REPORT

OF THE

CASE

JOHN DORRANCE against *ARTHUR FENNER*,

TRIED AT THE *DECEMBER TERM*, OF THE *COURT OF COMMON PLEAS*, IN THE COUNTY OF PROVIDENCE, *A. D.* 1801.

TO WHICH ARE ADDED,

THE

PROCEEDINGS

IN THE

CASE

ARTHUR FENNER *vs.* JOHN DORRANCE.

Carefully compiled from NOTES *correctly taken by several Gentlemen who were present during the whole Course of the Trial.*

PROVIDENCE:

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1802.

TO THE PUBLIC.

THE principal object of the following publication is a deſire to correct the ſtrange miſrepreſentions of the evidence given, and the proceedings of the Court, at the trial here ſtated, which have been induſtriouſly circulated particularly in the country part of the State. Whatever may be our ſentiments in regard to the merits of the Caſe, or the intereſts of the reſpective parties, we have uniformly been anxious that this work ſhould be conducted with a ſtrict regard to candour and correctneſs. It is ſubmitted to the public, under a perfect recollection of the multitude of witneſſes who are knowing to the truth, or the falſehood, of the facts here ſtated; and who will compare the repreſentations here made with the tranſactions they ſaw and heard at the trial. It is alſo ſubmitted, under a full conſciouſneſs, that party prejudices and intereſted inducements will probably ſeek out occaſions for diſapprobation and contradiction: However, as we believe that impartiality has been the conſtant guide througnout the whole compilation, it ſhall ſtill govern, on our Part, in applying the proper corrections, when ſuch ſhall be found neceſſary. If in the hiſtory of this long and intricate trial, conducted under peculiar circumſtances of hurry and inconveniency, ſome errors have unwarily eſcaped the Compiler (or us) and ſhall be pointed out, they ſhall be candidly and cordially acknowledged and corrected.

In ſtating the teſtimony given at the trial, we believe ſtrict preciſion has been obſerved, in giving to both the parties alike their full weight; and the

words

words of the witneſſes themſelves have been preſerved as far as, in ſeperating the applicable from the inapplicable, the propriety of the Caſe has required. The limits of the work have not permitted ſo full an inſertion of the arguments of the reſpective Counſel, by far, as is wiſhed. The heads of the arguments only are laid down, and ſuch particular declamatory effuſions as ſeemed to wear the general colour of the whole. In reciting the different deciſions of the Court, particular attention has been had to a full ſtatement of the queſtions before them; and the words of the Court have been noted *verbatim*, where inferences might be equivocally drawn, and where important principles were concerned in a critical interpretation of words.

Providence, February 27, 1802.

COURT of COMMON PLEAS

FOR THE

COUNTY of PROVIDENCE.

DECEMBER TERM, A. D. 1801.

PRESENT.

HON. DANIEL OWEN, Esq. Chief,
JOHN HARRIS,
WHEELER MARTIN,
DANIEL HOWARD,
ARNOLD PAIN,
} Esquires, JUSTICES.

In the Case

JOHN DORRANCE vs. ARTHUR FENNER.

Ray Greene;
James Burrill, jun.
Nathaniel Searle,
} Esq'rs. Counsel for the Plaintiff.

David Howell,
Asher Robbins,
Daniel Lyman,
} Esq'rs. Counsel for the Defendant.

THIS

THIS was an Action of the Caſe commenced at the preſent Term by John Dorrance, Eſq. againſt Arthur Fenner, Eſq. Governor of the State of Rhode-Iſland, charging the Defendant with having, falſely and maliciouſly, ſlandered and defamed the good name, fame and reputation of the Plaintiff. The Declaration conſiſted of ſixteen counts; the firſt of which charged the Defendant, that he, at "Providence, on the firſt day of May, A. D. 1801, then and there having diſcourſe of and concerning the Plaintiff with divers good, faithful and credible citizens of ſaid State, and of the United States, falſely and maliciouſly, openly and publicly, ſpoke, uttered, pronounced and publiſhed, in the preſence and hearing of divers of the aforeſaid good, faithful and credible citizens of ſaid State, and the ſaid United States, theſe falſe, feigned and ſcandalous words following, of and concerning the Plaintiff, to wit: John Dorrance (meaning the Plaintiff) has ſold to Doctor Pardon Bowen, for the purpoſe of diſſection, the dead body of a certain man, who hung himſelf in Scituate, in the county of Providence aforeſaid, in the year, 1799: Which ſaid dead body had been left in the care of the ſaid John Dorrance (meaning the Plaintiff) by ſome of the inhabitants of ſaid Scituate, to be decently buried, according to his (meaning the Plaintiff's) directions: That he the ſaid John Dorrance (meaning the Plaintiff) had received from ſaid Pardon Bowen a beaver hat, in payment for the aforeſaid dead body, ſold to the ſaid Pardon Bowen as aforeſaid, by the ſaid John Dorrance (meaning the Plaintiff) and that the ſaid John Dorrance (meaning the Plaintiff) had the impudence to wear the aforeſaid hat on his (meaning the Plaintiff's) head, while he (meaning the Plaintiff) officiated as Moderator of a Town-Meeting of the town of Providence aforeſaid." The ſecond, third, fourth,

and

and fifth counts charged the Defendant with ſpeaking, at other times, words of nearly the ſame import, varied only in the form of expreſſion. The ſixth, ſeventh and eighth counts charged him with having a diſcourſe, at different times, with divers citizens, previous to the election in May, 1800, of and concerning the Plaintiff, and of and concerning his office of a Juſtice of the Court of Common Pleas for the County of Providence, and of the execution of ſaid office by the Plaintiff; and in ſuch diſcourſe of falſely and maliciouſly ſpeaking the aforeſaid words, with an intent to deprive the Plaintiff of the ſaid office, to bring him into diſrepute, contempt and hatred, amongſt the aforeſaid citizens, and to prevent his re-election to the ſaid office, by the General Aſſembly, at their Seſſion, in May 1800.— The eight laſt counts charged him with having falſely and maliciouſly written and publiſhed, and cauſing to be written and publiſhed, certain falſe, malicious and ſcandalous libels, in the form of paper writings, containing the ſame words of and concerning the Plaintiff, and of and concerning his office aforeſaid, his execution thereof, and his election thereto, in the ſame manner and with the ſame intent as declared in the eight firſt counts.

The Declaration, in ſetting forth ſpecial damages, ſtated, that the Plaintiff, by reaſon and means of the ſpeaking and publiſhing, by the Defendant, ſaid words, and of writing and publiſhing, and cauſing to be written and publiſhed the ſaid libels, had been injured in his ſaid good name, fame and reputation, by him gained and enjoyed among the ſaid good, faithful and credible citizens: That divers of ſaid citizens had withdrawn from him their eſteem reſpect and confidence: That his ſaid election to ſaid office of Juſtice of the Court of Common Pleas was injured and affected; and that he, in the ſame e-

lection

tion, loſt the good and legal votes of twenty of the members of ſaid General Aſſembly who had good right to vote therein. The damages were laid at fifteen thouſand dollars. To which Declaration, the Defendant filed the following Pleas.

"And the ſaid Arthur Fenner comes into Court and defends the force and injury when, &c. and as to the ſpeaking and publiſhing all or any of the words; and as to the writing, or cauſing to be written, or publiſhing all or any of the ſaid words or libels, in all or any of the counts of the Plaintiff's Declaration aforeſaid, he the ſaid Arthur ſaith, that he is not thereof, or of any part thereof, guilty, in manner and form as the Plaintiff, in his Declaration aforeſaid, hath alledged and charged againſt him; and of this, &c. By David Howell, his Attorney."

"And the Defendant, by leave of the Honorable Court here, and according to the ſtatute in this behalf provided, further pleads and ſays, as to the ſpeaking, uttering and publiſhing the words mentioned and charged againſt the ſaid Defendant, in the firſt, ſecond, third, fourth, fifth, ſixth, ſeventh, and eighth counts of his aforeſaid Declaration, the Plaintiff his Action aforeſaid thereof againſt him, ought not to have and maintain; but from having and maintaining the ſame ought to be precluded and barred; becauſe he ſaith, that the ſaid dead body in the ſaid aforeſaid counts of ſaid Declaration mentioned, was the dead body of a ſtranger who died in ſaid Scituate, and was there decently buried, by and under the direction, and at the expence of the aforeſaid Town of Scituate, on the 17th day of February, A. D. 1799: That ſaid dead body was taken up from the aforeſaid place of its interment, and removed to and depoſited in a certain building, in ſaid Town of Providence, to wit; at ſaid Provi-

dence

dence, on the 19th day of February, A. D. 1799; that at ſaid Providence on the 20th day of Feb. A.D. 1799, a certain agreement and ſtipulation was made and entered into, by and between John Harris, Gideon Auſtin, and Joſeph Knight, Eſquires, Gideon Angell, Samuel Wilbour, jun. and Squire Franklin, Members of the Town Council and Agents for ſaid Town of Scituate, on the one part; Pardon Bowen, of ſaid Providence, Phyſician, on another part; and John Dorrance, of ſaid Providence, Eſquire, the Plaintiff aforeſaid, on the laſt part, to the following ſubſtance and effect: The ſaid John Dorrance, the now Plaintiff, then and there agreed to and with the other two contracting parties aforeſaid, that he would take the ſaid dead body into his care to be decently buried, in ſaid Providence, under his care and direction. The ſaid Pardon Bowen then and there agreed to and with the other contracting parties aforeſaid, that he would procure a ſuitable coffin, and be at the expence of ſaid funeral, to be conducted under the ſuperintendance and direction of the ſaid John Dorrance, as aforeſaid; and that he would pay to the ſaid John Harris, Gideon Auſtin and Joſeph Knight, Eſquires, Gideon Angell, Samuel Wilbour, jun. and Squire Franklin, Members of the Town Council and Agents for ſaid Town of Scituate, the ſum of forty dollars, as a compenſation for the trouble and expence of ſaid Town of Scituate, in the premiſes. And the ſaid John Harris, Gideon Auſtin and Joſeph Knight, Eſquires, Gideon Angell, Samuel Wilbour, jun. and Squire Franklin, Members of the Town Council and Agents for ſaid Town of Scituate, then and there agreed to and with the other contracting parties aforeſaid, that in conſideration of their ſeveral undertakings aforeſaid, to be by them faithfully executed and performed, and of the ſaid ſum of forty dollars to them in hand paid by the ſaid Pardon Bowen, they, the ſaid John Harris, Gideon Auſtin and Joſeph Knight, Eſquires,

Gideon

Gideon Angell, Samuel Wilbour, jun. and Squire Franklin, Members of the Town Council and Agents for ſaid Town of Scituate, would indemnify and ſave harmleſs the ſaid Pardon Bowen and all others, of and from all manner of coſts and damages, which might ariſe and fall on him or them; by means of any proſecution thereafter to be brought againſt him the ſaid Pardon Bowen, or any other perſon or perſons, by the ſaid Town of Scituate or by any inhabitants thereof, on account of the taking up and removal of ſaid dead body from Scituate as aforeſaid; and that they the ſaid John Harris, Gideon Auſtin and Joſeph Knight, Eſquires, Gideon Angell, Samuel Wilbour, jun. and Squire Franklin, Members of the Town Council and Agents for ſaid Town of Scituate, would leave the ſaid dead body under the care of the Plaintiff, to be decently buried, under his care, ſuperintendance and direction. And the ſaid John Harris, Gideon Auſtin and Joſeph Knight, Eſquires, Gideon Angell, Samuel Wilbour, jun. and Squire Franklin, then and there returned to their ſeveral homes, in ſaid Scituate, fully truſting and confiding, that the ſeveral agreements aforeſaid of the contracting parties aforeſaid would be carried into effect, in every particular as aforeſaid, in good faith and without any deceit or equivocation in any of ſaid contracting parties. And the Defendant further in fact avers, that at ſaid Providence, on the twentieth day of February, A. D. 1799, between the hours of 10 and 11, at night, the ſaid dead body, without any ſhirt or any other covering other than its own ſkin and hair, was put into a ſtraight, rough box made of pine boards, held together by nails partly driven into ſaid boards, with room enough under their heads for the claws of an hammer to paſs and eaſily draw them out:— Which ſaid box and dead body was then and there put into the ground, eighteen inches below the ſurface and not deeper, and covered over with looſe dirt.

dirt. And the Defendant further avers, that within three hours after the time laſt aforeſaid, the ſaid dead body was taken out of the earth, the ſaid box being left behind, and was carried and depoſited in a certain building, in ſaid town of Providence, and then and there came to the uſe of the ſaid Pardon Bowen, and was by him the ſaid Pardon Bowen, then and there, appropriated and converted to his uſe as a Phyſician or Surgeon, and was then and there, under his ſuperintendance and direction, diſſected, the fleſh and bones and entrails ſeparated, and the bones framed again to their ſeveral places to exhibit a ſkeleton or anatomy of ſaid human body. And the Defendant further avers in fact, that at ſaid Providence, after the ſaid dead body had been converted to the uſe of the ſaid Pardon Bowen, in manner aforeſaid, and within three weeks thereafter, he the ſaid Pardon contracted with Benjamin Randall, of ſaid Providence, Hatter, for a good Beaver-hat to be made by the ſaid Randall, on the ſaid Bowen's account, and at his the ſaid Bowen's expence, and delivered to the now Plaintiff: For which ſaid hat the ſaid Pardon Bowen then and there paid and ſatisfied the ſaid Benjamin Randall.

