the nursery and on the same floor as the parlor*; it was the room they used to occupy, and I slept there some nights during the first fortnight, with Rhoda; Rhoda, pointing to their room after they had left, said she was going to sleep there, and invited me to come and sleep there with her. Rhoda used to sleep in the attic; I helped Mrs Fairchild to unpack on her return; I helped her pack too; Mrs F. took out some morning dresses and wanted me to hang them in the closet of the room; there was not room for them, Rhoda's things being there; I was requested by Mrs F. to have Rhoda take them away. Mrs F. took a journey again in 1841. *Rhoda left the week before.* Eliza Towne was there; Rhoda went to Mrs Usher's; Rhoda left living there last, in November 1841, before thanksgiving. There was a conversation with Mr and Mrs Fairchild at their house before she left, when Rhoda was in hearing; she was distant about the width of a room and entry.

[Hon. Harrison Gray Otis here appeared in Court.]

Mr Warren, for the defence, here offered evidence to show by conversation between Mr F. and Mrs F. that Rhoda was to be dismissed from the family by direction of Mr Fairchild himself, for the purpose of showing a different version from Rhoda's account, and that this direction was carried



into effect the next day, Ruled out.

*Witness.* I don't know whether this direction was communicated to Rhoda. Was in the family often in 1841; from Sept '41 to Jan '42. Mr F's health was not good, and he was obliged to vacate his pulpit, and obtain assistance. Have conversed with Mrs E. about this child, before the Council met. Went to see Mrs E. on one Thursday morning, and Ann Davidson came to the door. I went to see Rhoda about the reports, thinking it my duty. Ann said she was not there. I then saw Mrs Esty, and asked where R. was. She said she was out of town. I said I come to see about the report and the child. She said that she had a child. I enquired about Mr F's being the father. She said she believed he was, as much as her husband was the father of her child. She said it was a year old in September. I thought a moment, reckoned up the time, and said *Rhoda did not live there then*, she said that was the worst of it. I asked when it was. She said she called when she was going to Abington, and he followed her down to the entry. I asked where Mrs F. and the girl were at the time. She said R. said, no one was in the house at the time.

*Cross ex.* In 1840, when Mr and Mrs F. left, I slept with R. some nights. Mr Fairchild was able to be about when he was unwell. I signed a statement, which was before the Council. I signed the paper after I saw Mrs Esty. I went to Exeter as a friend to R. and Mr Fairchild. I was a member of Mr F's church.

[Governor Fairfield called in Court this morning.]

*Eliza T. Barry called.*

(The child here cried and Mr Parker requested it to be carried out.)

Mr Warren. It is one of your witnesses, Mr Parker—we did not bring it here. (Laughter)

Mr Parker. I don't mean to charge the counsel with bringing it here.

Warren. No, we deny all agency about bringing it into the world, or here either. (Great laughter.)

I lived with Mr F. in 1841; lived there when Rhoda came back. Rhoda said she had objected to living there because she she could not see her beaux alone, for Mrs F. passed frequently into the kitchen. Taking her trunk up stairs she said, this trunk won't come down these stairs again, I know.

*Eliza M. Towne called.* In May, 1841, I was at Mr F's before, and when she when on her journey. She left on Monday afternoon and I staid till the Saturday after. Rhoda came there in 3 days after. I was in the kitchen, and started to go to the door, but Mr F. got there first; I got as far as the back entry and sat on the stairs; she

asked if she could stop there a few days to repair her clothing and to make a dress; he said he could not let her stay, for it would not be convenient, such were his arrangements. He said he had made arrangements to dine in the city, breakfast at home and sup at one of the neighbors so as to make no trouble for the young woman who was cleaning the house. She said she would put up with anything—but he said he didn't wish her to stay. He asked why she didn't go to Mrs Esty; she said, you know I have nothing to do with my sister; *she is an unprincipled woman, and I dare not trust myself in her house.* She said she had seen something there that led her to think that her sister's house was not a good house, and as she was young—she was afraid she should be influenced by her to do something wrong. She shed tears and then Mr F. assented to her coming, telling her to go down and talk with me about it, for it might be some put out to me.

She came down to me, after I went down into the kitchen. She arranged with me to stay, then went away, and returned the same day, and stayed two or three days, till she made her dress. She slept with me. The top of of the house was very warm in summer, and I used to raise the attic window and open the door. The draught used to make a rattling of the fastening, and then I bolted the door. I met Rhoda once after she left Mr F.'s, in Boston, and asked why she left. She said Mrs F. wanted her to do her work her, (Mrs F.'s) way, and she wanted to do it her own way. She said she could live with Mr F. forever, for Mr F. was the most exemplary man she ever knew, in the pulpit, or at home, and was the best preacher. She told about her head being examined on South Boston bridge, by a young man who was waiting upon her at home. He professed to be a phrenologist, and examined her bumps. She mentioned a one only, that of *Amativeness*. (Great laughter.) That he reported upon it, that it was more fully developed on her head than on any person that he ever knew. She told me about a 4th of July ride with this young man, when she was walking with her sister and her husband. She got separated, and the young man took her to ride in a carriage, and with a driver, in some of the adjacent towns, and left her in Park street, where he took her. She afterwards said, she learned from her sister that he was not a man of good character.

*Cross ex.* I sent a statement to Exeter, which I wrote myself of my own accord. I mentioned this affair soon after. I heard that Mr F. was implicated. She used the word "*unprincipled*" about Mrs Esty. I have told this several times, and given my opinion.

I may have used the word "*irreligious*," but I don't think I did. I have always noticed the fastenings, and have bolted the



door a great many times. She gave me the account about her head in the kitchen, and while she was in bed. She asked me if my head was ever examined. I said it had been. I never told her much of my experience, for I never liked her well enough.

The Court here adjourned at 2 o'clock.

In the afternoon, at 3 1-2 o'clock, the examination was continued:

*Dr Alonzo Chapin* called. I reside in East Abington. Am a physician. Rhoda lived with me, and came to reside with me on the 12th of January, 1842. I went to Boston for her on the 11th, and found her in a house, (her cousin's) in a street leading from Cambridge, (Mrs Hoyt's, in West Centre street.) I did not take her out in the forenoon, on account of her wishing to see a dentist. My wife applied to me for some medicine for Rhoda, and described her complaint so that I might prescribe. Rhoda never applied for an emetic. She never stated her complaint to me. If she mentioned any medicine, it was at the last application. I prescribed 4 or 5 times for suppression.

She stayed till April; we did not want her longer, on account of our being obliged to break up house keeping; I left her at Mrs Shaws; she did not say anything about religious privileges; she was absent from A. 4 or 5 times in February, I believe; I have the last time noted on my book; in June or July 1844, I received two letters in about 6 weeks; the first was from Alvan Simonds, in which he inquired about her deportment, and how long she was there; I answered it. The other was from the same person, longer and more particularly answered. *Tincture of steel or rather iron* is given in cases of suppression.

*Bolles.* Is tincture of Iron ever given or prescribed in cases of pregnancy.

*Parker.* I object.

Ruled out.

I never give this medicine in cases of pregnancy, for it would produce mischief, or abortion. I don't know that I ever heard Rhoda speak about Mr Fairchild. My wife is so unwell that she could not be here.

*Bolles.* I would desire to obtain her deposition if Mr Parker is willing.

*Parker.* I could not attend to take it.

*Bolles.* We would take it by interrogatories.

*Parker.* I must object for the present.

*Cross ex.* The first and last dates of the prescriptions are 1st, the 13th of February, and the last on the 25th of March, as I find them on my book. I could not say that one of the prescriptions was not for an emetic.

*Mrs Hannah Usher.* In the spring of 1841, I resided at South Boston. Rhoda came to live with me in 1841, in the spring, in April, May and June. She came from

Mr Fairchild's she said, and wished to work night and morning for her board, she wishing to learn her trade. She said she was a sister to Mrs Turnbull, of Boston, wife of the minister. She staid not quite a week. I told her she would not answer my purpose, and I could not keep her. She said she left Mr Fairchild's, because he was gone a journey. She then said she was going to her sister's, Mrs Turnbull, in the city. (Great sensation.) I did not see her for some time again. She left the last of the week, and come Monday night. (Mrs T. is not her sister.)

*Cross ex.* I am confident of the name of her sister, as she told me, Mrs Turnbull.

*Eleanor Tower.* I knew Rhoda in February of 1842, when she came in from Abington. (Rhoda, it will be remembered, stated that she was ill and irregular on account of going to Abington, and caught a cold.) Rhoda told me she asked for medicine for suppression in three or four days after she got to Abington, and told Mrs Chapin what her situation was. She spoke to me about Mr and Mrs Fairchild, and spoke of his kindness and good counsel to her. She spoke very frequently of this, while she was there. I saw her in the fall, before she went home.

*Cross examined.* I spoke to her about her looks. Said she looked pale, and asked her what the matter was. She said she took cold when she got out there. I understood her to say that she took medicine just before she came to Boston.

*Rachel Fly* called. I reside in Edgcombe, Me. I know Rhoda. Was with her when she was confined. I asked her how she came to be in that horrible situation? She said she believed it was sent in judgment upon her, for she was a despiser of girls of that character. Supposing you were in an attic making a bed, and a man should come into you, what would you do? She fell to crying, and the subject dropped.

*Ann Kenney* called. In September, 1842, I resided in Edgcomb, Me., I saw Rhoda before she was confined at her father's; I staid one day, one night and part of a day; when I saw her, she was at the door and run from me; I conversed with her about the child; she spoke about the father of the child, when I first came in, & that she was almost ashamed to see me—that she had met a great misfortune, but it was not as bad as it might have been, for she expected to have married the father of the child. I asked why she did not marry before the child was born. She said she would wait till the wife of the man died, I laid it to a married man because I loved him the best. I said I suppose a married man wouldn't like to have a child laid to him unless he was the father of it. She said she went to him and told him, and he was willing to father it because he loved



her. *I asked if the father was not a Methodist Minister; she said no, he was neither a Minister, Doctor nor Lawyer, but might be a member of the Methodist Church.* She said the father of the child was a merchant but she could not tell his name.

*She had intercourse, she said, with so many that it would puzzle a Philadelphia lawyer to tell who the father was. It was not the first child, she was likely to have.* The first child she was likely to have, she went to a doctor, who told her to go to the top of the stairs, roll down, and jump a rope. She did so, she said, and got clear of it. She told me she had been a dreadful bad girl among the young gentlemen—that there was no sort of company, but what she had been into, and that she was the lowest of all flesh. She said she had been insulted on the common by young gentlemen.

She said the wife of the child's father, was just gone in a consumption, and when she died she should have him. She said, he promised if it was a boy to put it into his store; also that his name, or the two first initials of it were on a pin cushion in her trunk, and I might find it out if I could. The last letter was S. In Boston she said she rode with gentlemen, did little work, and they gave her what money she wanted. She had many lovers, and met many on the common. She used to get up at night, meet her lovers, and return through the window.

The father was absent, and all she feared was his return. But she had got a good story for him, and if that would not do she had got money enough. She said a Mr Ellis paid her attention, and she didn't know but he was the father of her child. She preferred the other man, for he had the most property. She told me about being at Mrs Hoyt's at thanksgiving, that she dressed up in men's clothes and came down where gentlemen were, and they did not know her, that she went back to undress and looked under the bed and saw no one; she looked again and saw Mr Hoyt. The language she used was so impolite, that I don't like to tell it—but the substance was, *he had his will of her.* I slept in the same room with her. My brother is here. I told my family when I got home what my opinion of the girl was. I have not been in her company since, till this trial.

*Cross ex.* I have been in Edgecomb nine years; two years in Jefferson; I was seven months old when I came from Scotland; I came to Jefferson. Have known Rhoda some time, dating back time before the birth of her child. She has lived part of four or five years in Boston. She used to come home. I conversed with her about six weeks before her child was born. I last went home to Edgecomb last Septem-

ber; lived in Newcastle in August last, and some six months in all. I visited home a year ago; Newcastle was five miles from Edgecomb; Don't recollect when I saw her last before I saw her at her father's. She told me to keep it a secret several times. I didn't promise to keep the secret. I didn't tell her mother, but did mine; my mother is in Newcastle, but I did not tell her the whole, only that I considered her a very bad character. I told the secret first to Samuel Merry about two months ago. He asked me if I knew anything about it, as the neighbors said I was there at the time. I told him the heads of it. I signed a paper after I told him, in about three weeks. I don't know where the paper is.

No money was given or offered to me, to tell this story in Boston; no \$50 was offered me; I never signed but one paper; Rhoda told me these things of her own accord; there was no particular intimacy before she came to Boston; no one was present when she told me, but some children who passed through the room; she went over more grounds than I can tell; it would all cover a sheet of paper.

*Parker.* Was her manner serious, jocular, romantic, or *Rhodamantic*?

*Warren.* Does she know what *rhodamantic* is? (Laughter.)

*Bolles.* We ought to have a dictionary brought in, if such long words are to be used. (Laughter.)

Part of the time she was serious—then light. Have had no conversation about this since I came to Boston. Did not mention it yesterday, only that I was an evidence, as I can recollect. I stop at Mr Siders's, near Cross and Salem streets.

Don't recollect of speaking in that house about a methodist minister. I said something to my aunt last evening about coming on the stand; that I did not fear it, for I meant to speak the truth; I also told her that I thought she was a very bad girl; don't recollect of saying anything in presence of Mr Siders, about a Methodist minister. Have not repeated this evidence that I have given in today. I have answered some questions of Mr Bolles—it was last Friday.

Don't think I have told any one else; it was at Mr Bolles office. Had not told Mr Harrington. Don't think of telling any one else. I told Mr Bolles all that I have told here today.

*Mrs Fly* recalled. I conversed with Rhoda at Mr Davidson's about Ann Kennedy.

(Further examination on this point objected to [by Mr Parker and ruled out, after many sallies of pleasantry between him and Mr Warren. Indeed these passages at arms, seem to have quite an enlivening effect upon the progress of the trial.]



*Ruth Dwyer Called.* Conversed with Mrs Esty last June about the father of the child in her own house. I asked her if it happened in Mr Fairchild's family. She said no, but when Rhoda was on a visit there when she was on her way to Abington. Mr F. was alone, she said, and followed Rhoda down to the entry, and it was there that the child was got. She said, I presume you know that Mr F. had intercourse with Rhoda before this and that he admitted this to her on the common. She said she did not know what entry, for she had never been in Mr Fairchild's house.