And the Defendant further in fact avers, that at ſaid Providence, on the third Wedneſday of April, 1800, the ſaid Benjamin Randall delivered ſaid Beaver-hat to the Plaintiff, who then and there acceptted and received ſaid hat, and converted the ſame to his uſe; and that he the Plaintiff then and there refuſed to give to ſaid Randall, a receipt therefor, alledging that the tranſaction was of a delicate nature. And the Defendant further in fact avers, that at ſaid Providence, at the ſaid time when the ſaid Pardon Bowen contracted with ſaid Randall, for ſaid hat, or on ſaid third Wedneſday of April, 1800, the ſaid Pardon Bowen was not indebted to the Plaintiff for any cauſe, matter or thing, other than for

law-advice

law-advice given to the ſaid Pardon Bowen by the Plaintiff, during the time in which he the Plaintiff held a commiſſion, and acted as a Juſtice of the Court of Common Pleas for ſaid County of Providence, and was under his oath of office as ſuch juſtice, and other than for the ſervices rendered to ſaid Pardon Bowen, touching and concerning the ſaid dead body's paſſing to the uſe of the ſaid Pardon Bowen, in manner as aforeſaid; for the former of which deſcription of ſervices, he the Plaintiff always refuſed to receive any pay from him the ſaid Pardon Bowen, to wit; at ſaid Providence. And the Defendant avers, that the Plaintiff, to wit; at ſaid Providence, never paid, or promiſed to pay, or was liable to pay, to the ſaid Pardon Bowen, any money or other valuable conſideration, for ſaid Beaver-hat, other than as by the one or by the other deſcription of ſervices laſt aforeſaid. And of all the premiſes, the Plaintiff, at ſaid Providence, on the aforeſaid day when the ſaid Pardon contracted with ſaid Randall for ſaid hat, and on the aforeſaid day when ſaid hat was delivered by ſaid Randall to the Plaintiff, was well knowing. Wherefore the Defendant, at the ſaid ſeveral times when, &c. did ſay the ſaid ſeveral words againſt him the Defendant alledged and charged in the ſaid firſt, ſecond, third, fourth, fifth, ſixth, ſeventh and eighth counts of the Plaintiff's aforeſaid Declaration, not maliciouſly, but pleaſantly, only meaning thereby, that the ſaid Beaver-hat was for the Plaintiff's connivance and breach of truſt as aforeſaid: Which ſaid words had been theretofore reported by others, as it was lawful for him to do, for the cauſe aforeſaid; and this he is ready to verify. Wherefore, &c.

By David Howell, his Attorney."

To which Plea in Bar, the Plaintiff replied, in uſual form, that the Defendant, at the ſeveral times mentioned in ſaid eight firſt counts, *of his own*

wrong

wrong, and without any ſuch cauſe as by the Defendant alledged in ſaid Plea, falſely and maliciouſly, openly and publicly, ſpoke, uttered, pronounced and publiſhed the words ſet forth in ſaid counts; and thereon tendered an iſſue which was joined by the Defendant. The Plaintiff alſo joined the iſſue offered by the Defendant, denying the whole Declaration.

Purſuant to a motion by the Governor's Counſel, and the other party agreeing thereto, the Court anticipated the cauſe from the order of the Docket, and aſſigned it for trial on Wedneſday, the thirtieth day of December, and the ninth day of the Term. The Cauſe being called, at the opening of the Court in the morning, the Clerk proceeded to empannel the Jury; and the firſt twelve on the liſt of drawn Jurors having been called and ſeated in their box, the parties were reminded of their reſpective challenges.

The Plaintiff did not ſeem diſpoſed to make any challenge.

The Defendant objected to Nathan Dyer, and offered for cauſe, that the Juror was brother to Doctor Benjamin Dyer; and that Doctor Benjamin Dyer, at the time of the removal and diſſection of the dead body, had certain pupils ſtudying with him who were ſaid to have been in ſome meaſure concerned in that tranſaction. Mr. Howell, for the Defendant, obſerved that a Juror, in any cauſe, ought to ſit "neat and clean as a ſheet of blank paper:" That it was reaſonable to ſuppoſe that Doctor Dyer muſt have been ſomewhat intereſted or affected by the conduct of his pupils, and was therefore himſelf implicated in the buſineſs: That the Doctor's brother, the Juror challenged, muſt of neceſſity feel intereſted in the reputation of the Doctor,

and without doubt did entertain a partiality not only for him, but for all thoſe to whom the Doctor himſelf was partial, and of courſe would be partial to Judge Derrance who was ſo deeply involved in the affair. The Counſel in behalf of the Plaintiff obſerved, that the name of Doctor Dyer or any of his pupils was no where mentioned in the record of the Caſe: That he was in no way, directly or indirectly, intereſted, implicated or concerned in the cauſe at iſſue; but might have been himſelf, to every intent and purpoſe, a legal and competent Juror in this trial, and it would therefore be an abſurdity in the extreme for the Court to hearken to ſuch ſurmiſes againſt the Doctor's brother, to whom there could not poſſibly be made any legal or reaſonable objection.

The Chief Juſtice obſerved, that the cauſe was of great importance as it concerned the reputation and feelings of the Chief Magiſtrate of the State. The trial had become a matter of great public anxiety, and on that account it became the Court to be vigilant and careful that the ſame ſhould be conducted properly: He was therefore deſirous of having "ſuitable men" for Jurors. He ſaid, it was intimated from the Bar, that the Juror challenged did not come within any legal objection laid down in the books For his part he ſhould not ſtrictly confine himſelf to any rigid maxims of Law, any preciſe principles mated in the Books, the common cuſtoms of this country, or the former practice of this Court; but ſhould endeavour by every means to empannel a Jury in this Cauſe wholly free from intereſt and prejudice to the parties. The Court, after ſome private conſultation, ordered the Juror off.

Mr. Howell ſuggeſted to the Plaintiff's Counſel, that Naaman Aldrich, a Juror, was in ſome degree allied to the family of Comſtock's, to which family

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the Governor's Wife was alſo related: He wiſhed to know whether the Plaintiff on that account would object to the Juror. He was anſwered that the Plaintiff was diſpoſed to truſt his cauſe to a Jury empanneled according to the lot of the Law: That he then knew of no objection to any of the jurors who were regularly returned to ſerve at the preſent Term, and ſhould not challenge a juror on any account but where law or practice ſhould require; and that to Mr. Aldrich in particular, he knew of no legal or cuſtomary objection, on account of any diſtant relationſhip that might poſſibly exiſt between him and the Governor. Mr. Aldrich appeared from the ſmall knowledge he had of him, to be a gentleman firmly independent in mind, and wholly diſintereſted in the cauſe on trial; and therefore he was perfectly contented with him. Mr. Aldrich was now called on to declare in what degree of relationſhip he ſtood with the Governor. The relationſhip however appeared to be ſo remote, and obſcure, that neither he or the Governor were able to trace or explain it. Judge Pain declared from the bench, that he believed that the grandmother of Mr. Aldrich was ſiſter to the mother of the Governor's wife, which made the Juror and the Governor's wife fourth couſins.* Mr. Howell then obſerved, that although the relationſhip did not come within any legal or practical rule of challenge mentioned in the Books; and although the favour of relationſhip, if any, was on the ſide of the Governor; yet as the other party ſeemed to well contented with the Juror, it ſeemed to betray ſome ſecret intereſt in him, which was a reaſonable, if not a legal cauſe of challenge on the Defendant's ſide. He thereupon moved the court that the Juror be ſet aſide. The

* It proved that Judge Pain was totally miſtaken, for it turned out, that the mother of the Governor's wife was in no way related to the Comstock family; but that her father was really of that name.

The Chief Juſtice, in giving the deciſion of the Court, ſaid, that he had known Jurors who were related to parties, in ſome inſtances, give their Verdict againſt the party to whom they were related. He had alſo known Verdicts annulled by the General Aſſembly by reaſon of relationſhip being after the trials diſcovered between the parties and the Jurors. He was therefore of opinion with the other Juſtices that Mr. Aldrich ſhould go off the Jury, which accordingly he did.

James Hammon, another Juror, was called on by the Defendant's Counſel to declare whether he had ever previouſly formed any opinion in this cauſe, or whether he had ever publicly expreſſed any ſuch opinion. He anſwered that he did not perhaps preciſely underſtand what might be deemed by the queſtioners an opinion formed in the Caſe. He ſaid, he knew that the diſpute which had originally cauſed the commencement of this action to have been a long time in agitation: That it had been continually a ſubject of general converſation in the town of Providence in which he belonged, and had naturally divided the citizens into different and oppoſite parties attached reſpectively to each party in the Caſe —That he was equally an acquaintance and friend to both parties in the Caſe, and had ever been, as he conceived was right, deſirous that the animoſities between them might ſubſide, and that all their matters in diſpute, including the Caſe on trial, ſhould be ſettled by an amicable compromiſe, without any further recourſe to the Law. To accompliſh which deſirable purpoſe, he had frequently joined in the current converſation upon the ſubject, and had ſeveral times ſuggeſted to his neighbours the beneficial conſequences that might reſult from an attempt by diſintereſted perſons to bring about ſuch a ſettlement: That he had never been fully informed of the whole hiſtory of the diſpute, nor was he preciſe-

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ly acquainted with the grounds of complaint on either ſide; but from what knowledge he had acquired of the matter, he had been induced to believe that the whole diſpute might poſſibly have been chiefly the reſult of paſſion, miſinformation or political oppoſition, rather than real injury, on either ſide; and imagining that to have been the caſe, "*I have* (ſaid he) *ſaid that I thought neither party ought to recover very heavy damages.*" He ſaid he was ſtill imperfectly acquainted with the merits of the Caſe; was entirely ignorant on which party the blame moſtly lay, and was wholly free from prejudice of any kind towards either party. The Defendant's Counſel challenged him on the ground, that he had prejudged the cauſe by having previouſly made the above deciſion thereon. The Plaintiff's Counſel obſerved, that it did not appear the Juror had ever really formed any opinion in the particular cauſe now in Court, nor had he ever been poſſeſſed of the facts of the cauſe, whereon he could poſſibly have formed ſuch opinion. But if what the Juror had confeſſed to have ſaid could poſſibly be conſtrued into a decided opinion of the preſent cauſe, ſuch opinion could by no means be conſidered as prejudicial to the Governor, becauſe Judge Dorrance was the Plaintiff; and if the words of the Juror were to be allowed their utmoſt force, they could go no farther than to ſay that Judge Dorrance ought not "to recover very heavy damages" againſt the Governor. On the ſame ſide it was further obſerved, that the excellency of Mr. Hammon's character rendered it deſirable that he ſhould remain on the Jury, unleſs ſubſtantial objections ſhould be offered againſt him.

These obſervations however did not ſatisfy the Governor, and on his perſiſting in his challenge, the Court ordered the juror off.

Mr.

Mr. Howell then objected to Charles Low, another Juror; and for grounds of objection, suggested to the Court, that Charles Low was brother to the Wife of Charles Lippitt. That Charles Lippitt was a warm and intimate friend of Judge Dorrance, and was politically opposed to Governor Fenner, and had been heard to speak in approbation of the newspaper-publications which had lately appeared against the Governor. Mr. Howell also suggested, that Col. John Low, father of the Juror, had, some years since, been unsuccessful in a law-suit with his brother, and had attributed his ill-success to the influence of "Governor Fenner and his people." It was therefore, in his opinion, reasonable to suppose that the Juror might entertain a latent antipathy towards the Governor.

No proofs of the facts stated were however adduced.

The Juror, on being questioned, declared, that he had never in any manner prejudged the present cause. That he harboured no personal dislike whatever to Governor Fenner, and had but a very small and imperfect personal acquaintance with Judge Dorrance. He did not recollect even to have ever spoken to the Judge in his life: He further declared, that he had never before heard or thought of any suspicions his father entertained in regard to any influence of the Governor in the suit with his brother; neither did he hold any interest or concern in any attachments or antipathies of Charles Lippitt that might exist towards either of the parties in this Case. He observed that he was drawn by lot and returned by the Town of Providence, as a Juror to serve generally in the business of this Term, and he had accepted the undertaking with an intent to acquit himself of the duties thereof, to the best of his ability, according to the law of the State and the obligations

ligations he owed to ſociety. As regarded this particular cauſe, he was equally indifferent and equally free from prejudice, as in any of the other cauſes in which he had ſerved, and had no anxiety to ſit as a Juror, or to be exempted from it. The ſentiments of his heart, as well as the ſacred oath he was under, forbid him to be ſolicitous to ſit in a cauſe where any intereſt or prejudice could poſſibly influence his conduct; and on the other hand, where he was free from intereſt and prejudice, the ſame conſiderations forbid him to ſhrink from the performance of a duty which the law required of him, however arduous or important in itſelf. Such was the ſituation in which he ſtood, and as ſuch he ſtood at the pleaſure and diſpoſal of the Court.