I asked her in June where Rhoda was. She said in Ann street, but she didn't know the number or the name. I asked her how Mr F. admitted this. She said that he of course knew that she knew all about it. Said I, this is not admitting it—he must have used some words. Mrs Esty still answered—that he knew all about it. She was sick at the time, and this conversation made her worse. We soon stopped it.

Mrs. E. said Mr F. had no connection with R till the last time that she lived there—that he always conducted himself well before this.

*Cross ex.* This was Friday after Mr F committed suicide. Mrs. Thomas Dunham went with me. She joined in the conversation, and we both put questions. I never saw Mrs E. before. I had heard Mr Fairchild was dead and I went to see Rhoda, but she was not there. I felt anxious to know about it, as there was so much excitement. I then thought Mr F. was a bad man, and I wanted to find out about it. I have been a member of Mr F's Church since, but was not then. I signed two statements, one I wrote and the other I signed my name to only. I sent my statement to Exeter. I made the first at Mrs Fairchild's request.

We were at Mrs Esty's house some time. Mrs E. was so unwell as to be obliged to stop conversation. She was very willing to see us after we got there.

The court here adjourned to 9 o'clock tomorrow morning.

THURSDAY, March 27th.

*Mrs Ann L. Brown called.* I reside in Waltham. I lived in Mr Fairchild's family part of 1841-2. I went in November '41. Rhoda was there, and when I came in the morning, she went away in the afternoon; I lived there from 1st of November, to June following. I attended the door and the ringing of the bell. The front door had a dead latch on it; was kept fastened from November up to the 1st of March. I was gone one half day up to February. After February I was absent 4 days. The half day was Christmas; I attended church however on Sundays. Rhoda came back the next day after she left to get her wages. Mrs F. and Rhoda had some hard

words together. Rhoda did not take her trunk away when she left either time. In a week, she came after it. Mrs F. was there, and the little girl Florina, and Mr F. came before she went away. She called the third time after this, and I, Mrs F. and Florina were there. Mrs Dunbar came before she went. I saw her on that Sunday when she was at South Boston. She attended meeting in the afternoon, and I went home with her. She told me she was at Dr Chapin's. This was last of March, or 1st of April.

*Warren.* Has any one tried to induce you to testify in this case?

Objected to by Mr Parker.

*Bolles.* We expect to show by this witness, that 200 dollars has been offered by one of the conspirators to induce this woman to testify that she saw Mr F. and Rhoda locked up in the study together.

Mr Parker still objected, on the ground that it was plainly irrelevant.

Mr Warren urged the views of Mr Bolles, and said it was clear that there were persons abroad in the community who were ready to pay for false evidence in the case, and had offered this woman 200 dollars to testify falsely. The conspirator, whoever he is, ought to have been included in an indictment for conspiracy. A written false statement had been offered to this woman, and money promised.

Mr Bolles followed, and alluded very severely to the person who had figured in this matter, and who had figured in the Grand Jury room yesterday, and in obtaining the prosecution.

*Mr Parker.* I think the conduct of the counsel on the other side is most extraordinary, and for their own respectability, I wonder that they should attempt to offer evidence touching a third person so clearly irrelevant. I might offer witnesses to show that a person has been sent to Edgcombe, and offered persons large sums of money to come here and testify in behalf of the defence.

*Mr Warren.* I wish to discuss the point no longer. If the standard of respectability which the gentleman has set up depends upon his notions of the law, I am pleased that the law is not in his hands, and if it is a mark of ignorance, or want of respectability to differ with the gentleman on a question of law, I am happy that I am ignorant, and not respectable.



Mr Warren then submitted a statement in writing of the point, which the Court received and noted on its minutes for purpose of referring it to a higher tribunal, provided it was urged hereafter by counsel.

*Evidence Resumed.* Rhoda was not there before the first of February, except on the times that I have stated.

*Cross Examined.* I had leave of absence at the times stated; I went to shopping one afternoon to Boston; I had leave of Mr and Mrs F.; Mr F. gave me a ticket; never was out of the house, and never called on the neighbors; I went to the woodhouse after wood, but as it was cold, did all my work inside; never went to the part of the block at all; came to this country the August previous to my going to Mr Fairchild's; my husband is a machinist.

*Samuel Merry.* I reside in Edgecomb, near Davidson's; after the child was born, Mr D. talked with me about the child; I was in Wiscasset, and Mr D. wanted me to go and see Mr Young in Wiscasset whom he owed, and say that he was going to Boston for money, and should have some when he returned. Mr Young agreed to wait, and when D. returned, he said he should go and pay Young; I then talked with Davidson in July 1843, about the child. We were haying together, and stopping to put our scythes in order; he said I have got a good deal of business laid out, times is hard, and money is scarce. I said to him, I suppose you expect some money from Westward—how did you make out last fall?

He said, as well as he expected and was not disappointed; he had received money and expected to receive more. When he went to Boston, he saw the man who Rhoda said was the father of the child; that Rhoda laid it to him; the man when he heard this appeared thunder struck and denied the charge altogether; that he had no intercourse with her and was not the father of the child; that it was not possible. D. said he told the man that Rhoda had laid it to him and would swear it on him, and if he (the man) would comply with my terms, well and good; if he did not, the law must have its course. Davidson then said, he made the proposals to the man, and agreed to keep it secret. The man then said, *if it can be kept secret I will comply, but it is hard for an innocent man.* Davidson then said he took a solemn oath to keep it secret. I said, Mr D, I should like to ask one question, and you might do as he pleased about answering it. The question was this: "*Is the father of Rhoda's child a minister.*" He said, "*not a minister, a professor, nor a doctor; but he is nearer a doctor than a minister.*" "*I then said it must be an apothecary or some-*

*thing of that sort,*" Said he you have guessed right, you need not guess again. He would not tell how much money he had ived, or how much he had expected; he agreed to keep this a secret, and said, *if he told it, he should get no more money.* He then said he wanted me to keep it a secret, that he had told me more than he had any one else, not even his wife. I said, suppose I should drop a word in company and this should come out. It would do no harm, for he should never own it, or violate the secret; he never would expose the innocent. Mr Davidson said that Rhoda had told him that she never had intercourse with this man, but once, and that was in a room in the house. Said Davidson, I asked Rhoda, "*Daughter, why did'nt you halloo.*" Because, said she, his wife and children were in the house. (A contradiction of Rhoda's former statement.)

She further said—for she knew if she halloo'd, it would be the means of breaking up the family, and parting man and wife. There was more talk, which is not very proper. He didn't say whether Rhoda was right or wrong; I am a member of the Baptist Church in Edgcombe; we talked again in my shop in March or April, 1844. He was to work with me. He told me that the father of Rhoda's child was neither a minister, a doctor, nor a lawyer—but nearer a dentist than a minister. In Dec 1844, we were coming from meeting one Sabbath afternoon; I said Mr Davidson, what a good thing it would be if people would confess and forsake—what a sight of charity there would be. He said yes, there is that old fellow, westward, Mr Fairchild, *if he would confess, I would forgive and pity him in his troubles. For the old scoundrel denied it, always denied, and never would own one word.*

*Cross ex.* There has been some difficulty between Mr D. and me. Last fall I found out the rising of this dispute. The difficulty took place this winter, or early this spring; I have said in meetings, that what I had done, I had done from duty. I have not said that I had misrepresented Mr Davidson. What I have done, I have said I had done from duty, and not to injure Mr Davidson. Don't recollect of recanting anything in the church meetings. The church meeting was some time about the middle of last February; I did not disclose this matter, till it came out in a publication. This was a matter of common conversation in our neighborhood, and there were different opinions. The secret after a while was made public talk. I have never corresponded with Mr Fairchild, but have written to Mr Folsom of Exeter; Mr Folsom has been to my house; it was in haying time, 1844, July or August. I signed a statement. I have never received



one cent for collecting evidence. I have received \$10 from Mr Folsom for coming here as a witness, towards my travelling fees, and I gave a receipt that way.

I received it this last fall; have never paid a cent to any one; have taken some pains to get evidence, for I considered Mr Fairchild an innocent man.

Warren. You will not be hanged for your peculiarity of opinion. (Laughter.)

Mr Parker wished to inquire about the difficulty between Mr Davidson and witness.

Objected to by Mr Warren, and ruled out by the Court.

Dependent Merry called. Saw Davidson last fall; D. told me that it was rumored around in Boston that the father of Rhoda's child was a minister; He said he was not a minister. Davidson said that Rhoda said that Mr Shaler called on Rhoda and wished her to clear him. She said she would, but no one else; Davidson said when he called on Mr Fairchild, he seemed much afflicted, trembled bad, and said he was not the father of Rhoda's child—it could not be so. Davidson said he looked Mr F. right in the eye, and asked if he had not admitted to Mrs Esty that he had had a connection with Rhoda. Mr F. denied that he had ever admitted that he had any connection with Rhoda. He told me of his coming to Boston last fall. First he came, and wanted me to help him about his chimney. He said he had got some money in Boston, and would pay me for my labor. This was last fall. He said he got the money from Rhoda's friends. He said he had not got so much as he should if the story had not got out. He said he was with Rhoda's friends the best part of three days.

Cross ex. The first communication was in September last, at the corner of his house. The second in October, when he came from Boston; last conversation was in November. No one was present at October conversation; it was in the house; last conversation was in the woods. In September conversation I have related about all; in October conversation, he said he gave a statement in Boston, but did not make oath to it. In the wood's conversation, I related nearly all. Can't say whether Davidson said F. was a guilty man; he did say that F. would not acknowledge that he was guilty.

I am a brother of Samuel Merry; Davidson denied that he said to me what I have related, and said I was a liar, if I said so. I went and found him, and asked an explanation. Davidson denied that he ever said to me what I stated. I and brother were called upon by the church meeting about what Davidson said to us. I took no active part in the difficulty between Mr D. and brother, though I went to the meeting because Davidson had giv-

en me the lie. The church wanted to know whether I was to be laid down in the lie, and so I went to the meeting; I am a member of the church in Edgcomb.

Sylvanus P. Lowe. I reside in Edgcomb; am a member of the Baptist church. Have had a conversation in February last, 1845, with Mr D. about the child. We were fishing together. He then told me that the father of the child was not a minister. The next conversation was in July, 1844, on the flats, where he was digging clams. I asked if he was not afraid something would come out in Boston about Rhoda and the child. He said he was. When he got to Kanso, on his passage home, he had news from Rhoda's friends as to what was going on. He was afraid they would pick Rhoda, and make her tell something that she ought not to; he said he was in Boston, and made a statement of facts to the county attorney, but which he did not make oath to; he said R. had good friends in Boston, Mr Shaler and Deacon Drake; and Rhoda had received some money from them, but not so much as he should have received, if he had kept the secret.

Cross ex. He told me certainly that the father of the child was not a minister. I can make oath to this. Had some joke with him before we conversed. I don't like to tell what it is. (Laughter.) If I must tell I will. (Continued laughter.) He was speaking of his trials and troubles, and I said "these ministers have a curious way of getting around the girls." (Laughter again.) He then said the father of the child was not a minister.

John Dodge, 2d. I am a relative of the Davidsons; Mrs D. is my sister. Davidson told me, in February 1843, about his visit to Boston. It was in my barn; we were doing flax. He said, if I would not name it he would tell me how much he had made out of the Rhoda affair in Boston; he did not want me to tell it to any one, not even my wife, for he was under solemn obligation to keep it secret—I said I would not; he said he went to a town, (Billerica) then to Boston, and then to see Mr Fairchild, first asking his daughter, Mrs E. to go to some place while he talked with Mr F., he then said he told Mr F.—"My daughter R. has come, has got a child and says it is yours." Mr F. said—"It can't be so; I never had any intercourse with her, and am wholly an innocent man." Mr F. said too, that Rhoda came to him, and wanted money, and wanted to go home, but he told her that he was poor, going on a journey, and she must go to somebody who was better able; and that then Rhoda wanted to see Mr F. alone; she did so, and said, Mr F. I am going to have a child, and if you don't let me have it, I'll swear it on you. Mr F. then said, he told her he



was a poor man, that the charge would ruin his family, and he had rather pay money than be accused. She demanded the money, and he agreed to pay \$100 then, and \$100 in a year, and though the time had not come for the second sum, he would try and raise it, provided it could be kept a secret. The money was paid, then old D. said to Mr F.—“Mr F. you have now settled with my daughter, Rhoda; you must now settle with me.” (Sensation.) Mr F. said—“this is *hard*, this is *unjust*, this is *cruel*, I am an innocent man, but I had rather pay the money than be ruined, but I am innocent.” Said Davidson, “Whether you are innocent or guilty, makes no difference. It shall be laid on you if you do not come to my terms.” Mr F. after protesting his innocence again, agreed to pay \$300 in yearly payments. Davidson told me, that he had made out better than he expected, but that Rhoda told him that the father of the child was the minister of the church where she, Rhoda, was a member. Mr Davidson then closed by saying that Mr F. was a nice man, a true gentleman, and he believed him an humble christian.

Cross examination. Had a law suit with D some sixteen years ago; been upon good terms since. This conversation with Davidson was when I got the book about the trial; the statement or charges in which I did not believe, and said they could not be true. I am a member of the Congregationalist church.

Amos S. Haggett. I reside in Edgcomb. Had a conversation with Davidson about a year ago. I asked D. if the father of Rhoda's child was a minister. He said he was not. No more was said about it; I am a member of the Baptist church.

Cross examined. Nothing more was said; this conversation was in my house; my wife conversed with D. about this; my wife asked D. if the father of the child was a professor. He said he was; she asked why he didn't expose him; Davidson said, it would be a damage to the cause of religion, and of two evils, he would choose the least. (Mr Davidson discoursed on ethics.)