The Plaintiff's Counſel now obſerved, that Mr. Howell's objections to the Juror were of a ſingular and extraordinary nature. Ingenuity ſeemed to have been driven to the utmoſt ſtretch of exertion in ſeeking out laboured pretences and colourable ſurmiſes to effect a removal of the Juror. Mr. Low's marriage connection with Charles Lippitt by no means made him connected with Judge Dorrance. It was not in evidence that Charles Lippitt was in the leaſt concerned with Judge Dorrance in the proſecution or event of this ſuit; nor was it even ſuggeſted that they were concerned together in any buſineſs or purſuit whatever. Mr. Lippitt being in no way related to Governor Fenner; his name no where mentioned in the caſe; no inſtance of his enmity towards the Governor ſhewn; and having no poſſible intereſt in the ſuit, he might himſelf have been, againſt the moſt rigid ſcrutiny, fully and perfectly competent to ſit as a Juror. But on the part of Mr. Low, there was no ſhadow of impropriety or exception even hinted, either as regarded his ſentiments, his character or conduct. His being diſtantly related to perſons who might be ſuppoſed to entertain a

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to Governor Fenner's political tranſactions, was an objection that would equally apply to every family in the County which had any conſiderable number of connections. If political opinions were to be taken into conſideration, in the canvaſſing of this Jury, it would certainly be juſt that both parties ſhould be equally indulged with the ſame privilege: In that caſe, both parties together would have cauſe of challenge againſt every Freeman in the County, and muſt neceſſarily exclude the poſſibility of ever being able to empannel a Jury in the caſe. The ſame Counſel further obſerved, that out of the thirty drawn Jurors returned to ſerve at the preſent term, only fourteen remained on the ſtand, beſides thoſe already excuſed in this trial; the others either not having attended at all, or were excuſed by the Court and returned home;—That it was an important right to Mr. Dorrance to preſerve, if poſſible, the privilege of a Jury drawn by lot, according to Law. That was a mode of trial to which he was anxious to ſubmit his cauſe, without regard to the political ſentiments of the Jurors individually. But if unſubſtantial ſurmiſes of the Defendant were thus allowed to prevail to the excluſion of a pannel of drawn Jurors, it would be neceſſary to ſupply the deficiency from a *venire* then already returned by the Sheriff. That the Sheriff, though his character as a gentleman might be without reproach, was well known to be an intimate and particular friend of the Governor, and was particularly decided and active in the Governor's views of political matters. He would therefore by no means be a ſuitable perſon to ſummon a *venire*, in an action againſt his moſt intimate friend. A regard to the delicacy of the Sheriff's own feelings ſhould prevent a recourſe to ſuch a meaſure, while competent drawn Jurors could be poſſibly obtained. Such being the ſituation of the Sheriff, the Plaintiff held an intereſt in the drawn Jurors, generally: It was an

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intereſt which the law gave him of right, and of which no idle, frivolous, or unreaſonable ſurmiſe or ſuggeſtion ought to deprive him.

The Court, after ſome private conſultation, diſmiſſed Mr. Low from the Jury.

There was alſo another objection ſtated by the Defendant againſt Mr. Low, ſuggeſting ſome irregularity in the mode of his being drawn, and in the certificate of his return by the Town-Clerk; but that objection the Court declared was overruled, and not conſidered in the grounds of his removal.

The pannel being thus canvaſſed and concluded, comprehended the following Jurors, viz.—Enos Mowry, Aretas Sweetland, Chad Sayles, John Remington, Amos Harrindeen, Nathan Walker, Stephen Hopkins, Joſeph Hopkins, James Yerrington, James Arnold, George Burton, and Nathaniel Bailey.

On proceeding to trial, the Counſel did not preciſely agree, as to the order of the arguments which the parties were reſpectively to purſue, in reſpect to the opening and cloſing of the Caſe; and the Court were referred to for their deciſion on the point. On the part of the Plaintiff it was ſuggeſted that the Defendant, though he had filed a ſpecial Plea to the eight firſt counts, to which the Plaintiff, in his replication had tendered an iſſue, yet as the Defendant had alſo tendered an iſſue to the whole Declaration, he thereby gave the Plaintiff a right to the opening and cloſing of the Caſe; which was agreeable to practice in this Court. On the other ſide, it was contended, that the general iſſue to the whole by no means deprived the Defendant of that privilege to which he was entitled, by reaſon of his ſpecial plea; but, Mr. Howell obſerving, that there were croſs actions pending between the parties, in

which the order of the pleadings were ſimilar, and whatever might be deemed a privilege in this reſpect would be mutual to the parties; and it was therefore immaterial which party obtained this point in the preſent trial. Whereupon the Court decided that the Plaintiff ſhould have the opening and cloſing.

Upon this deciſion, Mr. Howell immediately moved for leave for the Defendant to ſtrike out the general iſſue from the eight firſt counts; which was granted, and accordingly done. He then moved the Court to reverſe their laſt deciſion, and grant the Defendant liberty to open and cloſe the cauſe. The order of pleading being thus materially changed, the two iſſues being confined, the one to the eight firſt counts, and the other to the eight laſt, the Defendant's Counſel contended, that they were entitled to the opening and cloſing. After ſome conſiderable time was occupied in argument by both parties, it was ordered by the Court that the Defendant ſhould have the opening and cloſing on the firſt iſſue, and the Plaintiff on the laſt.

Mr. Robbins, on the part of the Defendant, proceeded to open the caſe on the iſſue to the ſpecial Plea. After the declaration and pleadings were read, he obſerved to the Jury that their attention, on the preſent iſſue, would be wholly confined to the charges contained in the eight firſt counts of the Declaration, which concerned the ſpeaking and publiſhing only of the words therein mentioned. He ſaid, that in behalf of the Defendant, his general grounds of defence would be, firſt: That the words ſuppoſed to have been ſpoken by the Defendant were, in ſubſtance, true, which, in the courſe of the trial, would be evinced by the evidence to be produced. 2dly, that the words were not in themſelves actionable, as would be ſhewn by authorities from the Books.

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In order to prove the truth of the words, a number of witneſſes were called by the Defendant; the firſt of whom was the Hon. John Harris, one of the Judges of the preſent Court, who deſcended from his ſeat, and gave his teſtimony, in ſubſtance, as follows:

"On Saturday the 13th of February, 1799, I officiated as Coroner, and empanneled a Jury of Inqueſt, on the body of a man who had hanged himſelf in the town of Scituate. After the buſineſs of the Inqueſt was finiſhed, the body was delivered to the care of Gideon Auſtin, Eſq. who immediately cauſed the ſame to be decently buried, at the expence of the town. On the Monday following, I attended a Town-meeting in ſaid Scituate, and in the courſe of the day I was informed, that the dead body had been by ſome perſons taken up and carried away to Providence. After the Town-meeting was diſſolved, Gideon Auſtin, with ſeveral others, arrived and informed me and the people preſent, that the body had been carried away in a ſleigh; and that they, the informants, had tracked the ſleigh on its way to Providence, and had followed it into the yard of Dr. Dyer. This report ſeemed to excite ſome conſiderable agitation in the people preſent, and the alarm ſpread, and affected the feelings of the inhabitants in general. I was requeſted, with ſeveral others, to proceed immediately to Providence, in order to detect the perſons who had carried the body away.—On the next day we accordingly came to town, and applied directly to Gov. Fenner for his advice relative to the meaſures proper to be purſued. Governor Fenner was of opinion that we ſhould apply to ſome authority for advice and aſſiſtance in purſuing the object of our buſineſs; and particularly recommended us to Judge Dorrance, who was Preſident of the Town-Council, and Judge of the Court of Common Pleas. We thereupon, in the evening

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of the ſame day, applied to Judge Dorrance, and requeſted of him a ſearch warrant for the purpoſe of recovering the dead body. Judge Dorrance informed us, that a ſearch warrant could not be legally executed in the night, and adviſed us to defer the buſineſs 'till next day. We informed Judge Dorrance that we ſuſpected ſome young men, who were ſtudying under Dr. Pardon Bowen and Dr. Benjamin Dyer, to have taken the body for the purpoſe of diſſection; that the body was then in their poſſeſſion, ſecreted in the ſtore of Dr. Dyer; and that we wiſhed to be as expeditious as poſſible, leſt, by delay, our ſearch might be eluded. Judge Dorrance ſeemed perfectly diſpoſed to aſſiſt us in our enquiry, and after ſome further converſation on the ſubject, expreſſed his opinion that the whole affair might probably be ſatisfactorily adjuſted, without reſorting to the aſſiſtance of the law. He ſaid, he was perſuaded that if Dr. Bowen's pupils had conducted themſelves improperly on the occaſion, it was without the Doctor's knowledge or conſent; and that the Doctor would willingly take meaſures that ſhould again ſet every thing right. And for the purpoſe of ſome compromiſe in the caſe, the Judge adviſed us to meet Dr. Bowen, at his, the Judge's houſe, in the morning following; and ſaid that in the mean time he would requeſt the Doctor to attend. We agreed to this propoſal: and in the morning we again returned to the Judge's houſe, but Dr. Bowen was not there. Judge Dorrance informed us that the Doctor could not then conveniently attend to the buſineſs; but that he had ſeen him and converſed with him on the ſubject; and the Doctor was very deſirous of the matter's being ſettled, and wiſhed us to wait on him, at his houſe, for that purpoſe. We accordingly went to the Doctor's houſe, and found him at home; and after ſome conſiderable converſation, we came to a ſettlement on the ſubject, which we mutually agreed ſhould be committed to writing.

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"The ſubſtance of the agreement was, that Dr. Bowen, in behalf of the young men, ſhould pay to us, for the purpoſe of defraying the expences of the town of Scituate in the premiſes, the ſum of Forty Dollars; that he ſhould procure a decent coffin and habiliments for the corpſe, and, under the directions of Judge Dorrance, ſhould cauſe the ſame to be decently buried in the town of Providence, which Judge Dorrance was to *ſee* done; and we, on our part, engaged to indemnify and ſave harmleſs the Doctor and all other perſons, from all further trouble, and from all proſecutions that might be commenced by the town of Scituate, or any of its inhabitants, on account of the taking up of the dead body."

[Here the Defendant's Counſel produced a paper which the witneſs declared to be, according to the beſt of his recollection, a copy of the agreement by them entered into, in writing, at that time.]

The Witneſs croſs-examined.

Queſtion by Plaintiff's Counſel. Was Judge Dorrance preſent at the time the agreement between you and Dr. Bowen was made?

Anſwer. No.

Q. Was the whole agreement, including every engagement entered into by each party, committed to writing, and ſigned by you and the other men who came with you from Scituate?

A. Yes.

Q. Did Judge Dorrance ever ſign that written agreement?

A.

A. He never did to my knowledge.

Q. Did you underſtand by the terms of the agreement, that Judge Dorrance was to *ſee* the body buried, and became reſponſible for its being done, or that he only was to give directions for its burial?

A. It was agreed that he ſhould only give directions.

Q. Did you, about that time, ſee Judge Dorrance, after the agreement with Dr. Bowen was made?

A. No.

Q. Had you, or thoſe with you, any authority given you by the town of Scituate, authorizing you to proceed in any manner whatever relative to that tranſaction.

A. No.

Q. Were you and thoſe with you, at that time, members of the Town-Council of Scituate?

A. No.

Q. Did you conſider yourſelves as being, in any manner, Agents for that town in the buſineſs?

A. We firſt proceeded on the buſineſs at the requeſt of certain individuals, and from no other authority; and we governed ourſelves, throughout the whole, according to our own diſcretion and on our own account, and did not conſider ourſelves as being in any manner employed by the town.

Q. Did you conſider that the town of Scituate would

would be responsible for the engagements you entered into with Dr. Bowen?

A. Not otherwise, than that we supposed the town would give their consent.

Q. By the Defendant himself. At the time you applied to me, previously to your going to Judge Dorrance, did I not advise, and urgently desire you to endeavour to make an amicable settlement with Dr. Bowen and the others concerned with him in that transaction?

The Plaintiff's Counsel objected to the admission of evidence of what the Governor himself might have advised in that Case, as being impertinent to the issue on trial. They suggested that such questions were contrary to practice in this Court; and in the present Case could only be designed to give *colouring* to matters which *really* existed in a different view.

Upon this the Governor arose and declared to the Court, that his principal object in this trial was to have every fact, and every possible circumstance brought up to public view, in order that the public might fairly judge of his conduct, so far as he had been concerned in the business of the present enquiry. He wished the multitude of spectators, who crouded the galleries and floor of the house, would hearken to this his public declaration, and direct their attention to the trial, that they might be fully informed of the merits of his cause. He wished that every public transaction of his life might be proclaimed to the world; and that every deed, whether moral or political, public or private, might be, without reserve, submitted to the enquiry and scrutiny of that public, by whose judgment he wished to stand or to fall. He again looked upon the

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ſpectators, and again implored the attention of all thoſe who were "within the hearing of his voice;" and ſolemnly ſubmitted the cauſe to their candour, their judgment and *feelings*.

Whereupon the Chief Juſtice, after privately conſulting with the Court, ſaid, "It is the opinion of the Court that the witneſs tell all he knows." And deſired the witneſs to proceed. He anſwered, that the Governor did give them ſome ſuch advice as he mentioned.

Queſtion by the Defendant's Counſel. Did you ever hear the ſtory of Judge Dorrance's ſelling the dead body for a Beaver-hat, reported by any of the inhabitants of Scituate, or by any other people?

The Plaintiff's Counſel now objected to this queſtion being anſwered by the witneſs; and further moved the Court, that the Defendant be not permitted to go into evidence to prove any hearſay report, that might have been circulated, relative to the iſſue on trial.

The Defendant's Counſel oppoſed the motion; and to ſhew the propriety of permitting ſuch evidence, ſuggeſted, that their object was to prove that Governor Fenner did not himſelf originally fabricate the ſtory of which he was charged; but that it had been a matter of current report and belief, throughout the country, long before Governor Fenner was ever heard to repeat it; which if they ſhould be able to prove, Governor Fenner would be totally exculpated of the ſlander.

The Plaintiff's Counſel contended that ſuch kind of evidence was illegal and improper. They ſuggeſted that teſtimony concerning ſuch vague and general rumours could anſwer no purpoſe towards

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decidedly convincing the Jury, that Governor Fenner might not have been himſelf the original author of ſuch rumours and reports. They further contended, that ſuppoſing Governor Fenner ſhould be able to prove that the ſtory originated from other people, if the Plaintiff ſhould prove that the Governor repeated the ſame ſtory, as being true, and with an intent to injure the Plaintiff, he would be no leſs culpable than if he had firſt invented the ſtory himſelf. To eſtabliſh this principle, they recited an authority from Eſpinaſſe, N. P. Page 517. Buil. N. P. 10. Where it is ſaid, that "it is no juſtification of ſlanderous words that the Defendant heard them from another perſon, if he repeated them; for every one is anſwerable for the ſlander which he himſelf propagates of another." And a Caſe was there recited of words ſpoken in conſequence of their being read from a letter written by another perſon; in which caſe the Defendant was held to be unjuſtifiable.

The Court were finally called on, by each party to decide whether the evidence ſhould be admitted or not. The Chief Juſtice, after ſome conſiderable conſultation in private, declared, "*It is the opinion of the Court, that the witneſs go on, and tell all he knows.*"

The Plaintiff's Counſel then deſired the Court to give a regular deciſion upon the motion before them. They obſerved, that the motion involved a principle of the higheſt importance, as regarded the rules of evidence; and that the diſpoſal of the preſent queſtion would create, or eſtabliſh a precedent, that muſt govern, in the like circumſtances, thereafter.

The Defendant's Counſel inſiſted on the witneſs' proceding in his teſtimony, without any further interruption.

The Plaintiff's Counſel again called for a deciſion.

The Court again whiſpered for ſome length of time, as was ſuppoſed, upon the ſubject. The Chief Juſtice again repeated, "*It is the opinion of the Court, that the witneſs go on and tell all he knows.*"

The Plaintiff's Counſel then aſked the Court, if no formal deciſion was to be given on the motion. To which enquiry the Court made no anſwer.

The Defendant's Counſel then repeated their queſtion to the Witneſs, relative to his hearing the aforeſaid Report. He anſwered that he had frequently heard the ſtory reported in the Town of Scituate; but at what times, or by whom in particular reported, he could not ſay. He could remember in particular that Governor Fenner had told him the ſtory; and was poſitive that he never had heard the ſtory, from any perſon, previous to the month of May 1800.

The next witneſs for the Defendant was GIDEON AUSTIN, who teſtified, in ſubſtance, as follows: "I was appointed to bury the dead man which I accordingly did, on Saturday, the 13th of February, 1799. On Monday following, I received information that the body had been taken up, the preceding night, by ſome perſons, and carried away towards Providence. I immediately ſet out, with ſeveral other perſons, and followed a ſleigh-track from the grave to Providence, into Dr. Dyer's yard. We went in the firſt place to the Attorney-General's houſe, but he was not at home: We then went to Judge Dorrance's houſe, and he was not at home: Whereupon we went to the Governor, and communicated to him the circumſtances of

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our buſineſs. The Governor referred us back to Judge Dorrance for advice and aſſiſtance; but Judge Dorrance not being at home, we went to Dr. Bowen's houſe, and he was alſo gone from home. We then went to the young men whom we ſuppoſed to have taken the body, and I charged them peremptorily not to ſuffer the body to be diſſected. Afterward we returned to Scituate, where we arrived juſt as the Town-Meeting was broken up. We found the people there much irritated and alarmed at the tranſaction. I was deſired, with ſeveral others, to return to Providence, and make further enquiry in the caſe. The next day I accordingly came with Judge Harris, and others, to Providence. We waited on Judge Dorrance for his aſſiſtance, and requeſted of him a ſearch warrant, in order to recover the dead body. But our application being in the evening, Judge Dorrance adviſed us to wait 'till the next day, as it would be illegal to ſerve a ſearch warrant in the night. He ſaid he would ſend for Dr. Bowen that he might meet us at the Judge's houſe next morning, in order that the affair might be compromiſed amicably and properly. In the morning we returned to Judge Dorrance's houſe, but Dr. Bowen not being there, Judge Dorrance informed us that Dr. Bowen had been prevented from coming, but deſired to ſee us at his own houſe. We went to the Doctor's houſe and found him at home; and after acquainting him with the import of our buſineſs, he wiſhed to know of us what we deſired to have done in the caſe. After ſome converſation, I propoſed that the body ſhould be carried back to Scituate, and there buried, as decently as it was at firſt, at the expence of thoſe who took it away; and that the town of Scituate be ſatisfied for the expences they had already been at. Dr. Bowen aſſured us, that he had no intereſt or concern in the dead body, or in bringing it away: That he had never ſeen the body,

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and, probably never ſhould; but as his young men appeared to have aſſiſted in the tranſaction, he was diſpoſed, in their behalf, to do every thing reaſonable towards a ſatisfactory ſettlement. He obſerved, that it was probable the young men would not willingly be prevailed on to carry the body back themſelves; and propoſed that we ſhould convey the body ourſelves to Scituate, and engaged to pay us therefor. This propoſal we did not agree to. After ſome further diſcourſe on the ſubject, we ſtated to the Doctor the ſum of money we would take, and the meaſures we were willing ſhould be purſued in regard to the dead man; to which the Doctor finally agreed. The agreement was, that Dr. Bowen ſhould pay us forty Dollars; ſhould cauſe the man to be decently buried in Providence, under the directions of Judge Dorrance, and ſhould ſ ledge his word that the body ſhould there lie undiſturbed. We then agreed that the terms of agreement ſhould be committed to writing and ſigned by ourſelves and ſeveral other perſons who had come from Scituate, on the ſame buſineſs; and for the purpoſe of executing the writing, we concluded to meet, the ſame day, at Hoyle's tavern, where all thoſe who were to ſign the paper would attend. Whereupon Dr. Bowen met us at Hoyle's, according to appointment, and there we executed a written agreement containing the whole of our engagements, according to the underſtanding of the reſpective parties. Dr. Bowen then informed us that he had converſed with Judge Dorrance concerning the part he was to perform in the agreement, and that the Judge had conſented to the undertaking."

[The witneſs peruſed the copy of the agreement, in the Defendant's poſſeſſion, and declared it to be, in his belief, correct.]

Croſs

Croſs-examined.

Queſtion by Plaintiff's Counſel. Was Judge Dorrance preſent when the agreement was made?

Anſwer. He was not preſent when the agreement was made, nor when it was ſigned; neither did I ſee him afterwards.

Q. Did you conſider Judge Dorrance as a party to the agreement?

A. I did not.

Q. *By Defendant's Counſel.* When did you firſt hear the ſtory of the dead body's being ſold for a Beaver-hat?

A. I do not preciſely recollect, but believe it was about the firſt of May, 1800. At that time the Governor aſked me concerning the agreement, and I gave him a copy of it, which I believe to be the ſame copy here produced. I do not remember when firſt I heard the ſtory concerning the Beaver-hat.

The next witneſs examined was JOSEPH KNIGHT. He repeated the teſtimony of Gideon Auſtin, ſo far as he was knowing to the ſame, with but little variation. He ſaid he was preſent when the agreement was made with Dr. Bowen, and was one who ſigned the writing: That Judge Dorrance was to give directions concerning the manner of burying the body; and from the terms of the agreement, he at the time, underſtood that Dr. Bowen was reſponſible for the body's remaining in the ground undiſturbed. On being queſtioned, he ſaid he never heard the ſtory reported of the body's being ſold, till ſome time laſt ſpring. The

The Defendant's next witneſs was GIDEON ANGELL. He teſtified to the following purport. "Mr. Auſtin had the care of the burial of the man, which was done on Saturday, the 13th of February, 1799. On the ſame day, after the burial, two men arrived at Scituate, and deſired to examine the body, in order to aſcertain whether it might not be a certain perſon of their acquaintance, who lived at ſome diſtance, and had been for ſome time miſſing. The body was immediately dug up for their inſpection, but proved not to be the perſon they ſought for, whereupon it was again committed to the ſame grave. During the time of the burial, a young man, ſuppoſed to belong at Providence was obſerved to be preſent. This circumſtance excited ſuſpicion in ſome, that there were intentions to privately take the body away; and that this young man had been ſent for the purpoſe of diſcovering where the body was to be laid. With the expectation of ſuch an attempt, and for the purpoſe of preventing its ſucceſs, the grave was watched by the inhabitants, during the firſt night after the burial. But, on the night following, being Sunday night, the grave was not watched, and in the courſe of the night the body was taken up and carried away. I was one of the perſons who followed the track of the ſleigh to Providence, and with Mr. Auſtin and others, conſulted the Governor on the ſubject. I was alſo preſent the next day, at Dr. Bowen's houſe, when the agreement was entered into. I recollect, at that time, that the Doctor obſerved that he had never ſeen the body, and had no concern, directly or indirectly, about it. The Doctor further obſerved, that the body had by that time, probably, become putrid, and unſuitable for anatomical purpoſes, if there were no objections to its being ſo appropriated. He was deſirous the body ſhould be again buried, and all difficulties ceaſe. The agreement was finally concluded in the manner teſtified by the other witneſſes." *Queſtion*

Q. from by Defendant's Counſel. Did Dr. Bowen firſt mention Judge Dorrance as the perſon to give directions for the burial?

A. I am not certain whether the Doctor, or another perſon, firſt mentioned Judge Dorrance, but the Judge was finally agreed upon.

Q. Did Dr. Bowen agree that the body ſhould remain in the ground undiſturbed?

A. Yes.

Q. When did you firſt hear the ſtory of the body's being ſold for a Beaver-hat?

A. I cannot poſitively recollect the time.

Queſtion by Plaintiff's Counſel. Did you ſee Judge Dorrance after the agreement was made?

A. No.

SAMUEL WILBOUR, jun. "I came with the others to Providence, in ſearch for the dead body. I did not go to Judge Dorrance's 'till after the converſation with him, which was mentioned by the other witneſſes, was concluded. I went with them to Dr. Bowen's and was preſent when the agreement with him was made. Dr. Bowen was willing to cauſe the body to be delivered up, and was urgent that it ſhould be returned to Scituate to be buried. He requeſted that we ourſelves would undertake the conveying of the body to Scituate, and burying it, for which he offered us a ſum of money; and obſerved that it would not, in his opinion, be prudent for the young men themſelves to return to Scituate with the body, as they would probably be

in danger of violence from the reſentment of the people. It was however agreed upon in manner teſtified by the former witneſſes. Dr. Bowen agreed to bury the body "and let him lie and remain." I was one who ſigned the agreement." The witneſs did not remember when firſt he heard the report of Judge Dorrance's ſeizing the body.

Queſtion by Plaintiff's Counſel. Do you know what expence the town of Scituate ſuffered on account of the burial of the dead man?

A. No.

SQUIRE FRANKLIN, related the hiſtory of the two journies from Scituate in nearly the ſame manner as the witneſſes had done before. He ſaid, "Dr. Bowen propoſed that the body ſhould be returned to Scituate, in the night, and that we ſhould aſſiſt in burying it; but we did not agree to the propoſal. We finally came to an agreement that Dr. Bowen ſhould detray the expences of the town of Scituate already incurred: That the body ſhould be buried in Providence, under the direction of Judge Dorrance, in as decent a manner as it had before been in Scituate, and that the body ſhould be undiſturbed. The Doctor enquired of us what the expences of the town would probably amount to? Judge Harris took a pen and ink, and after making ſome calculation upon paper, anſwered, that the expences amounted to about Forty Dollars, which the Doctor afterward paid. At the time the agreement was executed at Boyle's, Dr. Bowen was preſent and informed us that he had ſeen Judge Dorrance who had accepted the undertaking as was propoſed in our agreement." The witneſs ſaid he had frequently heard the ſtory of the Beaver-that reported in Scituate, but could not recollect by whom or at what time.