Benjamin Kenney. I live in Edgcomb; am brother to Anne; my family came from Scotland 12 years ago and settled in Jefferson; then moved to Edgcomb; I talked with D. last fall when he came home from Boston; I asked if he could pay me some money; he seemed to be displeased, and said the neighbors supposed that he come home loaded with money, but he had not received a cent. Said I, I hear that you have, and you must let me have it. Said he I have not; but at last he said he had about a dollar; he said he got a stove in Boston, but no funnel, and he was going to Damarascotta for the funnel; after he returned I asked for money again, and he

said he expected some money, not from the fish money, but elsewhere; he had not a cent now; at last he sent for me, and at length wanted to see the note and said he could pay only \$5.

This evidence was introduced to bear on the fact, that Davidson had been to Boston and got money from Rhoda's friends, and was accordingly in funds, or flush. The Court would not allow it to go farther on account of its reference to *third persons*, who are supposed by the defence to have paid Davidson money in Boston, and to have bribed him in the matter. The Court said it would be admissible if it related to persons, who were witnesses.

[No cross examination had.]

Mr Warren here said that they had but one more witness—that they could not find him now, but would like to introduce him by and bye. Mr Parker assented.

Rhoda Davidson was here questioned by Mr Warren if she ever lived in Marblehead. She said, she never had lived there.

#### REBUTTING TESTIMONY OF THE GOVERNMENT.

Rev William Shaler called. I reside in Brookline. Know Rhoda. She lived with me in 1838, was a member of my church.

(Mr Warren here rose and said, he, his associate and the defendant did not implicate Mr Shaler in the least, although Rhoda had very likely insinuated something about it, as she had about other things. They exculpated Mr Shaler altogether.)

I know Mr F. He called at my house after Rhoda lived with him the last time. I can't state the time definitely. He called on me as he was riding for his health. It was in the spring of 1842, before the anniversaries. Don't know where Rhoda was, had not seen her there for a year, nor from 1841 to 1844.

[Evidence was desired by Mr Parker from witness, as to some declarations of Mr Fairechild at the time he called on Mr Shaler. Objected to by Mr Warren, and admitted by the Court, provided the period was before the paying of money.]

The anniversaries were the last week in May, and this visit was some weeks before. I stated at Exeter that it was in 1841, but Mr F. told me at E. it was in 1842. (Mr Parker said it was after the money was paid.) Mr F. reminded me of the South Boston controversy. I



would not swear that it was within two months of the anniversary, (or after the money was paid on the common.)

Witness continued. Rhoda resided in my family one year from Sept 1838, to Sept 1839.

[Mr Parker offered evidence in relation to the former character of Rhoda from 1836 up to the time of the events in the trial. No evidence could be offered now, said the Court, in support of her former general character. It was not admissible. The Court noted the objection of Mr Parker to the ruling.]

[Mr Parker wished next to explain the scene at Mr Hoyt's, as related by Miss Kenney from Rhoda's lips, by some other evidence. The Court decided that it was altogether objectionable.

Mr Warren said that evidence of the same nature had been ruled out five times.

*Evidence resumed.* My wife was not present when Mr Fairchild called; she was not in the room; I can't fix the date positively.

*Phillip Siders* called. I live corner of Salem and Cross streets; I know Ann Kenney; she came to me about a week ago; she conversed a few words with me; I found that she was an evidence in favor of Mr Fairchild, and I made some inquiries about Rhoda, having heard about her a good deal; she said she was a girl of bad character; I gave her a word of caution as to speaking about bad characters, for it was not always certain about them; she then said that money had been paid to bribe persons against Mr F; I then said, I thought, if Mr F. was an innocent man he should not have paid over money; she stated something about the pin cushion; this was about all that was said; Mr Harrington was present.

*Cross ex.* I asked her some questions; I never mentioned this conversation to any body in the world, and it was providential about my coming here.

Warren. I will not trouble you any further for the present. (Laughter among the audience.)

*Jonathan Peirce* called. A good natured looking individual, but evidently not very "fly." I know Mr Robbins of Taunton; I live in Brighton; Mr Robbins has spoken to me about Rhoda and the money; he said he asked R. when she came up from Boston—why she told of it? She said she was a great friend of Mr Shaler's, and did not want his character injured. He asked her if she got any pay for it. She said it was secured to her. He did not then mention the names of Mr Shaler or the deacon's. I did not pay any particular attention to what he said; he said she was to have as much as Mr F. gave her.

*Cross ex.* I didn't pay particular attention. I can swear to the *as much*, positively. (Laughter.)

Warren. Where was this, Mr Pierce?

Witness. I can't tell exactly—could tell if I had an almanac. (Laughter.)

Warren. Could you tell the year if you had an almanac?

Witness. I could, I believe. I think, however, this was in February last.

Warren. Where were you at this time?

Witness. In Taunton; I was on my way to *Squaberry*. (Laughter.)

Warren. What do you call the place—*Squaberry*?

Witness. Yes, sir.

Warren. *Squaberry*, you mean, don't you?

Witness. Yes, *Squaberry*—that is the place, but I did not know the exact name of it, or how it is called.

Warren. Well, Mr Pierce, you now can go to *Squaberry*, for all me, if you please. (Renewed laughter.)

The witness then very good naturedly retired, not having done much injury to the defence.

[This little episode afforded much amusement to the Court, the counsel, and the audience.]

Stephen Parsons. I reside in Edgecomb, Me., I know Samuel Merry; he brought some charges against Davidson in the church; I was on the committee; Mr Merry said, finally, he might be mistaken, but he should swear here to the best of his judgment.

Robert Sherman called. I live in Edgecomb; know Samuel Emery; have heard him speak about the Davidson matter in the church. They each said the other must be mistaken. It was said they might settle the difficulty and each have his statement his own way.

Court here adjourned to quarter before 4 o'clock.

In the AFTERNOON, at 3 3-4 o'clock, the investigation was resumed.

*Alison H. Brown* called. I have boarded recently in house of Phillip Siders, and do now. Miss Ann Kenny has boarded there a few days; she has said, merely in the way of conversation, that she knew Rhoda; she came about a week since; all that I heard her say was about 4 days ago; she addressed conversation to me in part; I introduced it; I said there was some doubt in my mind about Mr F.'s guilt; she thought he was innocent, and what evidence she knew was greatly in his favor. She *went into no details*; she alluded some to the pin cushion, and just spoke about the initials; I spoke about it a day or two after to her; we alluded to the same thing, and gave our opinions; she thought Rhoda was a very bad girl, for she had so many lovers; noth-



ing else was said then, or after, as I recollect.

*Cross Ex.* I introduced the last conversation too.

*Margaret Minnikin, Called.* Have resided recently at Siders. Knew there Ann Kenney. Went there Monday afternoon. Heard her speak about R. told how she got acquainted with R. but said nothing what R. said about Mr F. She began the conversation—felt bad about her being a witness—thought she would feel worse tomorrow. Never saw her but once till R. went home to be confined. The second time was when she went to get some patterns. Said R. told her story to her, but she did not tell me, only that R. was a terrible girl.

Rhoda Davidson recalled—Heard Ann Kenney testify. She came to my house before I was confined. Don't recollect of telling her anything except about the pin-cushion, and one of the initials, the Christian name, standing for the father of the child.—Don't recollect that she passed the night. Didn't say anything about marrying the father of the child. Had no talk about this affair only in relation to the pin cushion.—Think I didn't tell about the Philadelphia lawyers, nor about having a connection with Hoyt at his house: Said nothing about the Methodist minister to any one, only when I told the whole story—nothing about rolling down the stairs, bad girl among gentlemen, boy in store, &c. Letter S. was not on cushion. (In fact this witness denied Miss Kenney's statements in aggregate.)

*Cross examined*—I never told any one about coming from Marblehead, or that I was sister to Mrs Turnbull, &c. &c.

I never said that Ann Kenney was my only confidant, so far as I recollect. Won't say that I did not. Don't recollect about saying to a girl in Hanover st. that Mr F. was a most exemplary man, &c. It is possible I may. Didn't say that a man at Hoyt's let down the fall of my pantaloons, and we had a game of chequers together. I think Mrs Usher misunderstood me, and that I said Mr Turnbull married my sister.

*William Davidson, recalled.* Know Samuel Merry, of E; have talked with him about the father of R.'s child. In that haying time, he said to me, I want to ask you one question, and want a correct answer. It has been said, said he, that the father of the child was a Methodist minister. I said that was not his profession. He spoke about my getting some money last fall in Boston, and said I expected more. In the church, Mr Merry said that he was as likely to err as any one, and that in court he should give what he understood to be the facts. Have talked with Dependant Merry about the affair. I know Mr Lane.

Don't recollect about having any conversation with him on ~~our~~ fishing; I do when I was digging clams. There was some talk

about what Mr Merry was doing against my character. Know about Mr Dodge, he is called my wife's brother. We had some difficulty together. Don't recollect of saying anything to Mr Dodge about this affair. I may have done so. Don't recollect of ever having mentioned the name of Mr F. to any one. Know Mr Haggarty, of E.

Mr Parker here rested.

The Defence concluded to call no witnesses further:

At 5 o'clock, it was decided that it would be preferable to have the Court adjourned for to day, and to commence the arguments tomorrow morning.

FRIDAY, March 28th.

Mr Robbins of Taunton was first called by Mr Warren. Heard Mr Pierce's statement yesterday. He was at my house at dinner. He asked if my name was Robbins, if I knew Rhoda, and what I thought of the trial at Exeter, about the money. I told Mr Pierce twice the money was secured to her as she was to have from Mr F.

#### MR WARREN'S CONCLUDING ARGUMENT FOR DEFENCE

It must be as much a subject of congratulation to them as it was to him, that the end of this trial had approached—for the case was one unpleasant in its details, and involved unpleasantly the important interests of many persons. He thanked them, in behalf of the defendant, for the patience which they had exercised. He should trespass as little as he possibly could upon their patience further, and only as far as it became necessary in pursuance of his professional duties, and in the discharge of his duty to the defendant—but he was sure that if he found it necessary to extend his remarks further than he now designed to do, they would not refuse to listen attentively. They owed it to their professional duty and to their duty as citizens of the community, that the truth should be duly set forth and deliberately investigated. It was a case so disagreeable, and calling for so much arduous effort that no counsel would willingly offer his professional services, and he would not have engaged in this most important case, were he not fully convinced from the outset of the entire innocence of the defendant. He did not wish the jury to substitute his convictions for their own, but he desired them to presume at the outset not his guilt but his innocence. This was their duty—and he asked this degree of fairness towards one, who it was candidly said in the outset by the learned Attorney for the Commonwealth, had been up, to the events noticed in this trial, perfectly unexceptionable and beyond imputation. These circumstances



should not require them to be convinced of his innocence—but they rendered the case more melancholy, if the supposition of his innocence be established.

Mr Warren then referred in eloquent and feeling terms to the high character of Mr Fairchild, and the discharge of the sacred duties of his profession, and urged again that the usual presumption of a defendant's innocence should be deeply impressed upon the minds of the jury. Sneers at the clergy had been expressed by the vulgar in the community, chucklings had been heard in various quarters, and satisfaction had been manifested that a clergyman was guilty of the heinous offence charged. But he trusted that no man was to be found on the jury who took pleasure in denouncing and convicting a christian clergyman. He referred to those clergymen who had banded against the defendant and who had associated themselves with the vile in the community in acting in advance upon the presumption that the defendant was guilty.

He gave them and others in like circumstances a most solemn warning in this connection, and reminded them that the time might come when they would require the countenance and sympathies of their fellows, associates and friends. Their conduct towards Mr F. reminded him of the herd of animals on the plain; when one of their number was stricken down, they turned upon him, and then left him in the hands of his pursuers. They might realize how agreeable it would be to them to have their brethren denounce them in advance and lead the cry of the low, vile and vulgar in the community. He expected no sneers from the learned gentleman on the other side. He was not one of those who felt or thought in this manner, and he was sure such things could not come from one who was the son of one of the most exemplary clergymen that New England had ever known.

Mr Warren next passed to the nature of the charge, and the considerations applicable to it, before passing to the evidence. He referred them to the charge in the indictment, which was entirely different from the charge as set forth by the witness on the stand. The charge of the indictment was, *adultery*, a charge easily made, but most difficult to be met and successfully resisted or defended. It was difficult in ordinary cases to impeach the character of the prosecutrix, but he thanked God it was not so here. They had successfully and most triumphantly by a providential good fortune. Mr Warren next referred to the fact of Mr Fairchild's coming from New Hampshire here *voluntarily*, and in the character of a *petitioner* for justice. He also referred to the fact that the government could not move a single inch in the investigation if the counsel for the defence

had not withdrawn all technical objections to the specific act charged in the indictment and allowed the government to adduce any evidence they chose of any and every act of alleged guilt. They wanted the jury to pass upon the whole period of events alluded to, and to give their verdict upon them. Nothing else would the defendant be satisfied with, and nothing else did he demand.

Mr Warren next proceeded to the evidence in the case. He should not attempt to go fully into the evidence—he could not, if he was indeed able to call it to recollection. His intention rather was, to reason with the Jury on the facts. The oath which the witness and prosecutrix had taken, was of no binding force to one who was not possessed of virtue and a correct moral sense.

He spoke of the deportment of Rhoda on the stand—there was no halting; she was cool, and rehearsed the disgusting story in the most delighted manner. She appears on the stand as the champion of the females in our community, the pillar of the government, one who was ready to uphold to any extent the morals of the government, the cause of good society, and the purity, virtue and chastity of the female sex. (Laughter.) But she came before them as a *particeps criminis*, and no faith could justly be placed in her story. She appeared before the Jury as an *unchaste woman*, unchaste by her own confession. She had confessed herself to be guilty of fifteen or twenty acts of criminal intercourse, and there could be no doubt that her confession in this respect, was true, but there was no evidence that this reported connection was with Mr Fairchild. She was to be legally regarded as a common prostitute, and nothing less. She could not be believed, and the Jury would be most unwilling to place their several characters in the hands of such a woman. The modest lady who appears before you—who is she? She is Miss Davidson, formerly of Edgecombe, Me, more recently of South Boston, and now of the Cattle Fair Hotel, in Brighton. (Laughter.) A story like hers should have something like coherence. There was none here—and he would challenge the District Attorney to contend for a moment, that her statement was true in all its parts. It was grossly improbable.