Croſs

Croſs-examined.

Queſtion by Plaintiff's Counſel. Was Judge Dorrance preſent with you at any time in the courſe of the agreement?

A. He was not.

Q. Were Judge Dorrance and Dr. Bowen both together, preſent with you and thoſe with you from Scituate, at any time in the courſe of the whole tranſaction?

A. No, they were not.

Q. Was you, or any of thoſe with you authorized or employed by the town of Scituate to tranſact any part of that buſineſs?

A. No.

EZEKIEL KING teſtified to the execution of the agreement at Hoyle's, in the ſame manner as before related. He ſaid Dr. Bowen agreed that "the man ſhould lie." He ſaid he had heard the report of the Beaver-hat, but when or by whom he could not tell.

The next witneſs called by the Defendant was BENJAMIN RANDALL. The ſubſtance of whole teſtimony was as follows: "I was called on by Dr. Pardon Bowen, and by him requeſted to make a good Beaver-hat, on his account, for Judge Dorrance. I then told him that I had not then on hand ſuitable fur for that purpoſe; but that I expected ſome ſoon from the northward, and as ſoon as I could obtain the fur I would make the hat. But more than a year elapſed before the hat was finiſhed, by reaſon of my not obtaining the

fur before. As ſoon as the hat was finiſhed, I ſent it by my ſon, and at the ſame time directed my ſon to get of Judge Dorrance, either a receipt for the hat, or an order upon Dr. Bowen for the amount; but my ſon returned without obtaining either. Judge Dorrance, however, in the courſe of the ſame day, as he was paſſing my ſhop, called at the door and informed me, in the preſence of Reioived Smith, John Beverly, William Brownell and Randall Briggs, that he had received the hat of my ſon, and that my ſon had requeſted of him a written acknowledgement of the ſame; and further ſaid, as near as I can recollect, that the buſineſs between him and Dr. Bowen being of a *delicate nature*, he did not like to commit any thing to writing in order to charge Dr. Bowen with the hat. Judge Dorrance and John Beverly, while at my ſhop, ſoon got into a high diſpute concerning an execution on which Beverly had been, a little before, committed to goal; in which tranſaction, Beverly accuſed the Judge of being concerned; and in the courſe of this diſpute, many harſh and provoking terms were uſed on both ſides, 'till Beverly hinted to the Judge, ſomething of "the Beaver-hat." Judge Dorrance aſked him, "what Beaver-hat?" Beverly replied, "the one on your head, for ought I know; if you want to know further about it go to Scituate." Soon after this the Judge departed from the ſhop."

Queſtion by Defendant's Counſel. At what time did Dr. Bowen firſt ſpeak to you for the hat?

A. I believe it was toward ſpring in 1799; probably in February or March.

Croſs-examined.

Queſtion by Plaintiff's Counſel. Do you know for what

what conſideration Judge Dorrance received the hat of Dr. Bowen?

A. No.

Q. Do you know of any connivance of Judge Dorrance, or any improper underſtanding between him and Dr. Bowen, relative to the digging up of the dead man?

A. I do not.

Queſtion by the Defendant Did Dr. Bowen ever ask you any thing relative to the time when he firſt ſpoke to you for the hat?

The Plaintiff's Counſel objected to this queſtion's being anſwered by the Witneſs, becauſe Dr. Bowen was then preſent, and was the proper witneſs to enquire of concerning what he might have ſaid to Mr. Randall.

The Defendant's Counſel contended that the evidence ſhould be given by the preſent witneſs, as the object of the queſtion was to ſhew, that Dr. Bowen had laboured and managed the witneſs in order to induce him to qualify the teſtimony he ſhould give at this trial. Whereupon the Court ordered the witneſs to proceed in his anſwer.

A. Dr. Bowen, ſometime ſince, met me, near my ſhop, and aſked me whether I could remember in what ſeaſon of the year it was when he ſaw me, in the ſtreet, near the Turk's Head, and firſt requeſted me to make the hat for Judge Dorrance. I anſwered him that I thought it was then cold weather. He replied, that he thought it might be in the ſummer.

Queſtion

Queſtion by Plaintiff's Counſel. Did Governor Fenner ever aſk you any queſtions ſimilar to thoſe you have now mentioned of Dr. Bowen?

A. Yes, I think he has. I remember that, after the meeting of Judge Dorrance and John Beverly, at my ſhop, John Beverly, Reſolved Smith and myſelf were at the Governor's houſe. We there had converſation with the Governor concerning an execution on which Beverly had been committed to gaol, which execution had been iſſued in conſequence of a ſuit in which Beverly, Smith and myſelf were all in ſome meaſure concerned; and in which we entertained ſome diſlike toward Judge Dorrance for the part we ſuppoſed him to have taken. In the courſe of the converſation, Beverly introduced the ſtory of Judge Dorrance's ſelling the dead body for a Beaver-hat, as an additional circumſtance to the buſineſs of the execution, againſt the character of Judge Dorrance. The Governor enquired of us particularly relative to the Beaver-hat, and we gave him all the information we poſſeſſed on the ſubject.

Then followed the teſtimony of JOHN BEVERLY. This witneſs, in order to ſtipulate with the Court for their protection againſt any proſecution he might ſubject himſelf to, on account of any thing he ſhould tellify to, which would criminate himſelf, proceeded to relate a ſtory, particularly to the Court, to the following purport:

"Some years ſince, I think about the year 1794, I was indebted to one James Atwood, to the amount of four or five hundred dollars, for goods received at his ſtore; and in order to ſecure the payment of which, Gerſhom Jones ſigned a note with me, payable to Atwood. This note was afterward

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put in ſuit againſt Jones and myſelf. Judgment was obtained thereon and execution iſſued; but the execution expired without being ſatisfied, by reaſon that Nehemiah Knight, Eſq. then Sheriff of the county, to whoſe hands the execution was committed for ſervice, for ſome reaſon or other, did not make ſervice of the ſame. A ſuit was thereafter commenced in the name of James Atwood as Truſtee to Judge Dorrance, againſt Benjamin Randall as bail for me, in the former ſuit, for the amount of the ſame debt. Whereupon Randall, for his own ſecurity, cauſed me to be arreſted and confined in gaol, 'till he ſhould have an opportunity of ſurrendering me in his own diſcharge, which he accordingly did, before final judgment was obtained againſt him. I was then committed again to goal, by order of the Court, on the original judgment, and there remained 'till I availed myſelf of the law of the State permitting me to ſwear out of goal. I then ſuppoſed that Judge Dorrance had become poſſeſſed of the property of the judgment, and in the ſuit againſt Randall made uſe of Atwood's name as a neceſſary meaſure for recovering the debt: But I ſince have diſcovered that Gerſhom Jones was then the real owner of the judgment, by having privately ſatisfied Atwood therefor: That he was the cauſe of the ſuit being commenced thereon againſt Randall, and had made uſe of Judge Dorrance's name, in a fictitious aſſignment, in order to recover the debt from Randall, or from me, from whom it was wholly due; ſo that Judge Dorrance was entirely free from any active part in the buſineſs.

"Soon after I had ſworn out of goal, ſome irregularities were diſcovered in the tranſactions relative to my diſcharge therefrom, and another ſuit was immediately commenced, in the name of James Atwood as Truſtee to Judge Dorrance, againſt Reſo-

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ved Smith, who was then keeper of the goal, for the amount of the debt on which I had been committed. In this Action, judgment was finally obtained against Smith for the amount of the debt, by that time increased to a sum much larger than the original amount. Smith being thus unfortunately involved in a heavy debt, preferred a petition to the General Assembly for relief. An Act of the General Assembly was passed, discharging Smith of the Debt, and directing that execution should issue, on the same judgment for which I had been imprisoned, against Gersham Jones and me. The execution was accordingly issued, and Jones and I committed thereon to gaol. Jones immediately left the goal on a thirty per cent. bond, and I remained imprisoned till I was discharged by an act of the General Assembly, staying all civil proceedings against me, in consequence of a petition I have now pending before them for the benefit of the Insolvent Act.

"I had thus repeatedly been imprisoned, and persecuted with the vexation of law-suits, wherein Judge Dorrance's name continually appeared, till I had conceived a hatred against him the most violent and implacable; and became resolved to stigmatize his character to the utmost gratification of rage and revenge. About the time when Smith's petition was granted by the General Assembly, I related to the Governor, at his request, an account of the whole transaction relative to the Atwood business, and he then desired me to commit the whole story to writing for his use. I accordingly began the task, partly to gratify the Governor and partly with a desire to publish to the world what I then conceived to be Judge Dorrance's injurious treatment towards me, and also the misconduct of others whom I suspected to have connived with and assisted him. I proceeded in my history, colouring the conduct of Judge Dor-

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rance in the moſt exaggerated and aggravated terms, till I had written many ſheets of paper. In addition to the account of thoſe law-ſuits, I collected every circumſtance of Judge Dorrance's life, which I could diſcover to have been reported to his diſadvantage; and as one of thoſe circumſtances, I made uſe of the ſtory which I am now called on to tell, concerning his ſelling the dead body for a Beaver-hat."

After the witneſs had obtained an aſſurance of the influence of the Court for his protection, he addreſſed himſelf to the Jury, in ſubſtance as follows:

"The Governor had deſired me to commit the ſtory of the Atwood debt to writing for his inſpection, which I accordingly did. As Judge Dorrance was the principal character in my ſtory, and the foremoſt object of my wrath, I ſought for every thing which I thought might plauſibly appear againſt him; I even formed and *gueſſed* at many things and inſerted them without any authority whatever. About three weeks after a report was circulated of a dead man's being brought from Scituate to Providence, and after being buried under Judge Dorrance's orders was dug up. I happened to have ſome converſation with Benjamin Randall relative to the law-ſuit with Atwood, in which his name was frequently uſed. In the courſe of this converſation, Randall informed me that he had been requeſted by *a Doctor* to make a Beaver-hat for Judge Dorrance, and one of us (I do not remember which) immediately ſuggeſted the idea, that this hat muſt have been a conſideration for Judge Dorrance's conniving at the digging up of the body. As we were ſitting by the fire together, we *gueſſed* between ourſelves that this was "like enough the caſe." Randall *gueſſed* ſome things and I *gueſſed* at others, and, in our imaginations, we pretended to have unravelled another leſs intricate my-

ry againſt Judge Dorrance. This I conceived to be a valuable acquiſition to my hiſtory of Judge Dorrance's conduct, and accordingly improved it to the beſt advantage. Soon after this, Benjamin Randall, Reſolved Smith and myſelf were at the Governor's houſe. The Governor enquired of me reſpecting the Atwood buſineſs, and I preſented him with the writing, containing that ſtory, and alſo informed him of the circumſtances which had been furniſed concerning the dead body and Beaver-hat. Randall and I informed the Governor of our ſuſpicions reſpecting the hat, *and of our reaſons why we ſuſpected.* The Governor then declared to us, that he had never before heard any thing of the ſtory of the Beaver-hat, and further enquired particularly of us reſpecting the tranſaction; but all the information we gave him on the ſubject was by way of "*gueſs.*" Some time in April, 1800, ſoon after Randall removed from North-Providence to Providence, I was at his ſhop, and he mentioned before me, and ſeveral others, his having finiſhed Judge Dorrance's hat and ſent it to him. In the courſe of Randall's narration Judge Dorrance ſtopped at the ſhop-door, and informed Randall that his (Randall's) ſon had brought him a hat, and had requeſted of him a receipt or an order; but that he did not give the writing, as he thought it was unneceſſary, becauſe the hat was to be charged to Dr. Bowen; and added, that he did not like to give any writing in the buſineſs, becauſe the matter was of a *delicate nature*, and further ſaid he had rather Randall would take the hat back, than that he ſhould be obliged to draw upon Dr. Bowen for that which was deſigned as a preſent. In the mean time, I, in order to irritate Judge Dorrance, began relating to William Brownell, who was preſent, the circumſtances concerning Judge Dorrance's conduct in the Atwood lawſuit, and the hiſtory I had been writing of the

ſame. Judge Dorrance, overhearing my converſation with Brownell, (as I intended he ſhould) addreſſed himſelf to me, and told me, that if I had written any thing againſt him, as related to the Atwood buſineſs it was totally a falſehood, for he had had no perſonal concern whatever, directly or indirectly, in any part of that affair. This ſpeech irritated me, and I retorted the falſehood. We continued the quarrel for ſometime, mutually accuſing each other in harſh and provoking language; and in the courſe of this turbulent converſation, I, in my anger, accuſed the Judge of ſundry inſtances of miſconduct, till after I had run over my whole catalogue of accuſation, I hinted to him "the Beaver-hat." The Judge aſked, "What hat?" I anſwered him, "the one on your head for ought I know, and for further particulars you may apply to the town of Scituate?" The Judge however ſeemed not to underſtand my meaning; and we ſoon after parted."

Q. By the Governor. Did you not underſtand, at the time I requeſted you to write that ſtory of the Atwood execution, that my object was to procure an accommodation upon that ſubject?

A. There was ſomething of an accommodation mentioned at the time.

Q. By the ſame. Did I, at the time you and Randall and Smith were at my houſe, diſcover any enmity in me towards Judge Dorrance?

A. I did not obſerve that you did; at leaſt you did not diſcover it to me.

Croſs-examined.

Q. By Plaintiff's Counſel. Have you any knowl-

edge of Judge Dorrance's ſelling the dead body for a Beaver-hat?

A. I have not.

Q. Have you any reaſon to believe that he ſold the body for a hat?

A. No.

Q. Did you firſt ſuggeſt the idea to Randall, that the hat was given for the body, or did Randall firſt ſuggeſt it to you?

A. The firſt word that ever paſſed between us, was while we were ſitting by the fire together.—Randall firſt mentioned his making the hat; but which of us firſt ſuggeſted its being a conſideration for the dead body, I do not recollect. For the ſame reaſons that I had been buſy in accumulating matters againſt Judge Dorrance for my hiſtory, I anxiouſly ſeized on this ſtory as a new occaſion againſt him. Randall "gueſſed," and I "gueſſed;" we both underſtood each other, and neither of us cared much about the real truth of the grounds of our gueſſing. I was for avenging myſelf at any rate, of Judge Dorrance.

Q. Did you, at the time you told the Governor this ſtory, tell it to him as a matter of fact, or of gueſs only?

A. I told him the whole ſtory as a matter of gueſs and ſurmiſe; and at the ſame time told him of the manner in which Randall and I had hinted imaginary circumſtances to each other, till we had contrived up the ſtory between ourſelves, and concluded to report it as a plauſible truth; and from what the

Governor

Governor has told me, I do not think that he ever had any other information on the ſubject than what Randall and I communicated to him.

Q. Had not you and the Governor, previous to that tranſaction, been at variance with each other, and about that time became reconciled?

A. The Governor and I had not till then ſpoken to each other for nearly a year and a half: but at that time, of his own accord, he proffered a reconciliation, which I accepted, and was employed by him in the tranſactions I have related.

Q. By Defendant's Counſel. While you and Randall were gueſſing on the ſubject of the Beaver-hat, which of you gueſſed firſt?

A. I ſuppoſe it was he who thought of it firſt.

The next witneſs called was RESOLVED SMITH. This witneſs related the quarrel between Judge Dorrance and John Beverly, at Randall's ſhop; and alſo the converſation between Judge Dorrance and Randall, concerning the receipt or order for the hat. He further teſtified that he was ſeveral times at the Governor's houſe, in company with Beverly and Randall, and there heard ſeveral converſations relative to the dead body's being ſold for a hat. He ſuppoſed that the Governor received all his information, on that ſubject, from Beverly and Randall, at the ſeveral times while the witneſs was preſent at the Governor's houſe. On being queſtioned, the witneſs ſaid he had frequently heard the ſtory reported in the town of Providence, and at other places.

JAMES ALDRICH. "Sometime in April 1800, while

while I was at the Governor's houſe John Beverly and Benjamin Randall came in, and in the preſence of the Governor and me, related the ſtory of Judge Dorrance's ſelling the dead man for a Beaver-hat; and after the ſtory of that tranſaction was finiſhed, Beverly added, that Judge Dorrance had the impudence to wear the ſame hat on his head in Town-meeting, while he officiated as Moderator thereof. A few days after this, I was at the General Election at Newport, where Judge Dorrance alſo attended. He and I had there ſome converſation relative to the ſtory then circulating, concerning his conduct in ſelling the dead man. The Judge obſerved that it was an abſolute falſehood, invented, as he ſuppoſed, by John Beverly and Benjamin Randall, for the purpoſe of gratifying their malignity and reſentment. He informed me that the hat was a preſent from Dr. Bowen, for ſervices rendered in the ſettlement of Mr. Ward's eſtate. I have frequently heard the ſtory in the country; and the perſon from whom I firſt heard it, I think was Reſolved Smith; which, to the beſt of my remembrance, was not before April, 1800."

JOB RANDALL. "In April, 1800, I was at the Governor's houſe, and ſaw John Beverly and Benjamin Randall there. Beverly related the ſtory of the dead body and Beaver-hat, and ſaid that he believed that Judge Dorrance ſold the body for the hat; and Randall alſo ſaid he was of the ſame opinion. From the Governor's converſation, I had reaſon to think he had no information on that ſubject but what he received from Beverly and Randall. I had myſelf heard the ſtory from Reſolved Smith, about a week before I was at the Governor's, and have ſince heard it at ſundry times."

THOMAS HAZARD. "In April, 1800, I

was

was at the Governor's houſe while Beverly and Randall were there. Beverly, in my preſence, read to the Governor a long ſtory againſt Judge Dorrance, about an execution in which James Atwood, Reſolved Smith and others were concerned. At the ſame time a converſation aroſe between the Governor and theſe men, concerning the digging up and ſelling the dead man for a hat. Theſe men repreſented that Judge Dorrance had undertaken to ſee the man decently buried, but inſtead of performing the engagement, had had a ſham funeral, and corruptly permitted Dr. Bowen to take the body and diſſect it; and many obſervations were made on the ſubject which I do not recollect. After theſe men were gone, I converſed with the Governor on the ſubject of their converſation about the dead man; and he appeared to be much irritated with the tranſaction, and made uſe of many harſh and violent expreſſions. He ſaid the people of Scituate might poſſibly reflect on him for ſome negligence he might be ſuppoſed to be guilty of. He ſaid, "*if this is true*, Dorrance is no more fit for a Judge than the Devil." The ſtory however appeared to be new to the Governor."

ESEK SMITH teſtified, that Reſolved Smith was at his houſe in September or October, 1800, and related the ſtory to him, which was the firſt time he ever heard it. He added, that little had ever been ſaid about it in the neighbourhood where he belonged; but in Scituate, he had, ſince the information of Reſolved Smith, heard the ſtory many times."

DOCTOR ANTHONY teſtified, that he heard Dr. Benjamin Dyer inform a man by the name of Williams, that the bones of the dead man, after he was diſſected by Pardon Bowen, were ſold for *Five Dollars*

Dollars; and that he (the Dr.) paid *ſeven dollars* on account of his young men having been concerned in the buſineſs.—The witneſs firſt heard the ſtory of ſelling the body in May, 1800.—[See Dr. Dyer's teſtimony.]

RICHARD ANGELL. This witneſs teſtified, that the young men who brought the body from Scituate ſtopped at his houſe, while on their way to that place. Among theſe young men he obſerved one who had ſtopped there in the evening after the man was buried at Scituate. While they were at his houſe, the witneſs heard one Anthony, who drove the ſleigh for them, ſay, that he was to have ten dollars for his ſervices. He heard the young men ſay they were then going out to Iſh's tavern. The witneſs ſaid, he afterward heard the body was brought to Providence, there again buried, dug up, and ſold by Judge Dorrance for a Beaver-hat; and that Judge Dorrance wore the hat on his head in Town-meeting; but did not remember the exact time when he firſt heard the report.

RICHARD RHODES. This witneſs teſtified that he was coming from Scituate to Providence, and overtook the Scituate men in their firſt purſuit after the dead body. He went with theſe men to the Governor's houſe; and the Governor in his converſation with them, ſeemed deſirous that the matter might be ſettled. The witneſs had ſince heard, in Scituate, the ſtory reported of Judge Dorrance's ſelling the body for a hat; but he never believed the ſtory, nor did he think enough of it to ever report the ſtory to any perſon himſelf.

STEPHEN DAVIS. He teſtified, that in April or May, 1800, he firſt heard the ſtory from Reſolved Smith. He had ſince repeatedly heard the

ſtory

story, but knew nothing of the truth of it himself.

SAMUEL WILBOUR testified, that he first heard the story from James Andrew, but at what time he did not recollect.

PARDON ANGELL thought he first heard the report at the Town-Council of Scituate, in April, 1800; but from whom he did not remember.

JAMES ANDREWS. "In April, 1800, I was in Providence, and saw John Beverly. He told me the story of his dispute with Judge Dorrance relative to the law-suit of Reserved Smith; and at the same time informed me of the circumstances relating to the dead body and Beaver-hat. I have frequently heard the report since."

WILLIAM RHODES heard the story of the Beaver-hat in April or May, 1800; but from whom he did not know. He knew nothing of the subject himself, and never gave any attention to the story.

WHEELER MARTIN, one of the Judges of the Court, testified as follows. "At the General Election in May, 1800, I was at Newport, and lodged at my Brother's, where Judge Dorrance also lodged. We there converfed together concerning an opposition that was intended to be made against him as Judge of the Court of Common Pleas. Judge Dorrance was however elected without any opposition.—The next day after the election, as the Judge and I were walking together, he asked me if I had ever heard the report of his selling the dead body for a Beaver-hat. He said that Governor Fenner had got John Beverly to write such a story concerning him. I understood him to mean, that Beverly had fabricated the

ſtory and the Governor procured him to commit it to writing Judge Dorrance ſeemed much diſpleaſed with Gov. Fenner's conduct, and diſcovered much reſentiment towards him. He declared the ſtory was a groſs falſhood, wholly originated through malignity: That the hat given by Doctor Bowen was a mere preſent, as a friendly acknowledgement, as he ſuppoſed, for aſſiſtance given in the ſettlement of Mr. Ward's eſtate."

Q. Had you ever heard the ſtory of the Beaver-hat before the converſation with Judge Dorrance?

A. I heard it on my paſſage to Newport at that time.

Q. Who was on board the packet with you, on that paſſage?

A. I recollect Gov. Fenner, Dr. Comſtock, David Sayles, and ſeveral others.

Q. Did you hear the ſtory on the paſſage from Gov. Fenner himſelf, or was he preſent at any time when it was told to you?

A. I underſtood that Judge Dorrance was to be oppoſed, and his ſtory was ſuggeſted as a reaſon; and I think the Governor was preſent when theſe circumſtances were mentioned.

THOMAS SMITH. He teſtified as follows: "In March or April, 1800, I was at Providence, and ſaw John Beverly. He told me the ſtory about the dead man who was buried in Providence after he was brought from Scituate; and that he was afterwards dug up and diſſected by the Surgeons. He then proceeded in theſe words: "This was a

damned

damned trick acted by our noble Judge Dorrance; he sold the body to Dr. Bowen for a Beaver hat." Since that time (said the witness) I have frequently heard the story mentioned by other people."

The next evidence introduced, on the part of the Defendant, was the deposition of Daniel Knight, which was read in the following words:

I, DANIEL KNIGHT, of Pomfret, in the County of Windham, and State of Connecticut, Physician, on Oath, do testify and say, that in the Month of February, in the year 1799, I assisted in taking from the Theatre, in the town of Providence, the body of a man which was said hung himself in the town of Scituate; which body had been clandestinely removed from the town of Scituate to Providence, for dissection; that said body was put into a coffin, or box; then myself and two other persons conveyed said body to the new burial ground on the west side of the river, and there buried it, it being to the best of my recollection, between ten and eleven o'clock at night. From thence returned to the shop in the house occupied by Dr. Pardon Bowen. After staying at said shop about two hours, myself and four other persons went to said burying-ground, and took up said body, leaving the coffin or box in the ground, and conveyed said body to a house belonging to Jabez Bowen, Esq. then in the occupation of Mr. Baggin.

Question asked the Deponent in behalf of Arthur Fenner, Esq. Who assisted you in taking said body from the Theatre, and conveying it to the burying-ground?

A. To the best of my recollection, Dr. Pardon Bowen, George W. Hoppin, William Spencer,

John Eddy, and a perſon that lived with Dr. Dyer, whoſe name I do not recollect, aſſiſted in putting the body into the coffin; and George W. Hoppin, William Spencer and myſelf, removed the body to the burying-ground.

Q. By the ſame. Was the body put into a coffin of the uſual form?

A. The body was put into a rough, pine box, not made in the uſual form of a coffin.

Q. By the ſame. Was the body, when put into the coffin, covered with a ſhirt, and otherwiſe laid out in a common and decent manner?

A. It had no ſhirt on, and to the beſt of my recollection no cover at all.

Q. By the ſame. How far below the ſurface of the earth was the coffin ſettled?

A. To the beſt of my recollection, not to exceed eighteen inches.

Q. By Ditto. Who were the four perſons who aſſiſted you in taking up the dead body, after you had buried it?

A. Horatio G. Bowen, George W. Hoppin, John Eddy, and a perſon who lived with Dr. Dyer, whoſe name I do not recollect.

Q. By Ditto. What operations were performed on the dead body the ſame night after you had removed it from the grave to Mr. *Suggin's*?

A. The body was opened and the entrails taken out.

Q.