Mr Warren then described the various and conflicting features of her evidence in the most graphic, powerful, and sarcastic manner, and commenced his relation by alluding to her as a virgin, a maiden, a religious maiden, of some 19 years of age. He described her singular and incredible deportment when attacked by the ravisher, making no complaint, no outcry, but patiently waiting after the first unsuccessful assault, to be ravished, like the females in



the besieged city spoken of by Lord Byron, who stood patiently and wondered *when the ravishing would begin.* (Laughter.) She fastened not even the door, for fear that there might be a fire—being much more willing to be ravished than scorched—and did not even do as Queen Caroline did, *put a boiled carrot in the door for a fastening.* (More laughter.) Rather than scream, she preferred to lose her virtue; she remained quiet, and rather than expose Mr Fairchild, prostitutes herself to this awful monster. Mr Warren referred to the improbability of the story being true, in connection with the fact that she should so long remain in the house, thus prostituting herself while Mrs F. was present, or could deport herself without insulting her, or awakening the Argus eyes of a devoted and observing wife. He spoke of her coming again after these awful events had been committed, and after she had left the house, and humbly asking to be admitted for a short time to the family—or in other words, asking to be ravished again.

Mr Warren next passed to another feature of the case—the conduct and declarations of Rhoda to other persons concerning Mr Fairchild, his character and deportment. He pointed out very strongly what she said in relation to Mr F. and Mrs F. being willing to let her remain in the house, and how powerfully she could have impressed upon his mind, that she would stay there and could have denounced him at once to his wife, if he refused to let her stay. He spoke of the interview between Mr F. and Rhoda in the entry, when she asked to stay, and the version as given by Miss Towne, the very intelligent and unimpeached witness on the stand. This was the private interview between the adulterer and adulteress in the hearing of Miss Towne, when they thought no eye but God's were upon them. How was her demeanor? Did she demand to come, did she threaten? No! she begged and implored, and he at last in the kindness of his heart assented, if it was agreeable to Miss Towne. Another point in this conversation, and the strongest of all was, when he asked her why she didn't go to Mrs Esty. The answer is well known. She speaks to the adulterer, looks him in the eye, and says she, a young girl, would be ruined at the bad house of her sister if she went there. Would this have been her course, provided the act had been committed? No, it would not be pretended. Again, her fear to ask him for advance money—on account of being turned away from a good place—is another test in this matter. Would such a girl, in the house of a guilty married man, her paramour—ever want money. No—never.

The eulogies which Rhoda paid to Mr Fairchild at different times and on various occasions, were set forth with great power and a most convincing manner.

He was sure, on another point, that the judgment of the jury would not be insulted by the prosecuting attorney for a moment, that this girl was deluded—a girl of 19 years of age. There was no girl of that age in the community, who did not know that adultery was a crime. Mr Warren now passed to the many and various contradictions of Rhoda's story as set forth by other unimpeached witnesses. It will be seen that the moment she undertakes to state a fact out of the secret veil of her own machinations, or within the knowledge of others, she is at once and triumphantly contradicted. He referred to the making of the dress, the time that she stayed there and when Rhoda slept every one of the three nights with Miss Towne, according to the latter's evidence. Rhoda stated that no one was in the house at the time, for the purpose of making a strong case on this point. It was happily overthrown. She falsified in saying that she never said she had just come from Marblehead. She seemed to falsify just for the sake of lying. It was a second nature with her. So it was about her being a sister to Mrs Turnbull, about Mr Fairchild's hair, the bolt on the door, the beaux in the kitchen, and her false reason for leaving the family of Mr F. On these points some six or seven of the most respectable citizens of South Boston and other places expressly contradicted Rhoda, and to convict Mr Fairchild, the jury were called upon to convict all these witnesses of perjury. Mr Warren then set forth the contradictions of Rhoda here and at Exeter. The means of discovery are wholly providential. The contradictions were as to the place of the alleged act, the explanation of which is obliged by her to be supported by gross perjury, that although the place stated at Exeter, was not the true place, yet she thought it was better to stick to it here.

This sort of BLENDING would not be believed, and would show at once that she was entirely reckless of the obligations of an oath. In this connection, the instructions to witnesses were noticed, who were spurred on by men who are not lawyers, but who have been so conversant with proceedings in criminal courts as to feel themselves quite qualified to manage prosecutions—a kind of incipient attorneys, who have hitherto always been in the *defence*, and who enjoy the novel honor of appearing for the government. Passing to Rhoda, he remarked very ably, on a point of Rhoda's evidence, "that she forgot to scream out." On the point of contradiction, Mr Warren enlarged at much length. The story of Rhoda about herself, riding with a young man, the phenological scene on the bridge, he was not allowed to dwell upon by the Court as being true, as it was not relevant, but he was allowed to say



and to argue that Rhoda had lied about it. She had lied, and it was all the same. So as to her story at Taunton, and her charge as to Mr Shaler. That he could not believe, as he said yesterday, that Mr Shaler was either guilty of adultery or of bribery. But he was sure that he had taken a strumpet by the hand, and been defiled. There were indications here that some other persons were behind the scene. Who has paid the counsel (Mr Brigham) who has been sitting at the elbow of the county attorney, not to help him, for no one could help him, but to officiate professionally for his employers.

As Mr Robbins has said, "who in the deuce are they?" Why was Thomas Dunham in the Grand Jury room reading reports of the evidence? How came old Davidson to appear here so suddenly from Cape Ann, where he run away with his employer's money? Why was Thomas Dunham absent a few days from South Boston, and then appear again at home?

Speaking of the different locations of the alleged act, and the lying versions that were given of it, he was reminded of that scene in the Scripture of Susannah and the Elders. She was accused by two lying witnesses, as the defendant was accused this day, who wished to revenge themselves on her for not assenting to their lusts. On their testimony she was adjudged guilty, but the witnesses were providentially separated. Then was one asked, "Under what tree didst thou see them companying together?" He replied, "under a palm tree." The other was then inquired of—"What tree didst thou see them companying together?" "Under a holm tree," replied this one; and the judge whose righteousness has been celebrated in history and in poetry said to each of them, "thou liest, to thy head." And the beautiful and affecting story ends—"And thus the innocent blood was saved the same day. God grant that it may be saved this day also. The evidence of Ann Kenney was next alluded to, and its entire accuracy tested, and also Rhoda's various and lying stories about the father of the child, and the pin cushion. In connection with Ann Kenney, Mr. Siders was handled pretty severely, as also Mr Thomas Dunham, who was probably there. Mr Siders had got into a pit, and he would leave Mr Siders there, in *Squaberty*, with Mr Pierce. Touching the paternity of the child, there was every evidence and reason to believe that the child was begotten in December. If so, Mr F. could not be implicated.

He examined this evidence in full, and Rhoda had said herself, that she was at Mrs Hoyt's on the 19th of December; all will recollect the masquerading scene, and the act of cohabitation there. The child was born in 9 months after. She then changed the scene to January, to implicate Mr F.

but the evidence of the defence, in connection with Dr Chapin's notes of the time, disposed of this lying testimony, and fully illustrated her doctrine of the tincture of steel. Leaving her testimony here, Mr Warren made a powerfully eloquent and deeply impressive appeal to the jury on the danger, the injustice, and inhumanity of condemning a man of Mr Fairchild's high character, profession and learning on the testimony of a lying, contradicted and perjured woman and prostitute. It was a deeply affecting appeal, and we are sorry that our limits will not admit of further detail. If such a principle was to be acted upon, not a high-minded and respectable man in the community was safe, and there was not one of the Jury that might not be in the State Prison in a week.

To place any man's character or property at the mercy of such a creature—to allow her polluted lips to leave a stain upon any man's reputation is to offer a reward for iniquity—a bounty upon prostitution—a premium on perjury.

Mr Warren next examined the testimony of Mrs Esty, the sister of Rhoda, with great power, and contended that it was not to be believed. She shared in the plunder from the commencement, and probably took the lion's share, as Rhoda carried home a very small sum. Rhoda had said that Mrs Esty was an unprincipled woman and kept a bad house. If it was true, Mrs Esty was a bad woman; if not true, then Rhoda had lied about her own sister. The prosecuting attorney might take either alternative. The Common interview was next detailed in all its aspects, and its alleged character, as testified to by Rhoda and Mrs Esty, delineated and exposed. So also in relation to her signatures of statements, which were disgorged by Mr Brigham, who was inclined to keep possession of it, as belonging to a client. Who was the client? He wished he could tell the jury. One most singular thing was, that the first person who ever named the charge in connection with Mr Fairchild, was this same Mary Esty. The plot then commenced. Said she, was it Mr F's. Yes, said Rhoda. She told Rhoda to take Mr Fairchild, charge him with it and threaten him with exposure of the charge. This was done promptly. The hypothesis must be true. In this connection, and by way of allusion to Mrs Esty's and Rhoda's attempts to fortify their evidence by perusing with Dunham in grand jury room, the exceedingly accurate reports in the newspapers, Mr Warren spoke with much eloquence and point.

The evidence of Davidson was next passed in review, and Mr Warren said he would not say that Mr D. did not once think, in view of Rhoda's misrepresentation, that Mr F. was the father of the child—but afterwards he had reason to believe the contrary; had been engaged in extortion, as he thought, and in all the main particulars of his evidence, was contradicted by five witnesses.

Mr Warren then came to the last two circumstances alleged by the prosecution—THE LETTER AND THE MONEY PAID. They had been both ad-



mitted by the defence from the first. He argued with great force, that payment did not necessarily show guilt. Cases like this had often occurred, and where the accused parties were afterwards adjudged to be innocent. Mr Warren pointed out, most eloquently, the folly of Mr F. in thus paying money on such a charge, and although a man might prefer to pay a thousand dollars rather than be charged with such a crime, or defend it, yet they should hold no terms with prostitutes or their honor. Their honor would last only with their money. This portion of the argument was deeply affecting, and it is no figure to say, that the jury and audience were in tears. He described Mr F. as a sensitive man, as weak in this particular—but he was not so here. The worst had passed. His deportment here was as it should be, calm and becoming—it was not hardened. He now felt his error, and that he had done himself and family a great wrong by his timidity and ignorance of the world; and he ventured to say, and he said it respectfully, that as a class, the ministry had less knowledge of the world than any other portion of the community. If Mr F. had that knowledge of the world, he would never have paid money to secure the mercy of such persons.

As to the letter, it was perfectly susceptible of an explanation consistent with his entire innocence. Two were destroyed by the artful creature for her own purposes, which, from the phraseology of this letter, he had a right to presume, were filled with protestations of his innocence. It was stated by her in Exeter, that in the second letter he denied that he was guilty; that he had denied it from the first, now, and would continue to deny it till he died. The commencement of the third letter expressly refers to this repeated denial; when he says, in substance, I write not now for the purpose of denying what you have charged. This I have done from the first, &c. Other portions of the letter were fully explained and made consistent with this state of facts.

The above is not intended as a full report of Mr Warren's argument, though we believe it presents accurately the general course of it. The closing paragraph was as follows:

The defendant is in your hands. If, upon your oaths, you are constrained to say, upon this evidence, that he is guilty, it will be his duty and my duty to submit. But, if you pronounce him innocent, I shall deem it one of the most fortunate circumstances in my professional life, that I have here, and now, been in any degree however humble, instrumental in the promotion of truth and the advancement of justice. Gentlemen: I commit him to you, and not him alone, but *her*, also, who with all the confidence of youthful affection, and with all the strength of her matured judgment, clings to him in the hour of his peril; and a far-away daughter who is waiting with a beating heart, for a verdict which shall justify her reverence for her father; and those too, who are yet too young to know that it depends upon you, whether their father's face is to be to them, hereafter, a perpetual blessing, or that they are to bear through life, the burden of that father's deep disgrace. I commit them all to you, and with deep reverence, I ask that you may be guided by Him who will always "deliver the innocent from the snare of the fowler." [Great sensation.]

Mr. Warren's argument occupied about five hours, and was characterized by strong argument, great eloquence and variety of illustration. When being made, we prepared a sketch of its prominent points, which, on account of the demands of a daily press, we were obliged to finish with the delivery of the argument and could not then extend it. Mr. W. spoke without notes and it is impossible now to supply what was considered one of the most happy efforts ever made at the Suffolk Bar.

The Court then adjourned to 4, P. M. Mr Warren having spoken about five hours.

In the afternoon, at 4 o'clock, P. M., Mr Parker commenced the closing argument for the prosecution, and spoke until 7 1-2 o'clock.

#### MR PARKER'S CLOSING ARGUMENT.

GENTLEMEN: This interesting trial, now is much more nearly approximating to its close, than when my learned friend commenced his address this morning. You have already heard the accusation,—the denial,—the proofs,—and the defence; nothing remains but such observations as it is my duty to make in summing up in behalf of the Commonwealth,—the charge of the honorable Court,—and lastly your decision upon the whole matter. I thank you as my learned brother did, for the patient attention you have thus far bestowed upon the cause, and I beseech your candid consideration of the views of the evidence I shall now present to you. I was glad when the senior counsel of the prisoner said he should select the cool of the morning for his argument. I wish all the proceedings to be cool, calm, just and satisfactory. But I shall be cooler than he was.

It is not my intention to attempt any of the arts of oratory, or to resort on this occasion to any of the professional efforts of an advocate. I wish not to move you with eloquence or pathos, as he did, if I possessed any, nor to obtain a verdict upon doubtful or improper grounds. My object is higher and holier. I wish only justice and truth to prevail. A prosecuting officer's desire should never go beyond that consummation. His rule of conduct is supposed to be very different from that of the prisoner's counsel. The prisoner's advocate is to obtain an acquittal, at all events, if he lawfully can. The prosecution is to be defeated, if possible, by all lawful means. No matter if the prisoner is guilty, if the government can be lawfully prevented from getting a verdict, it is deemed the duty of the prisoner's counsel to get his client clear, if there be any defect in the law or the evidence. This principle is not yet carried to such an unscrupulous extent in this country as in England. No lawyer here will go so far as Mr Brougham did in a celebrated trial, whose memorable language was:

"An advocate, by the sacred duty which he owes his client, knows in the discharge of his duty but one person in the world—that client, and none other. To save that client by all expedient means, to protect that client at all hazards and costs to all others, and among those others to himself, is the highest and most unquestioned of his duties; and he must not re-



ward the *alarm, the suffering, the torment, the destruction*, which he may bring upon any other. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on, reckless of the consequences, if his fate should unhappily involve his COUNTRY in confusion for his CLIENT'S protection."