Q. By Ditto. What was done with the entrails?

A. They were buried in said Saggis's shop, which had no floor.

Q. By Ditto. What knowledge have you of any operation which was performed on the dead body afterwards?

A. The operation of dissection was begun the next night following, which was continued for several nights until completed.

Q. By Ditto. Who was the principal operator in dissecting the dead body?

A. Dr. Pardon Bowen.

Q. By Ditto. What other persons attended and assisted in dissecting said dead body?

A. To the best of my recollection, Dr. Benjamin Dyer, Dr. Comfort A. Carpenter, Dr. James Mann, George W. Hoppin, John Eddy and Horatio G. Bowen.

Q. By Ditto. Had you any direction, either verbal or written, where to convey the dead body, after or before you removed from the place where it was interred?

A. Yes, before we took up the body, we received directions, in writing, in what manner to proceed, and to what place the body was to be carried, which to the best of my recollection was nearly as follows: That you come to the house, you will find a gate open; go through the gate, and proceed round

to the back ſide of the houſe, and you will find the door opened; go in at the door, you will ſee a flight of ſtairs, aſcend them and turn to the right, and you will ſee a chamber door open, and a lighted candle ſtanding on the floor; in that room depoſit the body.

Q. By Ditto. Did John Dorrance, Eſq. give you any directions in what manner, and at what time to bury the dead body?

A. No.

Q. By Ditto. Was the box in which the body was laid nailed cloſely or only tacked?

A. It was ſo nailed that the claws of the hammer would paſs under the heads of the nails to draw them.

Q. By Ditto. Do you know what became of the fleſh which was taken from that corpſe, or the contents of the breaſt?

A. I was not preſent when the fleſh was taken off, but the heart and lights were buried in the ſame ſhop that the entrails were, but not at the ſame time nor *in ſame* place. And further the Deponent ſaith not.

DANIEL KNIGHT.

Here cloſed the evidence produced on the part of the Defendant, in the opening of the firſt iſſue.

On finiſhing the examination of the Defendant's witneſſes, Mr. Robbins proceeded in his defence in the opening of the Caſe. He reſted the defence on the ſeveral different grounds following:

First.

First. That the words alledged to have been ſpoken by the Defendant were *true*; which he contended was fully evinced by the teſtimony adduced by the Defendant. He obſerved that Dr. Bowen had engaged to cauſe the body to be decently buried in Providence, and that it ſhould forever lie undiſturbed. Judge Dorrance had become obligated to ſee all the engagements of Dr. Bowen fulfilled, as reſpected the burial, and alſo became reſponſible for the body's remaining undiſturbed: That inſtead of burying the body in a decent manner, and ſuffering it to lie undiſturbed, as they had agreed, they had acted a kind of mockery of funeral ceremony, and buried it in a very indecent manner, ſcarcely eighteen inches under ground, and had it immediately after, taken up and diſſected. "Judge Dorrance had the care, the cuſtody, the controul and ſuperintendance of the body." Dr. Bowen had no right to interfere with or diſpoſe of it otherwiſe than according to Judge Dorrance's ſpecial permiſſion.—Whether Dr. Bowen himſelf, or any other perſon was actually employed in the diſpoſal of the body, was immaterial, becauſe it muſt have been done through his agency, and from Judge Dorrance's authority. For Judge Dorrance to ſuffer the body to be dug up was a violation of truſt, of promiſe, and duty, which could by no means happen by an act of mere negligence. In delivering the body from his own cuſtody, he muſt have been guilty of connivance and colluſion. Theſe circumſtances afforded an irrefutible preſumption, that Judge Dorrance previouſly knew that the body would be dug up, and ſilently conſented to it at the time.

Mr. Robbins propoſed a caſe which he conceived to be parallel to the one in queſtion. He ſaid, "Suppoſe the driver of a mail ſtage ſhould be proſecuted for *ſtealing* the mail, but on the trial it ſhould

for

not be proved that he actually made a formal bargain with any one; but that he only permitted a thief to steal it. In such case it could not be doubted but that the stage driver must be convicted, though he should be directly charged in the indictment or fair with *selling* it; because it would be presumed that he would not have suffered the thief to take it, unless he had received some compensation in return." So, in the present case, Judge Dorrance's connivance went to the full extent of making him a *principal* in the transaction of digging up the body.

In order to establish a presumption that the Beaver-hat was a consideration for Judge Dorrance's connivance, the Jury were called to a consideration of the testimony of Randall and Beverly. The pretended services in the matter of Mr. Ward's estate was a subterfuge of the Plaintiff's totally without foundation; a mere pretence. The coincidence of the time of digging up the body with that of presenting the hat was a strong circumstance for presuming the hat to have been a payment for the body. Judge Dorrance himself had said the present of the hat was a *delicate matter*, and had refused to trust any thing to writing on the occasion. If the hat was really given for services rendered in settling Mr. Ward's estate, where was the impropriety in giving a receipt? There was no degree of infamy nor *indelicacy* attached to receiving a reasonable compensation for honest and legal services. No *delicacy* whatever could interfere with Judge Dorrance's receiving a present from a fair and honourable motive, or payment for a fair and honourable consideration. His scrupulous and cautious conduct was without doubt the effect of a consciousness of some impropriety in his own conduct.

The second ground of defence was, a denial of the words

words being ſpoken *maliciouſly*.—As this was a neceſſary point for the Plaintiff to eſtabliſh, he ſhould leave the diſcuſſion of it till the evidence on the part of the Plaintiff ſhould be diſcloſed, when Mr. Howell would conſider it in the cloſe of the caſe.

Mr. Robbins now placed the defence upon a third ground; which was that the words were not *actionable*. He obſerved, that although it ſhould be proved that the Defendant did ſpeak the words complained of; although the words had been the dictates of the foulest falſhood; and although the ſame words might have been breathed from the rancour of the blackeſt of infernal malice, ſtill if they were not in themſelves, independent of any conſequent damages, actionable, the Plaintiff would not be entitled to recover of the Defendant. In order to ſhew what words the law diſtinguiſhed as actionable, he cited Eſpinaſſe, N. P. 496. "Of words in themſelves actionable—Theſe are 1ſt. Which bring a man into any danger of legal puniſhment; as to ſay that he poiſoned another: 2d. Which may operate to exclude a man from ſociety; as to ſay, that he hath an infectious diſeaſe: 3d. Which injure a man in his trade or profeſſion; as to call a *trader* a *Bankrupt*: 4th. Which charge a man in a public capacity or office with principles inconſiſtent with his office; as to ſay of a Juſtice of Peace, that he was a Jacobite and for bringing in the pretender." Mr. Robbins contended that the words complained of did not come within any deſcription pointed out in this authority. That the words imputed no offence to the Plaintiff whereby he could have been endangered of puniſhment. His being concerned in digging up a dead body was no offence for which he could have been indicted and puniſhed. He recited 4 Black. Com. in theſe words. "No larceny can be committed unleſs there be ſome property in the thing

taken,

taken, and an owner; yet if the owner be unknown, provided there is a property, it is larceny to steal it, and an indictment will lie for the goods of a person unknown.—This is the case of stealing a shroud out of a grave; which is the property of those, who ever they were, that buried the deceased; but stealing the corpse itself, which has no owner (though a matter of great indecency) is *no felony*, unless some of the grave clothes be stolen with it." Thus, said Mr. Robbins, it is considered by the laws of England, that when the human body is once divested of the functions of life, when once the power of death has rendered it useless and unprofitable to the surviving, it becomes a cast out beyond the reach of the laws or protection of society;—it becomes a loathsome object of abhorrence, disclaimed and deserted by all the living of the human race."—He cited 2 Black. Com. 429, 12 Rep. 113. Haynes's case. 3 Init. 110. in order to shew that no civil action could be brought by any person, for damages, where a dead body should be disturbed, a monument defaced, or the grave-cloths taken away. He argued that the dead body supposed to be dug up, or permitted to be dug up, by Judge Dorrance, was of all dead bodies the most peculiarly unworthy the protection or notice of the law. It was, as if moral duty required it to be stigmatized and treated with indignity and neglect. It was the dead body of a total stranger in the land, who had wickedly and feloniously committed the crime of suicide, and had thereby forfeited all decent regard, and even the ordinary rites of christian sepulture. A suicide, by the common law, in a vindictive manner, is consigned to utter disgrace, his property to confiscation, and his body to an ignominious burial in the highway, with a stake driven thro' it, to exhibit a spectacle of infamy and abhorrence to his memory.—4 Black. Com. 190.—Such being the circumstances of the dead body in question, there

could

could be no crime imputed, in ſaying that it was dug up and diſſected.

It was further argued, that the words could not be actionable by reaſon of their being ſpoken againſt Judge Dorrance as a public officer. He was not charged with miſconduct in his official capacity, either as Judge of the Court of Common Pleas, or as Preſident of the Town-Council. His engagements in the contract for burying the body were entirely of a private and individual nature: For, though the words ſtated in the ſixth, ſeventh and eighth counts of the Declaration, are ſaid to be ſpoken of and concerning the Plaintiff in the execution of his office of Juſtice of the Court of Common Pleas, yet the words themſelves cannot be conſtrued to imply any want of integrity in him, in the execution of that office. The words were therefore not actionable by reaſon of his being a public officer.

The next point in Mr. Robbins' argument was to prove, that the Plaintiff ought not to recover on account of any ſpecial damage which he had ſuſtained by reaſon of the words being ſpoken. He obſerved, that words muſt be in themſelves actionable, or they muſt become ſo by reaſon of ſome ſpecial damage ariſing from them. The damage, ſtated in the Declaration, of the receſſion of the Plaintiff's friends from his ſociety was a matter of mere form, and common to all declarations for ſlander. Such damages, when ſet forth, are never neceſſary to be proved, unleſs ſome pecuniary loſs can be proved to have been ſuſtained by reaſon of the departure of ſuch friends. He contended, that the other damages ſtated in the Declaration, concerning the plaintiff's loſing a number of votes at his election, were not proved; but on the contrary, it was proved that the Plaintiff was actually elected to the office for which

he

he was a candidate, without oppoſition. But the Plaintiff was guilty of an informality in his Declaration which effectually excluded from him all poſſible advantage from ſpecial damages, ſhould he be able to prove them. This defect ought to prevent the Jury from hearing or making uſe of any evidence on the ſubject of ſpecial damages. If the Plaintiff had actually loſt the ſociety of his friends, or the votes which he pretended to have loſt, it was neceſſary for him, in order to recover of the Defendant, on account of ſpecial damage, to have ſpecially declared what perſons had left his houſe, and what members of the General Aſſembly had withheld from him their votes, by reaſon of the words ſpoken. It was abſolutely neceſſary to mention their names particularly, or he could not ſupport his declaration. To eſtabliſh this, he read Eſpinaſſe N. P. 515.—"Note, that ſaying generally *per quod* ſeveral perſons left the houſe, without naming any in particular, is not ſpecial damage." And alſo, ibid. 520. "So in ſuch place of words, actionable, whatever ſpecial damage is laid the Plaintiff may go into evidence of it; but not more: As where the words were, "you are a thief and I'll prove you ſo," with a *per quod*, that by reaſon of them one *John Merry*, and ſeveral others, left off dealing with him; the Chief Juſtice allowed the Plaintiff to go into evidence as to Merry, but not as to the reſt." Theſe authorities, in his opinion, excluded the Plaintiff, in the preſent Caſe, from all conſideration of ſpecial damages.

In the evening of the ſecond day of the trial, the Plaintiff's Counſel firſt roſe in ſupport of the ſuit.

The Plaintiff's Counſel, after ſome obſervations on the nature and object of the action, proceeded to the examination of their witneſſes; the firſt of whom was *Dr. Pardon Bowen*, who teſtified in the following manner; "About

"About the middle of February, 1790, I was informed by John Dorrance, Esq. that Mr. John Harris, and several other persons, from the town of Scituate, had been at his house, respecting the dead body of a man who had hung himself, in that town; and whom, they said, had been taken up, for the purpose of dissection, by the pupils of Dr. Dyer and my own, and was advised by Mr. Dorrance to call at his house, and see the gentlemen on the subject. I accordingly met them there, and entered into conversation with them on the subject, and endeavoured to convince them of the necessity of acquiring anatomical knowledge by dissection, if we meant to qualify ourselves to preserve the lives and limbs of our fellow-creatures, and the propriety of taking this person, as he was a stranger, entirely unknown, and had no friends nor relatives whose feelings could be hurt by his dissection. But, finding that my reasons had no effect to convince them, I then proposed an accommodation with them, on behalf of the young gentlemen concerned in the business, told them that I would see the young gentlemen, and afterwards meet them at my house. After seeing the young gentlemen, I met the Scituate gentlemen, at my house, where we had a long conversation on the subject; and after laying a great deal about the matter, we agreed to give them Forty Dollars, which I afterward paid them at Col. Hoyle's tavern. We also entered into a specific agreement respecting the disposal of the body, which was committed to writing, according to the understanding of the parties respectively."