Nor will any fair-minded lawyer imitate the conduct of Mr Phillips in the trial of Courvoisier for the murder of Lord William Russell, who, after his client had fully confessed his guilt to him, pressed with unreasonable and most unjust and even cruel severity, the young woman who testified truly to the principal facts, and whom Mr Phillips knew was guided only by the truth.

On the present occasion I do not mean to insinuate in the slightest degree, that either of the prisoner's counsel have not an entire belief in his innocence, or that all their zeal and statements in his defence, are not sincere. But counsel are not the best judges of the merits of their cause; they easily take a side professionally, and if retained on that side, become in some measure, by their duty to their client, and their sympathies in his behalf, blinded to the exact justice of the case. Their efforts, their zeal, their extravagance, and, even their merciless attacks upon the witnesses adverse to their side, are considered excusable, and in the line of their duty. Their object is not strictly and always the pursuit of truth; they look for defence merely: they seek their client's discharge—that is their grand purpose, and all their efforts are directed to that end. But on the other side, the Government's attorney has a different duty to perform—guilt, only, is the proper object of his attack, truth only the proper end of his argument. His feelings are not necessarily enlisted on the side of justice, which wishes to prevail only when reason and conscience will approve of the victory. I come to this final part of my duty, there, in this cause, with no impassioned efforts of eloquence, and with no severity of language towards the Prisoner, or the witnesses produced in his defence. I ask your attention to a cool and just view of the evidence, without partiality to one side, or prejudice against the other. I have taken no side in the popular excitement on this subject, and desire to say not an unkind word against the prisoner, or to injure the feelings of his respectable family. I am not his judge; it is no part of my duty to decide the question of his guilt, and I am not called upon to express my own opinion, in the case, because the law places that responsibility only on you, and seeks your judgment under your solemn oath upon the whole evidence. No matter what other people think upon the subject; it has not been perhaps made their duty to weigh the evidence, and perhaps they have not had an opportunity to hear all or much of it. The judgment of no human being should influence yours; the fate of the prisoner is thrown wholly, entirely, absolutely, and unconditionally upon you; and you are to be answerable to your fellow citizens and to God, for the impartial discharge of the solemn duty of giving a true verdict upon the evidence now laid before you.

Let us then consider that evidence, its import, weight, and effect.

It cannot be denied that the testimony produced on the part of the Commonwealth, if believed, sustains the full charge in the Indict-

ment, an adulterous intercourse between the prisoner and Rhoda Davidson. From the nature of the charge, the evidence is commonly circumstantial, and the crime can seldom be proved by positive and direct testimony. The offence is usually committed in secret, and studiously concealed from the knowledge of all other persons. But in the present case the only person on earth besides the prisoner that could know the fact positively under the circumstances of its commission, is produced and has testified before you and been under examination for eight hours. There is direct, express, conclusive proof of the fact, and the case ends here, if that witness has told the truth and is believed. The import and effect of the testimony are sufficient, if it has weight enough to carry credit. But in opening the case, I frankly said to you that that witness must be considered in the light of an accomplice, and knowing that it was not safe generally to convict upon the sole testimony of an uncorroborated accomplice, I offered you corroborating evidence from three sources, Mrs. Esty, Mr. Davidson, and the letter, and unless two persons besides the principal witness are grossly and most infamously perjured, the corroborative evidence of itself, even independent of Rhoda Davidson's testimony, puts the guilt of the defendant beyond a doubt. The case then turns wholly upon the credibility of these witnesses and the effect of that extraordinary letter.

There are several modes known to the law by which witnesses may be impeached. The law desires that truth shall prevail, and it binds the consciences of witnesses to speak truth, and nothing but truth by the most powerful sanctions and punishments here and hereafter;—the pains and penalties of perjury are imprisonment in the State prison for many years here on earth, and the great displeasure of Almighty God and the retributions of his justice in the world to come. Perjury by the extent of its punishment is deemed by the Legislature a much greater crime than Adultery, and it is never to be presumed without the clearest proof. If it be true that high crimes are to be proved by evidence strong in proportion to their atrocity, perjury ought to be proved by evidence stronger than that of Adultery—and the presumption that a very great crime has been committed not by one person only, but by three, is under like circumstances and evidence less in proportion to the magnitude of the crime. In this point of view then a question arises in this case whether under all the proof here, there is more evidence that three persons have committed the wicked and abominable crimes of conspiracy to cheat and perjury, than there is that one person, who had much personal influence and many opportunities, has committed adultery and one other person fornication.—That question is openly and boldly put to you to decide in this case, and the defence avers that three persons have committed the crimes of conspiracy, extortion and perjury. Now were they in the criminal's box for those crimes, and waiting for your verdict upon this evidence, and upon your decision whether they were to be sent to the State prison for ten years or not for those crimes, is there one particle of evidence here which would justify a single man on your pannel in saying that clearly beyond all doubt it is proved by evidence in this case that those persons have manifestly been guilty of



conspiracy and perjury? I think I can boldly challenge every juror to name any proof which could justify such a conclusion. But they may not be guilty of perjury, and yet you hesitate to believe them. I propose to examine the grounds of any such hesitation. Your oaths bind you to give the verdict according to the evidence. That evidence you have; will you reject and disregard it, or will you give it the proper effect of evidence? You desire to proceed justly, and to discover the truth. Let us consider whether any uncommon obstacles stand in our way in the pursuit of the truth in this extraordinary case.

It must be confessed there are some difficulties peculiar to this trial. But your duty is to overcome them if possible.

First, the events occurred several years ago. The lapse of time has thrown a shade of oblivion over many of the little circumstances now so minutely enquired about. No human memory could contain them all.

Secondly, the frailty of the human memory concerning words and things at the time deemed of little or no importance, permits many words and many things to escape recollection, which if recollected would now be of much importance.

Thirdly, the carelessness of common conversation, seldom as exact as a deposition given in court, seldom conveys the whole truth, and not always the exact truth. Mankind do not commonly talk with the accuracy of sworn witnesses. Exaggerations, and loose phraseology are very common, and lead to frequent errors.

Fourthly—all that a person says upon a particular subject is not always distinctly heard or regarded; some qualifying word escapes—the meaning is liable to be mistaken; and nothing is more common than mistakes of this nature. Writers on the subject say, “there is danger of mistake from the misapprehension of witnesses, the misuse of words, the failure of the party to express his own meaning, and the infirmity of memory.” Besides, the mind of the party whose words are seized upon, may under these circumstances, be influenced by the motives of hope or fear, to prevaricate or speak untruth. Add also the zeal of partisans, and the strong disposition of persons engaged in pursuit of evidence on one side, to rely on slight grounds of suspicion, which are exaggerated into proof; consider these things, and the value of evidence arising from long past conversations is much impaired, and entitled to but little effect, when standing alone. I appeal to your own experience: Have not many of you misunderstood a witness upon the stand? When you have retired to your jury room, have there been no debates and contradictions on what a witness said an hour before in court? From your own experience as Jurors and as men, consider how liable language is to be misconceived or forgotten even on recent occasions, and how much more so in months and years gone by.

Fifthly—Talking over the past events frequently, if a mistake occurs at first, each repetition confirms the speaker in the belief that he tells the matter truly, and it is an old saying, that some liars from oft repeating their falsehoods, get at last to believe them. This is a copious source of error. But, without enumerating other causes of mistake and error, there is one difficulty which is peculiar to this cause; it is a very great one, and causes almost all the other difficulties in the case—and

that is, that the evidence shows that money, bribes, and oaths, and the most urgent and reiterated entreaties were used for the express purpose of keeping things secret. This is a peculiar feature in this case, and if persons are hired, and bound by oaths, and reminded by letters, to use and adhere to a course of concealment, to keep things out of sight, to prevent suspicion, and at all events to save from ruin an individual; then, if some prevarications, some evasive answers, may even if some untruths appear, spoken by persons thus bound to keep a secret; if they use all means to act in good faith under their agreement and up to their oaths, and even by prevarications; certainly such prevarications stand on very different grounds from others, and ought not to impair the general effect of their testimony. He who pays money and exacts oaths to induce others to mistake particulars, ought not to be allowed to take advantage of such mistatements. Carry this principle with you throughout this case; it will explain much of it; it will afford you a scale by which you can weigh the just value of those supposed contradictions so much relied on in the defence. With one other remark, I will proceed to a consideration of the objections to each of the three principal witnesses of the government: and that is, the presumptions of law are as much in favor of the honesty and innocence of witnesses as of prisoners. Crime is not to be presumed in any case, until proved. What then are the supposed proofs of conspiracy and perjury here? We must take the government witnesses severally. We begin with Rhoda Davidson—and I will call your attention to the facts and arguments used to show that the defendant is innocent, and she guilty of falsehood.

1. The voluntary alteration of her testimony as to the first place of criminal intercourse. She was sworn at Exeter, but the lawyers there said to the council that the oath had no binding civil force. As it had not, there could be no criminal conviction of perjury under that oath; but she was morally bound to tell the truth, and she did not intend to falsify. Her story was mainly true, but two transactions were blended. She first stated them, and she did not see the importance of keeping them distinct. She stated this discrepancy voluntarily, of her own mere motion, and explained it. The mode of examination there was peculiar, and often interrupted. Why should she change it here of her own accord?—if not not governed by truth? If wickedly bent on lying, why did not she adhere to the same story, first told? Her chance of credit would have certainly been better. Two reasons may be assigned—and you are to judge of them. One of them good; that which she avows, to tell now the *exact* truth;—the other bad, which they suggest—namely, that she had learnt that she might be discredited, and that she now endeavors to escape detection by shaping her evidence differently. Before you adopt the wicked motive, candor, charity, justice require that you should have proof of it, and I submit to you that it rests wholly in the suggestion of defendant's counsel, and is not proved, nor even credible or probable. You must give her credit for much astuteness, cunning and profligacy before you can arrive at such a conclusion; and you will seek in vain for the evidence to justify it. But it is worthy of remark, that so far as the guilt of the defendant is concerned, the fact itself is wholly imma-



terial. It was adultery, whether committed in either place or both, and that is the main fact. Nor can any reasonable motive be assigned why she should mistake or wrongly assign the place of the first criminal act. After so many criminal interviews, and at such a distance of time, three years or more, times and places may have become blended in the recollection; and besides, no fair opportunity of explanation at Exeter may have occurred. There is much testimony inaccurately expressed at first, and by more close examination and cross questions explanations are afterwards made which would have been omitted by the most honest witnesses, without them. Consider this point then carefully, and see if it would not be unjust to her to say that she is perjured throughout, and that her perjury is proved by this circumstance? You would judge her much more harshly than you do other witnesses if you condemn her for this. Many honest men in their direct examination have stated facts quite differently, and with many alterations, when subjected to a very close, long and critical cross examination.

The next subject of importance is her supposed contradictions, as testified to by Ann Kenny.

But who is Ann Kenny—and can you trust her? What do you know of her general character, or her reputation for truth? And how much is she discredited by her own testimony and manner before you, and by the positive testimony of some witnesses, who speak of her disclosures at the house of Mr Philip Siders? She swore she had spoken of her testimony to nobody in Boston. After some time she excepted Mr Bolles, and expressly denied speaking to Mr Siders, Mr Brown, and Miss Minnikin. She is positively contradicted by them. Then she said Rhoda had been to Edgcombe three times. This is disproved. Then the improbability that Rhoda should have talked in such a way to a stranger, never seen but once before. Yet I should not be surprised, if the learned gentleman had found more contradictions than Ann Kenny has testified to. Rhoda Davidson was taught to conceal the name of Mr Fairchild in connection with that infant. She was paid for that concealment, and often reminded of her duty in this particular, and she was bound by a quasi oath to conceal his name. Now what more natural in a country town than for every body to be very inquisitive to a pregnant girl about the father of the child. All manner of questions are put to find out the name of the father, curiosity is sharp and searching,—and all manner of dodging answers must be given to avoid the disclosure. Falsehood, strange stories, anything, everything may be said,—lightly, carelessly, recklessly, by a girl under such circumstances, to avoid disclosing the name, to put people on the wrong scent—to protect the promised person, to keep her pledge, and to continue her title to the 50 dollars per annum—which were to be stopped as soon as she let out his name. So Ann Kenney tells you part of what she said was serious, a part light, and said in a manner as if she did not care what she said—and what is observable, Ann Kenny cannot separate the serious from the jocose part. Much was reckless, and not intended to be believed. That was apparent before Ann Kenny said so. No girl that was not crazy would so have spoken, especially to an almost total stranger,—and the whole tenor of her life

in Boston, so far as proof of facts go, contradicts those silly speeches. Nobody could or would believe them. They were said with a design to conceal the name, not to make confessions of truth—and when you consider the powerful motive to be rid of troublesome questions and the duty of concealment, I think you will not put much reliance on Ann Kenny's testimony. It is doubtful in its character and if ever said, which may admit of doubts, can under the peculiar circumstances, be reconciled with Rhoda's present truth. Certainly it does not convict her of perjury; and what is remarkable there is no attempt to prove the truth of any of those facts, and the introduction of the evidence that they are not true is successfully objected to, and it is kept out.

The affairs at Mr. Hoyt's, about the men's clothes, &c., were collateral matters, and the defendant's counsel who asked Rhoda about them made her answers their evidence, and they are not allowed to contradict her on these points, and she positively swears there was no criminality there. As to the journeyman's door in the attic, there is no evidence but hers, and she swears it was always shut at night. If this was not true, they could call one or all of those journeymen, and they have not, and her evidence is the only testimony on the subject. We offered to disprove these allegations, and they object and prevent us showing the truth as to each of them.

Her declaration to Mr. Robbins, as to getting more money by disclosing than keeping the name of Mr. Fairchild concealed, deserves a passing consideration. This depends on a single word. Consider in this connection what has been said as to mistakes in conversation. Robbins said she was to have as much *again* from Mr. Shaler, &c. Mr. Robbins told Mr. Pierce, *as much*—leaving out *again*. They object also to Mr. Shaler's telling the truth on this subject, but they do put in Mr. Wm. Davidson's declaration made to their witness, Mr. Sylvanus P. Low, last February (1844) when digging clams. Mr. Low swore that Davidson then told him that Deacon Drake and Mr. Shaler were great friends of Rhoda, and that he had received some money from them, *not so much as he would have received if he had kept the secret*. This is a complete answer to Mr. Robbins' testimony, to say nothing of his own contradiction in your presence this morning. The testimony of Dr. Chapin is supposed to affect Rhoda. I think it supports her. Living in a doctor's family, it is to be presumed when she complained to Mrs. Chapin, and through her to the doctor, she had an early prescription. If the criminal intercourse took place on 19th December or January 12, nothing remarkable in suppression on 13th February, and perhaps 13th February proves the intercourse on 12th January, quite as well as earlier. Her speaking well of Mr. Fairchild, and her religious improvement while there, is entirely consistent with her criminal intercourse with him, under his explanations. It cannot be doubted that it was gratifying to her. She certainly could have prevented it. Though she resisted, she yielded; she would not scream. She certainly put herself in his way before going to Abington. She wished to protect him from harm. If she had not become pregnant, probably she would never have brought Mr. Fairchild into suspicion. She was friendly to him, esteemed him, perhaps loved



him. Under these circumstances, speaking well of him is nothing marvellous, or inconsistent with her secret intercourse with him; perhaps, too, it was a device to prevent all suspicion of him or her; certainly nothing remarkable, considering the influence of his arguments on her mind.

There are many other slight circumstances alluded to by the prisoner's counsel not worthy of spending any time about—the fastening on the attic chamber door, the not screaming, the supposed discrepancy about the bonnet and shawl when she went up stairs, coming from Marblehead, being Mr. Turnbull's sister, &c., and other unimportant matters, which at this distance of time may be misremembered by her, or by the witnesses called to contradict her on these small points. I have not time at this late hour to take them all up. Most of them are easily explainable, and few of them are of much importance.

I deem it my duty now to call your attention to the opening of the defence by the junior counsel in this connection. He enumerated a most appalling catalogue of crimes which he said Rhoda had committed. I believed then as I believe now that those attacks were imprudent, and it not sustained by the evidence would react with disastrous influence upon the cause they were intended to help. Not a witness has been produced to support these most scandalous charges but Ann Kenny, and her testimony, improbable and extraordinary as it is, is relied upon to prove them. Now I beg you explicitly to understand of what Ann Kenny's testimony is *proof*, and *what it is not*.—*Facts* are to be proved under oath. What a witness says in an idle, loose, extravagant, silly, jocose, and not serious conversation, not under oath, is no proof of the things talked about. Strange that any reasonable man could offer what was said in jest as proof of a fact to be acted upon in a solemn judicial tribunal! If then it is not evidence of the facts talked about, is it evidence of any thing? Yes. It is evidence for the consideration of the jury for one purpose, and one purpose only. It may lawfully be introduced to enable the jury to weigh the evidence of Rhoda in court under oath.—They are to give it just this weight. How much, if any thing, should be deducted from the credibility of a witness, who for years is consistent in stating a fact, and on several occasions swears to it, and is examined and cross-examined eight or nine hours upon a time concerning it, and is corroborated in it by other witnesses and a document in writing, if a girl, almost a stranger to her, comes into court, and says on one occasion there was a conversation not wholly serious, and I cannot tell what was serious and what was not, in which she told me in a light, careless, reckless way, many most singular things of herself and of the father of her child? So far as this foolish and unmeaning talk, if it ever took place, which is denied, should derogate from her oath in court, you have a right to decide. Beyond that, it is evidence of nothing. It is no evidence that those facts are true: not any more than if any other idle talker, under a strong motive, had said them not under oath. I know they are capable of being used for another purpose, but I *protest against such use of them*. If you use them for any other purpose, I think you will violate the laws of the land. The junior counsel, in his opening, has alluded to this evidence

as supporting those very gross charges against Rhoda, and it is the **ONLY** testimony of those supposed facts. But I believe the court will tell you they cannot lawfully be used for such purpose. Evidence lawful for one purpose may be unlawful for another, and sometimes when introduced for one purpose is made available for an improper purpose. It may be evidence of her contradicting herself, but no evidence of the facts not testified to under oath. It is evidence that under very strange and perhaps incredible circumstances she may have talked in a manner affecting her testimony, but no evidence she was a strumpet, or that her child was begotten in Mr Hoyt's house, or that she ever procured an abortion, &c., &c. It is no lawful evidence of any such facts. If defendant's counsel rely upon such facts, they are to be proved in a lawful manner; and I ask you if there could be any thing more cruel and unjust to state such things as facts in the case, and shut out all evidence and all the witnesses then in court on the part of the government, offered expressly to show that such facts never occurred? While the counsel persisted that her declarations of these things was evidence of their truth and of those facts, I persisted and zealously claimed that if her declarations were to be used so, I had a right to introduce evidence on the part of the government to disprove all such facts. The court ruled that her declarations being **NO EVIDENCE** of those facts, I could introduce no evidence to disprove such supposed facts. This being so, are not these gross charges left wholly without any proof, and if such gross charges are made and not proved, do they not disgrace the cause they were intended to help. In this connection it is also remarkable they have offered no evidence to prove that the general reputation of Rhoda Davidson is not good for truth and veracity, and no evidence to prove she is a common prostitute, and thus bring her within the case of Commonwealth against Murphy, in 16th Mass. Repts. Now if Rhoda Davidson is such a terrible girl as alleged by Ann Kenny, is there no evidence on earth to prove it but her own silly, unserious talk? She has lived nearly nine years in Boston and vicinity, was a member of a church strict in its discipline, lived in clergymen's families, and other respectable places.—Now can you for a moment believe that if she was the infamous creature they allege, the keen hunt of Mr Fairchild and his agents could get no evidence of the fact? If Edgcombe could be ransacked, could nothing be discovered in Boston, the scene of all her supposed wickedness? If she could be impeached on these two grounds, first of being a common liar, or secondly, of being a common strumpet, can you believe no evidence would be offered on those points? Am I not justified then in saying that there is **NO LEGAL** evidence in this cause of those gross charges against her, and that such supposed facts cannot be lawfully argued by counsel, or relied upon by jurors.

I shall leave her, then, in your hands, as unimpeached in any important particular, except so far as her being an accomplice affects her credit, and the prevarications she has resorted to under the special inducements. She is a competent witness by law. You may believe her uncorroborated if you see cause. But she is *supported* by two witnesses, and the supposed effect of the defendant's letter. This brings me to the second witness, Mrs Easty. She says,



that in April, 1842, Mr Fairchild met her and Rhoda, and confessed that he had connection with Rhoda; that the devil must have had influence over him; but that he thought it hardly possible she could be with child; that if his crime was exposed, he should be turned out of the ministry; hoped God had forgiven him for his sin; gave the money, and urged Rhoda to go directly home. In October, afterwards, he denied being the father; gave her five dollars, and had an interview with her father, &c. Now Mrs Easty is not impeached on general grounds for want of truth and veracity, nor is there any very important evidence brought to contradict her. What Rhoda is alleged to have said of her is no evidence, for reasons already stated as to Ann Kenny's testimony; not under oath, and by Rhoda denied under oath. Perjury must be very cheap, if Mrs Easty would sell her soul to perdition for fifteen dollars, all she has been proved to have received for her silence. There is an attempt to impeach her by a visit of Ruth Dewyer, accompanied by Mrs Thomas Dunham, whose name I would not allude to, if her husband, Mr T. H. Dunham's name had not been introduced on the other side. To what extent party spirit will lead ladies, as well as gentlemen, I cannot tell; but to take advantage of a woman sick-a-bed, and so sick, that while they were there some neighbors were called to her relief, does not seem to me exactly right. Mrs Easty persisted even then, that Mr Fairchild admitted the fact, and Mrs Dewyer cross questions her how &c. I submit, gentlemen; that this attempt of Mrs Dewyer to impeach Mrs Easty wholly fails. The very circumstances of the conversation make it suspicious. But Mrs Easty had forgotten she had signed some papers, but as soon as shown to her, she acknowledged them. It was supposed they contradicted her oath here? Do they? The learned gentleman used the power of the law, and obtained one from Mr Brigham, and one from Mr Simons. Do they contradict her? The learned gentlemen has not read them, nor pointed out a single variance! Having them on his table, would he not, if they benefited his cause? Are they thrown by, because they confirm her? you must judge. (Here Mr Bolles put them in the case, without reading them.)

Is there anything therefore in this case that can authorize you, or justify you in rejecting Mrs Easty's positive oath of Mr Fairchild's admissions? I think you will find none. And does not the payment of the money corroborate her? Is it any answer under the facts proved in this case, that money in some instances has been extorted from other clergymen or other men? Because some persons in London or New York, or elsewhere, have committed crimes will you believe all other persons guilty in the absence of all proof of their guilt? How manifestly unjust such conduct would be in you, who are under oath to be governed by evidence! Let me also ask you in this connection, if there is not very pregnant corroboration of Mrs Easty, of Rhoda, and of their father, in the very remarkable letter of the defendant? I will call attention to some of its passages. There is some reason in newspapers saying that an urgent request to Rhoda and her father to commit falsehood, is contained in these passages: "If any question should be asked respecting the matter I shall be ignorant of the whole subject, and so must you be." "Say

nothing to them, but if they should happen to guess me, then your oath binds you to clear me." "If any person should ever ask him whether he did not suspect me, his oath binds him to clear me at once." "He must never tell what my business is, or where I live." There seems to be also confession in that letter: "What has been done cannot be undone." "I hope what has been done, cannot be undone." "I hope what has past has been forgiven of God; but if you violate your oath to me, you must expect the curse of God on you." The words, *but if you*, and "*on you*" seem to be language put in contrast to what precedes it, and the sentence perhaps may be paraphrased thus: as to what I have done, I hope what is past has been forgiven of God: but as to you, if you violate your oath to me, you, in such a case must expect the curse of God on you—as if she was not to expect herself the curse of God for what was past, but only if she hereafter violated her oath, leaving the forgiveness of God for what was past for him in contrast to her.

In this anonymous and strictly confidential letter, there is no complaint of extortion, no allusion to injustice, no resentment; and it is difficult to believe the style to be that of a man strong in the consciousness of his own innocence, writing to two foul conspirators. It savors at least as much of guilt as of innocence, is written with much skill, and abounds with cautionary admonitions: "A wise head keeps a close mouth," &c. I invite your attention to this letter, and wish you to ask your own wise heads, whether there is not in it a very strong corroborative proof of the testimony of the two Davidsons and Mrs Esty; and especially if there is not in it, the most abundant excuse for all the prevarications about the father of the child.

But beside the positive oath of Rhoda Davidson to this adulterous intercourse, and the evidence of Mrs Esty and the true construction of that letter, you have the accumulated evidence of William Davidson, a member of the Baptist Church, and a man whose general character for truth is not impeached. Many witnesses are here from Edgecombe; not one speaks against his general character for truth and veracity. But Mr Samuel Merry and Dependent Merry his brother, and some others are brought to impeach him, as to some supposed conversations. I need not repeat the dangers of misapprehension and mistakes in long past conversations. Indeed, the Baptist Church in Edgecomb was troubled by just such a misconception, and if you believe Squire Parsons of that place, there was a misunderstanding between Samuel Merry and William Davidson, and after much trouble Samuel Merry admitted *he might be mistaken*, as Davidson denied what he said—and both retained their opinions, and the matter was left there. Now which was in the right? Can you say? Certainly not. The church and neighbors could not find out, and it was a drawn battle. There was a real misunderstanding. So perhaps too, in all the other conversations with Mr Davidson, there may have been misunderstandings, and considering how parties have taken sides, it is not improbable. I thought the junior counsel harsh upon Mr Davidson, in charging him as a vagabond or runaway from his vessel to cheat the captain out of half of his advanced wages. He is here providentially, and if his Captain would not discharge him at Cape Ann to come to this before unexpected trial. I think



few persons will condemn him for leaving the ship under those circumstances. He would have been an unnatural father, and supposed to have abandoned his child. In Mr Dodge's testimony there is a long narrative of what Mr Fairchild said while making a bargain with Mr Davidson. His statements under these circumstances are not evidence of any of the facts thus stated. He was making the best settlement he could with Mr Davidson, and cannot claim to have what he then said as evidence,—and I beg you in considering William Davidson's testimony, and the manner in which it is attempted to be impeached, to consider his position, under oath to protect Mr Fairchild, and his interest and motives to avoid and escape from too close questions. What was he to do when people guessed right? The letter says, "if they guess right, your oath binds you to clear me." So as to Rhoda, and the letter says—*the same is true of your father.* Now if there is some prevarication, is it fair for the other side to impeach Davidson and Rhoda for doing just what Mr Fairchild's letter tells them they were bound by their oath to do? If a man hires another to falsify, has he a right to take advantage of such prevarications to impeach his own agent. I might go through all the testimony of Mr Davidson's neighbors, and show you how in his peculiar position and his prospects of the 50 dollars per annum, all the supposed discrepancies may be accounted for, without supposing him guilty of perjury in this case, and without subjecting him to the charge of conspiracy. If he really believes Mr Fairchild guilty, there was no extortion; he is poor, the girl is poor, how is the child to be supported in sickness and health for seven years? Is the sum extravagant, less than a dollar a week. It is easy to charge conspiracy and perjury, but such atrocious charges are not to be believed to have been committed without competent proof.

And now for a moment let us consider how the secret became divulged. It got currently reported in Edgcomb, the father of the child was a Methodist minister, and at last it came to Mr Shaler's ears that Rhoda had had a child, and a minister was its father. She had lived in his family. He was a minister. He did not choose to lie under the imputation. He sought her—found her at Mr Robins's; obtained a paper from her clearing him, but she would clear nobody else, and she would not forfeit Mr Fairchild's money as a disclosure until she obtained an equivalent. Is there any thing in this, to impeach or discredit her? You are the judges, Reports do get round, but according to Ann Kenny, Rhoda was willing to sacrifice herself to the most astonishing degree, to shield Mr Fairchild, told all manner of silly and false stories, about herself, and referred to artifice, the pincushion, &c, to conceal and protect him from suspicion—so her father in what he said about ministers, and about the dentist, &c. All these things were resorted to to conceal Mr Fairchild. But truth, like murder, will come out a little at a time, and one thing leads to another, and then reports, and then Mr Shaler insists on the truth. Does all or any of this show conspiracy or perjury. Judge candidly, fairly, impartially. Such are some views of the evidence in this case. Some of you have taken minutes and I will not dwell more on the testimony. It is certainly clear Mr Fairchild had confidence in the honour of Rhoda, in the

honour of Mrs Easty, and in the honour of Wm Davidson, for he took no receipt for his money, no release or discharge in writing, no document. He had long known Rhoda, and his reliance upon her word is strong proof of his belief that she was not the infamous character now pretended.

To some few remarks of the counsel I will now add a few words in reply.

It is said Mr Fairchild deserves great credit for voluntarily surrendering himself for trial. I cannot view it in such light. The Governor of this State demanded him; the Governor of New Hampshire refused to give him up. He thus found New Hampshire an asylum, and suppose he had not surrendered himself, what would have been the legal and common sense inference? It is a maxim generally true, that flight is a confession of guilt; enshrining oneself in an efficient asylum is tantamount to flight. Suppose a clergyman in Boston indicted, and he hid himself for eight months, and avoided trial, would not severe imputations be cast on such conduct? Now Mr Fairchild had been within FOUR HOURS RIDE from this Court House for several months, and was suspended from the pulpit until he took his trial, could he stay away any longer without a great injury to his reputation? was not the pending indictment like a perpetual blister on his character; and would not his continued absence daily add to the supposition of his guilt? Is there much merit in coming to trial? He has acted properly in this respect, but certainly his counsel has no ground to claim favor for him in this particular.

They claim merit also for having consented to a latitude of proof as to the number of instances of adulterous intercourse. The rule was rightly laid down in this court recently in Dr Morrill's case. You may require the government to select one instance as the one charged in the indictment, and that, and that alone, is to be proved as THE CRIME for which the party is on trial; but other instances of adulterous intercourse before and after, may be admitted in evidence to explain the intention of parties, their course of conduct, and for other purposes in connection with other parts of the testimony. There is then no great merit as to this course now.

The counsel also said her story is vastly improbable. Human depravity unfortunately has ceased to be improbable, but the most remarkable part of her testimony is just such as she had not capacity, talent, learning and ingenuity to invent. The bible arguments and other parts of her testimony were beyond the reach of her invention; nor could she sustain two different examinations of six or eight hours at a time before different tribunals, and go so minutely into times, places and circumstances, if her evidence was not based rather on



SATURDAY, March 29.

realities than fancy. A well executed, successful conspiracy could not be well carried on by simple and illiterate persons; means of detection would in the lapse of years multiply in all quarters.

Her supposed discrepancies as to time, should no more affect her evidence than it does that of other persons, as the experience of courts has constantly demonstrated that there was no subject upon which the most honest witnesses are more apt to differ than in the computations of time as to past transactions, when no record of the time of the events is made. Judge of her candidly in this particular as you would judge of other persons. She is entitled to so much.

It is remarked that the accomplice is not herself indicted. The government have no right to take the evidence of an accomplice, and then use it against the accomplice. States' evidence usually obtain a judicial pardon by the very act of testifying as to their own guilt connected with other criminals. She cannot have been indicted for adultery, but may have been prosecuted for fornication, the punishment is slight by our laws.

I forbear, gentlemen, to speak of the domestic relations of the defendant. This is no place to allude to them. I regretted to see that my learned friend's close differed so much from the assurance he gave you when he began his speech: he then protested he did not wish to interest your feelings and should make no attempt to do so, and yet in his closing remarks he arrayed before you the wife and children and the absent daughter of Mr Fairchild in the most touching manner, and scarcely left a dry eye on your pannel. This was not correct. This is the temple of justice, not of mercy. The fountain of mercy can flow only through the executive, and not in the judicial, branch of the government, and not even from the governor and council until AFTER conviction. The ancients wisely in their emblem of Justice, put a bandage over her eyes, as well as a sword in one hand and the scales in the other. She was to be no respecter of persons; she was to see no wife, no children; she was to deal upon the proof with a husband, with a father, as she would with a single man. It was an attempt to mislead you, that your feelings should bias your judgment, and so far was incorrect.

And now, gentlemen, I leave this important case in your hands. I ask for a just decision upon the evidence. The commonwealth and the defendant, your fellow-citizens and his friends, look to you on this interesting occasion for a diligent, impartial and conscientious search for the truth, and a fearless and honest declaration of it when found. With that, they will all be satisfied.

The Court came in at 8 1-2 o'clock this morning, and the usual dense attendance appeared in the Court Room. JUDGE WASHBURN then proceeded to deliver the following able, lucid and impartial charge. It occupied in the delivery two hours, and while its ability is spoken of by all in terms of high commendation, its entire fairness was no less conspicuous and generally acknowledged:

#### JUDGE WASHBURN'S CHARGE.

GENTLEMEN OF THE JURY: The Council on the one side, and the other, have done no more than justice to the patience and attention with which you have listened to the evidence and arguments which have been adduced in this case. It now becomes my duty to call for a further exercise of your patient attention, while I review the circumstances and evidence upon which your verdict is rendered.

The question upon which you are now called to pass, has justly been deemed by all who have taken part in this trial, as one of no ordinary interest. It involves, not only all that is most valuable in this life, of the individual accused, but reflects indirectly, upon that most worthy and respectable class of men to which he has heretofore belonged.

No class of men have hitherto stood higher in the public estimation for their virtues, and their devotion to the temporal and eternal well being of their fellow men, than the clergy of New England. Nor is it too much to say that to their influence, direct and indirect, as much, if not more than to any other single cause, is to be ascribed the high character for morals and intelligence which the People of New England have hitherto sustained.

When, therefore, a Jury are called upon, in the performance of their duty, to pass upon the guilt or innocence of one of this class of their citizens, charged with an odious and disgraceful crime, they hardly need to be reminded that it is a case which calls for a careful, candid and deliberate judgment.

But Jurors also will bear in mind that this is a question in which the public are also interested. If in fact a man has been willing to put on the outward garb of a preacher of our holy religion, while he has been willing to make it a cloak, under which to violate, not only the precepts of that religion, but the laws of the land restraining vice and crime, it becomes the duty of the officers of the law to strip him of his disguise, and disarm him of the power of mischief, by exposing his true character.

Unfortunately for the honor of the Church, its history, even in New England, has presented, most melancholy instances of dereliction of duty in its ministers, and though it is justly a cause of congratulation that they have been so infrequent, the fact that they have existed at all, shows that it is sometimes necessary to look beyond the outward personal or professional character of the individual who may stand charged with an offence, to reach the true character of his private life.

From the position which ministers of the gospel hold in society, and the restraints which their very position imposes upon them, it could hardly



be expected that if unworthy men became connected with that profession, they would be guilty of open vices, or the commission of acts of violence, or public outrage. If such men were to offend at all, it would ordinarily be in the commission of secret vices or crimes, and those to which their physical passions and temperaments, and habits of life, might naturally tend to lead them.

But while these considerations might lead a Jury to believe that offences of a particular class or character might be committed by men of any particular profession or habit of life, they ought to guard their minds, carefully, against arriving at the conclusion that any one of such a profession is guilty, merely because the offence of which he is charged, is of that class which a man of that profession would be the most likely to commit.

The difference between secret and open offences and the proofs necessary to sustain them, consists in the ease with which in the one case the charge may be made, and the necessity of relying upon one or at most, a few witnesses, to sustain it, and the great difficulty, often existing in disproving the charge, even if the party implicated be innocent.

Take for instance the offence of violating the person of a female. If committed at all, one would naturally expect that it would be done, secretly in the absence of witnesses, and of course nothing is to be presumed from the mere absence of witnesses, when a trial is to be had for its alleged commission. It is an offence to which the passions often impel unprincipled men, so that to that extent, there is nothing improbable in the charge. And yet, as the charge may often be made by a female to cover her own disgrace, where she herself was more or less in fault, or for baser purposes, and the person charged, ordinarily has no means of disproving the charge, Juries are properly cautioned, in such cases, to weigh carefully all the circumstances attending the transaction, before arriving at the conclusion that the charge is true.

Among the circumstances which are proper to be considered in this connection, the previous character of the party charged, is entitled to great weight. If his character has hitherto been unstained—if his pursuits and duties in life have been such as to give a direction to his thoughts and feelings inconsistent with the idea of the commission of such an offence, it certainly raises a probability in his favor which no jury should disregard.

In the present case it is admitted that the previous character of the defendant, was unblemished, and as to the character of his calling and pursuits, and their tendency upon his conduct, the Jury can need no instruction from the law. In regard to the amount of proof which is requisite in order to convict a person of an offence charged, there is ordinarily no definite rule to be prescribed to a jury. In most cases, the evidence of one witness, if believed by them, is sufficient in law, to authorize a conviction, and whether the whole evidence in the case is sufficient to justify a verdict, is ordinarily a matter for the jury alone to determine.

So far as any rule may be regarded as a guide for juries upon the subject of the sufficiency of evidence, it may be stated thus. The law expects jurors to form their judgments not from their own

personal knowledge of the transactions upon which they are to pass, but from the testimony of others, and their own knowledge of the principles of human action, and the ordinary relations of circumstances and events to each other. They cannot, therefore, require *positive, absolute certainty without the possibility of a mistake or error* in order to make up a judgment. If this were so, such is the imperfection of our natures that no verdict could ever be rendered, however morally certain a jury might be that they had arrived at a true conclusion. All that I apprehend is required, is that the evidence when taken altogether, must be sufficient to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest.

When therefore the government charge any person with the commission of an offence, they are bound to this extent to make out the proof of his guilt.

This is what is called the *burden of proof*, and if they fail to sustain it to this extent, a jury is not authorized to find the defendant guilty, whatever their own conjectures or suspicions might lead them to imagine upon the subject.

When coming to the consideration of this case you will in the first place disregard every thing like *popular excitement*. Public sympathy, whether for or against the debt, is not to be regarded here. It is to the evidence and to that alone, that you are to confine your attention (for there are few or no questions of law involved) and it is according to that evidence, that you have sworn to render your verdict in this case.

With these preliminary considerations, I pass more immediately to the case now under consideration.

The crime with which the defendant stands charged, comes within that class of secret offences to which I have alluded, where the indulgence of a passion, common to all mankind, becomes a crime by its unlawful gratification.

The offence, if committed, almost necessarily implies that it is secretly done, and, of course, while you will neither ask nor expect the testimony of many eye witnesses of the defendant's guilt, if guilty, you will bear in mind that from its being thus necessarily a secret act, it is easily charged, and often disproved with great difficulty, though the charge be ever so false.

The offence may be defined, in this case, to be a sexual intercourse, by defendant, with a female other than his wife—inasmuch as it is admitted that at the time of the alleged act he had, and still has a lawful wife living.

You will not therefore have any of those difficulties which sometimes arise in determining whether an act is criminal or not, according to the intent with which it is done, as whether, for instance, the taking of goods under certain circumstances, be *larceny* or not. The single enquiry seems to be, did he do the act charged? Did he have sexual intercourse with Rhoda Davidson, as the Grand Jury have set forth in the indictment before you?

This of course is a matter exclusively within the province of the Jury to determine.

If the evidence in the case shall have satisfied you as reasonable men, of the defendant's guilt—painful as may be the duty, the public have a right to his conviction at your hands.



If the Commonwealth shall have failed so to satisfy your minds, the defendant has a right, quite as sacred, to an acquittal.

The cause of public justice, the cause of that religion, whose minister the defendant has been, and the cause of personal security and protection, require that you should *candidly, fearlessly and impartially* weigh well the evidence before you, and render a verdict *according to the truth, regardless of the consequences.*

I have stated this proposition the more strongly, because in my view this case may require that you should find the defendant guilty of a gross and detestable crime---or that one or all the witnesses first called by the government, have been guilty of a foul conspiracy, which they have sought to carry out by gross and unmitigated perjury.

If there is a middle ground upon which the testimony can be reconciled with truth and the defendant's innocence, you will doubtless do so. But if there is not, it has become your duty to decide, and you will do so fearlessly, I doubt not, which is *true*---the guilt of the defendant, or the conspiracy and falsehood of one or all of the three witnesses on the part of the government.

To aid you in your deliberations, I propose to go over somewhat in detail, the evidence that has been adduced, but I shall not deem it necessary to comment upon it, after the very full and able and elaborate manner in which every thing connected with the case has been presented to your minds, by the learned counsel on the one side and the other, for so far as they are concerned, nothing certainly has been omitted that could be fairly done.

Before going into this detail, however, I may observe, that so far as the question of credit to be given to a witness is concerned, the first inquiry ordinarily is, whether he was in a situation to know of that of which he testifies. In the 2d place, whether he has intelligence to understand, and capacity to communicate the facts of which he testifies. And in the next place, as to his fairness and honesty, in stating facts as they actually exist.

And these remarks the Jury will understand and apply as well to the witnesses on one side, as to the other.

In respect to the principal witness for the prosecution, she must have been in a situation to know whether what she states is true, since, if any offence was committed, she was a participant in it.

In regard to her intelligence and capacity, the Jury have had an opportunity to judge from her manner and appearance before them, while testifying upon the stand. As to her fairness and honesty, the Jury will judge from the whole circumstances, and evidence in the case, connected with her own manner and appearance on the stand, and how far she has otherwise been contradicted, or impeached, or sustained.

There are some general suggestions proper to be made before examining her testimony in detail, that a proper rule should be applied in testing the degree of credit to which she is entitled.

In the first place, this is not necessarily a question of the *paternity* of her child. If the act of intercourse took place between the defendant and herself, the crime was as effectually con-

summated without its having been followed by her pregnancy, as with it.

The importance of the question, who is the father of the child, arises from the fact that the last alleged intercourse, testified of by her, might agree with the actual time when the child was begotten, if her story is true, and from the further fact that she solemnly denies any sexual intercourse with any other person than the defendant. And if the Jury should be satisfied from the evidence, that any other person was, or might have been the father of the child, it would go directly to contradict her testimony, and, of course, to that extent, at least, to impeach her credibility.

In the next place, when comparing her present statements with those on former occasions, for the purpose of showing their inconsistency, the Jury will see how far these discrepancies, if any, are in *material and essential* particulars, and how far they can reasonably account for them, on the ground of weakness of human memory, when taxed for hours in succession, in the recapitulation of a great variety of circumstances, instead of necessarily inferring an intentional falsehood, or attempt to deceive from discrepancies which are unimportant.

In the next place, the Jury will examine into the motives and inducements which are alleged to have acted upon the mind of a witness to lead him to commit perjury, and judge, as well as they can, how far these motives and inducements may be regarded as adequate to produce such a result. The law never *presumes* that a man, whether party or witness, has been, or will be guilty of a crime, and as a general thing experience shows that no man, who is not wholly corrupt, commits crimes, especially of a high and aggravated nature, unless operated upon by some adequate motive or inducement. And these remarks will apply as well to the witnesses on the one side as the other.

If motives are ascribed for the commission of perjury in this case, the Jury will of course see how far they have been proved before they allow the mere suggestion that they may have existed, to control their judgments, or affect their conclusions.

Here the motives and inducements on the part of the principal witnesses for the government, to conspire and commit perjury against the defendant, are said to be to extort money from him, besides a desire on Rhoda Davidson's part to detract from the infamy of her own conduct by associating with her guilt the name of a respectable man.

It may, perhaps, occur to your mind, that if this were their object, they would have selected a man of more wealth and ability to pay, than a man of the defendant's pecuniary circumstances, and that they would not be likely to make an attempt upon a clergyman, whose high character, they would be aware, would render their story improbable.

On the other hand, it has been suggested to you that a clergyman is so situated as to be the most easily assailed, from his very anxiety to preserve his character, and that the sum obtained here, though small in itself, was a considerable one for persons in their condition of life.

It may perhaps have struck your minds whether the object could have been to put money in the pockets of those witnesses, when according to their



statement, only so much was required as was sufficient to help support the child, and if they had been willing to undertake the scheme they would have extorted larger sums.

On the other hand it has been suggested to you, that they got all they could; and that the sister shared in the spoils although she had incurred no charges on account of the child, and it is further claimed by the defendant that the evidence tends to show that the principal witness has been willing to receive money growing out of this transaction when offered from other quarters.

The instances cited in the opening statement, of the defendant's counsel, are sufficient to show that conspiracies such as is charged in this case have existed, but that is not to be taken as, of itself, evidence that a conspiracy exists here unless the assumed probability of such a thing is sustained by satisfactory legal proof of the fact.

A circumstance in this case has been strongly relied upon by the defendant's counsel as tending to show him innocent, and that is the fact that he has voluntarily surrendered himself and solicited a trial. This fact has been the subject of comment on both sides, as to the inferences that should be drawn from it and is certainly a proper matter for the consideration of the Jury, in reference to the arguments that have thus been addressed to them.

Another circumstance which has also been relied upon by defendant's counsel, is that if he had insisted upon his legal rights they could have excluded all evidence of any more than a single act of adultery, inasmuch as only one is charged in the indictment, but instead of that, he has not objected to evidence as to all of the many alleged acts in regard to which the other principal witness seen fit to testify.

And as a general proposition it is certainly true that where the Government charge but one criminal act, though they are not confined to the time alledged in the indictment, they are limited to some one act, as the act charged, and cannot ask a conviction by undertaking afterwards to prove another.

Taking these suggestions as your guide, it will perhaps be as intelligible an order of considering the evidence as any, to see,

- 1st, What Rhoda Davidson did testify?
2. How far she is supported, corroborated or confirmed by the other direct evidence in the case.
3. How far she and the other two principal witnesses are impeached, 1st, by contradictory statements of their own, and 2d, by contradictory testimony of others or by the circumstances themselves? and
4. How far the defendant's rebutting evidence is, of itself, controled, if at all, by the government's witnesses?

So far as Rhoda Davidson is concerned, she being a *particeps criminis* with deft, if he is guilty, it is not claimed by the Commonwealth's Attorney, that a conviction can be had upon her testimony alone. She is a competent witness, but the counsel on both sides agree, that there ought to be corroborating evidence to justify a jury in confiding in her statement.

The Judge here recapitulated, in a summary manner, the facts of which she had testified, and then read from his minutes the testimony of Mrs Esty and of William Davidson.

In addition to this testimony he remarked and offered by the way of corroborating the testimo-

ny of these witnesses, was the fact of the Defendant's having written three letters to Rhoda, the writing of which is now admitted, and the acknowledged payments by him of sums of money as stated by the government.

One of these letters will be with the jury, and has been the subject of comment by the counsel on both sides.

The existence of these facts, is, certainly, to be regarded as important evidence. The effect to be given to these facts, as well as the construction and meaning of the existing letter, is for the jury, taking into consideration and giving them their just weight, the suggestions of the counsel on the one side and the other.

On the one side it is insisted that the language of this letter implies an acknowledgment of the guilt of this charge on the part of the defendant. On the other, that it is entirely consistent with the idea of his innocence, and is such as might be expected from a timid man whose fears had been practised upon until he had been made a victim of a conspiracy to extort money from him. You will carefully read and examine that letter, keeping in view both these theories, and then, in the light of your whole knowledge of the case, taking the letter as a whole, and taking it in connexion with the facts which you believe to be proved, you will judge what effect should be given to it and what its legitimate bearing should be upon the decision of the case.

The Judge then read from his minutes of the evidence, such parts of the testimony as the defendant relied upon as contradicting or controlling the testimony of Mrs Esty and Mr Davidson, which is omitted here, the same being contained in the report of the evidence.

He then proceeded. The defendant's counsel have urged that the conduct of the defendant's wife, whose faithfulness and devotion to her husband, through the pendency of this investigation are surely deserving of all praise, showed that an adulterous intercourse, could not have been carried on between Rhoda Davidson and her husband while she was at home, for if it had been she would have suspected or detected it, and would have interposed to prevent or put an end to it.

If from your knowledge of human nature, you believe she would have manifested her displeasure upon such a suspicion or detection, the argument is a fair one, that *she* did not see any thing which awakened her suspicions, if the evidence shows that she manifested no such displeasure, but it cannot be safely or legitimately carried beyond that extent.

The Judge then read from his minutes of evidence the statements made by Rhoda, and by other witnesses which the defendant claimed were inconsistent or contradictory to each other, until he came to the testimony of Ann Kenney, in regard to which he observed: Although the defendant's counsel do not rely upon this as an essential part of the defence, it is nevertheless of a character that requires a few words of remark.

If the jury believe that Rhoda Davidson made the statements testified of by this witness, they will not consider that, of itself, satisfactory evidence that the acts which she speaks of as having been done by others, did in fact take place. For instance, they would not consider it proved by that statement, that Mr Hoyt had intercourse with her, and thereupon infer that he may have been



the father of the child. If such an inference might have been legitimately drawn, I should have felt bound to have permitted the Commonwealth's Attorney, as he proposed to do, to put Mr Hoyt upon the stand to give him a chance to deny the truth of the statement. And the same rule applies as to Mr and Mrs Shaler and the "Deacons of South Boston," to whom Rhoda is said to have alluded at other times; and so in regard to the facts of which they know nothing except by the way of a repetition of her statement.

But the jury have a right to regard her statements, if they believe the testimony, as evidence that she has at other times made entirely different statement from what she now does, and as showing a levity of conduct and conversation upon the subject which they have a right to consider, when weighing and judging of her testimony.

It was upon this ground that the evidence was excluded which was offered by the government, to show that the facts alledged to have been stated were not true, for even if they were not true, it would not change the effect which might thus legitimately be given to the statements, if made by the witness.

The Judge then read from his minutes the testimony of Anna Kenney, which is omitted here. So far as the question of a conspiracy was concerned, it depended so much upon the opinion which the jury should form of the other parts of the case, that he deemed it unnecessary to recapitulate the evidence as bearing upon this point. If the principal charge is false, it goes far to say the least to show the existence of a conspiracy; and if on the other hand, a conspiracy has been shown to exist, it has a strong tendency to show that the principal charge may not be true.

The Judge occupied two hours in summing up the case to the Jury, and in conclusion, remarked that he had necessarily omitted many things, and, perhaps, some that were important. The Jury would be careful to supply such omissions as far as they could, and would not understand that, because he had omitted suggestions or evidence on the one side or the other, he thereby intended to exclude them from their consideration.

The whole case, said he, is now for you to determine. It is for you to ascertain the TRUTH from the evidence before you, and to declare it fearlessly, regardless of its consequences to the one party or the other.

If the Government have satisfied you, as reasonable men, that the defendant is guilty, I doubt not you will say so. If they have failed to do this, I have no less doubt that you will say so by your verdict and let the defendant go free.

The Jury retired at 15 minutes before 11 o'clock, and returned at 6 o'clock, P. M., having been out 7 1-4 hours. On their appearance, the Court was thronged, and there was a deep sensation throughout the room. The defendant was outwardly calm, but evidently realized that the great result of a most protracted trial was now to come. He seemed trustful of a deliverance, but perfectly resigned in view of an opposite fate. His deportment was most becoming. His wife awaited the verdict in hope, but with tears. The Sheriff arose, and gave the audience an im-

pressive charge, that they should respect the Court of Justice, and give no expression of approbation or disapprobation, on the announcement of the verdict. If they did so, the individuals should be arrested for contempt of Court.

The Clerk rose, and the Foreman of the jury rose. Rev Joy H. Fairchild was directed to take his stand at the bar. He did so, amidst profound silence.

Clerk. Mr Foreman, is Joy H. Fairchild, the prisoner at the Bar, *Guilty or Not Guilty*?

Foreman. NOT GUILTY.

Clerk. So you say, Mr Foreman, and so, gentlemen, you all say?

The jurymen bowed.

On the rendition of the verdict, notwithstanding the premonition of the Sheriff, the audience burst out in involuntary applause, which was immediately checked.

Mr Fairchild then rose, and asked the Court if it would be proper for him to make a few remarks to the Court. The Court kindly assented—when he rose and in a deeply affecting address of a few moments, in a sad and measured cadence, and with trembling yet assured tones, delivered the following address:

#### ADDRESS OF MR FAIRCHILD.

MAY IT PLEASE YOUR HONOR: Having been acquitted by a jury of my country, I wish now to state, that from the first moment I heard that the Grand Jury had found a bill of indictment against me, I determined to return and meet the accusation as soon as I could, acting under a sense of duty to myself and the advice of counsel. I determined to return to the old Bay State, to this good city of Boston, to my former acquaintances and friends, among whom I had labored for fifteen years in the Gospel ministry, and who had been witnesses of my daily life and conversation. I did return; and though under the condemnation of an Ecclesiastical Council, I found a host of friends to cheer and comfort me. I have submitted myself to the laws as a good citizen should do; and the result is before you. During the trial my mouth has been closed; but I now declare, with all solemnity, and as in the presence of my Maker and Judge, that I am innocent of the crimes charged upon me. My enemies and persecutors I forgive, and commend them to the forgiving mercy of Almighty God. The pains—the agonies which they have caused me to endure, no tongue can tell. They have brought me and mine almost to poverty; but I will trust in the Lord and fear no evil.

According to the decree of the late Council at Exeter, I am now restored to that ministry, in which I have endeavored to labor, with all fidelity, for thirty years; and being thus restored to my office, I greatly rejoice.

I will only add, that I thank your Honor for your patience and impartiality, in the discharge of your duty as Judge; I thank the County Attorney for his courtesy, and the Jury for their just and righteous verdict.

Multitudes then came up, took Mr Fairchild



by the hand, as well as his excellent lady and interesting son, and congratulated him and them upon his deliverance.

We desire here to say, that the time which the jury were out, must not be understood as detracting from the merit of the verdict; for we are assured by one of the Jury that they were unanimous at the outset with the exception of one, Mr George W. Bond, who only dissented that they might examine the evidence in detail, and thus come to a deliberate result. They did so. This of course occupied many hours. Then it was that they decided that Mr Fairchild was not only *legally*, but *morally innocent*. Mr Bond so expressed himself to Mr F. at the close of the trial.

The defendant and family then retired, and as they entered their carriage in Court Square, which was literally filled with thousands of people, there arose *three tremendous* cheers, with not a single note of disapprobation, and the carriage drove off amidst the plaudits of the people.

Thus has ended one of the most interesting trials in New England. The defendant has suffered, but he is now delivered. The verdict is a most righteous one, as all will confess, who read the evidence. The over zealous and accusing clergymen, and the private prosecutors, will only be remembered in sorrow and indignation—the former, for having condemned a brother without waiting for adequate proof, and the latter, for their shamelessness, corruption and infamy.

The Court then adjourned for the present term.

[NOTE. We would here say, in justice to the Commonwealth's Attorney, Samuel D. Parker, Esq, that he has conducted the prosecution throughout with the greatest fairness and liberality. He has treated the defendant respectfully, and without indulging in any disparaging personal epithets, has contented himself with urging the case for the government, with all his ability and professional astuteness indeed, but not

as a partizan or with the feelings of those who have privately prosecuted the case from motives, other than those of justice, and who are looked upon by the public as having been the especial companions of Miss Rhoda Davidson and thereby received some of the pitch of her defilement.

In connection with the trial, and rather as a preliminary thereto, we would say that the bill of indictment was found at the July term of the Municipal Court, 1844, and from that time until the 15th of Feb. last, the defendant was residing in Exeter, N. H. out of this jurisdiction. It is now understood that Governor Briggs refused at first to grant any requisition for the arrest of Mr Fairchild in New Hampshire, but was prevailed upon to do so subsequently, by reason of some urgent solicitation on the part of certain persons, but not at the especial instigation, as we learn, of the prosecution.

This requisition on the Governor of New Hampshire was not successful, and Gov. Steele declined to give him up. Subsequently, Mr Fairchild, having become ready for the trial, and the public excitement having somewhat subsided, left Exeter, and voluntarily repaired to this city for the purpose of giving himself up, and meeting the prosecution. He did so on the 15th of February last, pleaded *Not Guilty*, and with several friends, among the most wealthy and estimable of our citizens, gave bail in the sum of \$1000 for his appearance at the March term of the Municipal Court.

We shall issue ANOTHER EDITION of this pamphlet in a few days, revised and corrected, and with some considerable addition to the reported remarks of the opening counsel for the defence.]