Here the witness produced a writing which he declared to be the same agreement, in the hand writing of Judge Harris, one of the signers; which which was read in the following words:

"Know all men by these presents, that whereas the

the dead body of a ſtranger, who, about a week ago, hung himſelf in the town of Scituate, was taken from Scituate by certain perſons unknown. And whereas the people of ſaid town are much alarmed about it: Therefore know ye, that in conſideration of the ſum of Forty Dollars to us in hand paid by Pardon Bowen, of Providence, Phyſician, we, John Harris, Gideon Auſtin, jun. Joſeph Knight, Gideon Angell, Samuel Wilbour, jun. and Squire Franklin, all of ſaid Scituate, Yeomen, do bind ourſelves, our heirs, executors and adminiſtrators, that we will forever indemnify and ſave harmleſs, from all damages and coſts whatſoever, all and every perſon or perſons who ſhall *ſhall* or may, at any time hereafter, be proſecuted, in any manner whatever, by the ſaid town of Scituate, or any inhabitant thereof, on account of the perpetration of the aforeſaid deed, which is alſo in conſideration of the ſaid Pardon's agreeing to have the aboveſd. body *Decently* buried, under the direction of John Dorrance, Eſqr. of ſaid Providence. Witneſs our hands, at Providence, the 20th day of February, A. D 1799."

JOHN HARRIS,
GIDEON AUSTIN,
JOSEPH KNIGHT,
GIDEON ANGELL,
SAMUEL WILBOUR, jun.
his
SQUIRE X FRANKLIN,
mark."

Witneſs,
JOSEPH MASON,
GEO. W. HOPPIN."

The witneſs continued his relation as follows:—

"I conceived by this contract, that I was only to agree that the dead body ſhould be decently buried,

under

under the direction of Judge Dorrance. I accordingly took the directions from Mr. Dorrance, at his houſe, and, to the beſt of my remembrance, in preſence of Mr. Harris and ſome others of the company; which were as follows, viz. That a coffin be procured, the dead body put therein, and be decently buried, in the weſtern part of the new burying-ground allotted to ſtrangers. I accordingly directed my eldeſt pupil, Dr. John M. Eddy, to ſee that a coffin be procured, which he afterwards informed me Dr. Joſeph Mafon had obtained. I then directed Dr. Eddy and Mr. William Spencer to put the body into the coffin, and with their aſſiſtance, carry it and bury it, decently, in the weſtern part of the new burying ground allotted to ſtrangers, as before ſpecified. Some time late in the night, when Dr. Eddy came home, I heard him come into the next room to where I was a-bed, and I called to him; he came to the door, and I enquired if my directions, reſpecting burying the dead man, had been complied with? And he ſaid they had been, punctually. The next morning, I went to Mr. Dorrance's houſe, and reported to him, that his directions had been complied with, reſpecting burying the dead man, and thereby conceived that I had more than complied with the ſtipulations I had entered into with Mr. Harris and his company, which were only, that I ſhould be willing that the body ſhould be buried, under the directions of Mr. Dorrance; and I have reaſon to believe, that he never heard any thing reſpecting the body's being taken up till more than a year afterwards. That I ever bought this body or any other of Mr. Dorrance, for a Beaver-hat, for the purpoſe of diſſection, or any other purpoſe, I ſolemnly declare to be totally falſe. At the ſame time, it is true that I preſented to Mr. Dorrance a Beaver-hat; but this hat was for eſſential ſervices rendered in the arrangement of my own affairs, previous to my

embarking

embarking for Europe in the year 1797, and in the ſettlement of Mr. Ward's eſtate on which I adminiſtered. The facts were theſe: Finding my health very much impaired, in the year 1797, I had concluded to undertake a voyage to Europe, in hopes of deriving ſome benefit from the ſea-voyage, and of obtaining medical aid from the Faculty in Europe, and from the change of climate. For this momentous undertaking I made the neceſſary arrangements reſpecting the ſettling my buſineſs, in my abſence, and with ſome difficulty prevailed on Mr. Dorrance to undertake it. This led me to frequent conferences with him. I had now engaged a paſſage with Capt. Dring; and in the very week in which I expected to embark, I was ſeized with the yellow-fever, which had made its appearance in Providence. Finding my ſituation becoming ſolemn and critical, I ſent to Mr. Dorrance, requeſting him to viſit me; which he did, at a time when but a very few of my neighbours choſe to come into my houſe. Mr. Dorrance ſat by me, took the minutes reſpecting my will, which he wrote, and agreed to become Executor thereto, in caſe of my death. I however fortunately recovered, and as ſoon as I was able went into the country. After my return, ſtill finding my health very infirm, I engaged a paſſage, and did actually embark, on board the ſhip Providence, of this port, bound for Hamburgh, in the latter part of November, 1797. The ſhip, in her paſſage to Newport, was caſt away in a gale of wind, and was detained till the laſt of December following to repair the damages ſhe had ſuſtained. Then conſidering the advanced ſeaſon of the year, my infirm health to encounter a winter's voyage, and the critical ſituation in which the eſtate of my father-in-law, Mr. Ward, was left, I concluded to give up the voyage, which I did, and adminiſtered on Mr. Ward's eſtate. It was now that I had occaſion to call on Mr. Dorrance, to ac-

quire

quire the information neceſſary to the punctual diſcharge of duties, to which I was quite a ſtranger. I was led to make this preference for theſe reaſons; I ſuppoſed him to poſſeſs adequate law-knowledge, and he was Preſident of the Town-Council, before whom all the buſineſs muſt neceſſarily come; and I had moreover the beſt opinion of his integrity. Under theſe circumſtances, I frequently called upon him for advice, which he always cordially gave me in every thing appertaining to my buſineſs; and whenever I aſked him what compenſation I ſhould make, he ſaid that he had no demand againſt me, and that I was welcome to his advice. I ſeveral times obſerved to him, that I ſhould not reſt ſatisfied until I had made him ſome compenſation for his trouble; and one day aſked him if he would accept of a Beaver-hat as a preſent, as I could not find a freedom to trouble him further about my buſineſs, without doing ſomething therefor. I muſt obſerve here, that my adminiſtration buſineſs was far from being ſettled at that time, and in fact is not to this day, owing to a law-ſuit now pending. Mr. Dorrance obſerved, that he ſhould have no objection to accept the hat as a preſent, although he had no charge againſt me for his advice. I accordingly requeſted Mr. Benjamin Randall to make a Beaver-hat for Mr. Dorrance, and ſend it to him, and charge the ſame to my account. Whether this was before or after the ſtranger hung himſelf, I cannot poſitively ſay; as the idea of buying a dead body for a hat had never occurred to my imagination, I did not particularly charge my mind with the time when I ordered it. It would however appear to me to be previous to the ſuicide before alluded to; but whether it was before or after, or at the time, it cannot alter the fact, which was, that I never did buy of Mr. Dorrance a dead body for a hat; but that the hat which I preſented him was for ſervices rendered me in the

adjuſtment

adjuſtment of my own affairs, when about taking a perilous voyage, under very infirm health, and for eſſential ſervices rendered me in ſettling Mr. Ward's eſtate. I would alſo remark, that at the time of my embarkation, I put a great part of my notes and accounts into Mr. Dorrance's hands, together with theſe ſheets" (ſhewing a bundle of papers to the Jury) "containing inſtructions and memorandums relative to the ſettlement of my affairs; and that all my books and papers were to have been ſent to him after my departure."

Queſtion by Plaintiff's Counſel. Had the dead body any impreſſion on your mind, or did you think of it at the time you firſt mentioned the preſent of the hat to Mr. Dorrance?

A. Neither the dead body, nor any tranſaction or thing in any manner relating to it, were in the leaſt degree connected with the motives for my preſenting the hat."

The next witneſs was Dr. HORATIO G. POWEN, who was one of the pupils ſtudying under Dr. Pardon Bowen at the time of the ſuicide. He teſtified, that immediately on the report being circulated, that a man had hung himſelf in Scituate, it was propoſed amongſt them to procure him for diſſection; which was unanimouſly agreed to by the whole, and a night was appointed for bringing the body a-way. The witneſs himſelf was prevented from going on the buſineſs only by reaſon of indiſpoſition. He never ſaw the body after it came to town until after it was removed from Dr. Dyer's ſtore to the Theatre. He was preſent, and held the lamp while the body was put into the coffin, on the day of its burial in Providence.

Q. By the Plaintiff's Counsel. Did Dr. Pardon Bowen at the time, know any thing of the body's being taken up after it was buried in Providence, or that it was intended to be taken up?

A. I presume he did not, at the time it was taken up, nor till some days after; nor did Judge Dorrance in my opinion, know any thing whatever of the matter.

Cross-examined.

Q. By the Governor. Was you of the party that went up to Scituate after the body?

A. I was not.

Dr. GEORGE W. HOPPIN, one of the Students of Dr. Dyer, testified, that Dr. Joseph Mason had engaged to procure a coffin for the body, and William Spencer was sent for the coffin to the workman who made it, and brought it to the Theatre where the body lay, about eleven o'clock at night: That after waiting some time for fear of frightening or disturbing the neighbors by removing the body to the grave, the young gentlemen took the body, with a canvas cloth then wrapped round it, and put it into the coffin and nailed it up firmly. The body was then carried to that part of the west burying ground allotted to strangers, and there buried in a grave. The witness was at the grave, at the time, and saw every part of the burial. He observed that the grave, toward the bottom was rather shorter than the coffin which was uncommonly long. They pared the grave some, near the bottom, in order to let the coffin down; but by reason of the severity of the weather, they could not stay to complete it according to their intentions. The coffin therefore by consi-

derably higher at one end than at the other. The young men ſtepped into the grave, and endeavoured to preſs the upper end of the coffin to a level with the other, by means of their weight. While the witneſs ſtood on the coffin in the grave, at the higheſt end, the ſurface of the ground was conſiderably higher than his knees. After endeavoring in vain to level the coffin, they covered it with dirt in the uſual manner of filling up graves, and rounded off the top of the grave in decent and uſual form. The coffin was ſtraight, large, and much too long for the body; and after the body was put in, it was firmly nailed up; the nails were driven as hard and effectually as nails are uſually driven into pine boards; the greater part of which the witneſs drove himſelf. The witneſs was the perſon who went to Scituate and ſaw the burial of the body there. He alſo was one of the party who went there to bring it away. He was preſent at ſeveral times in the courſe of the diſſection which he obſerved was never fully completed. On being queſtioned, he ſaid that Dr. Cleveland kept the bones, and carried them away with him when he removed from Providence. The witneſs was confident that Judge Dorrance had no knowledge, connivance or ſuſpicion of the body's being by them dug up, as it was within an hour or two after burial; becauſe it was, as the witneſs obſerved wholly unneceſſary for their purpoſe that he ſhould. He was alſo confident that Dr. Pardon Bowen knew no more of the matter than Judge Dorrance till nearly a week after the body was by the young men taken up, and after they themſelves had performed a part of the diſſection. The viſcera were extracted the ſame night the body was buried and taken up; after which the body lay untouched for ſeveral days.

Q. By the Governor. *After you had taken out the entrails, how much ſalt did you put into the body to preſerve it from putrifaction?* A.

A. I do not know.

The next witneſs was WILLIAM SPENCER. He teſtified as follows: "I received directions from Dr. Pardon Bowen to dig a grave for the dead man who was brought from Scituate. I accordingly went to the weſt part of the new burying-ground where ſtrangers are uſually buried, and there dug the grave. I returned back to town, and was immediately ſent by ſeveral young men to the ſouth part of the town to bring the coffin, which I brought to the Theatre. The young men went with me into the Theatre, and I aſſiſted them in putting the body into the coffin, I then proceeded with the horſe and ſleigh with which I firſt brought the coffin, to the grave with the body. I was there aſſiſted by two of the young gentlemen in burying the body."

Q. By Plaintiff's Counſel. Was Dr. Pardon Bowen preſent when the body was put into the coffin?

A. He was not preſent at any part of the buſineſs.

Q. In what manner was the coffin nailed up?

A. There were a great many nails uſed in nailing it up, and were all well driven, which I ſtood by and ſaw done.

Q. Was the body covered with any cloth?

A. It was wrapped in a canvas cloth.

Q. In what manner was he buried after you had carried him to the grave?

A. The grave was dug ſix feet deep, and of the uſual length; but the coffin being longer than I expected

expected it would be when I dug the grave, we found it impoſſible to place the coffin horizontally at the bottom of the grave. We pared the ends of the grave as much as the ſevere cold weather would permit us, but ſtill were obliged to leave one end of the coffin higher than the other. We finally filled up the grave with dirt and gravel, and rounded it up at the top as graves uſually are.

Q. How far below the ſurface of the ground did you leave the higheſt part of the coffin?

A. When I ſtood on the upper end of the coffin the ſurface of the ground was nearly as high as my hips.

Q. Had Judge Dorrance any concern in that burial?

A. I did not ſee him nor hear his name mentioned in any part of the tranſaction?

Q. Had you any knowledge that the body was to be taken up again, at that time?

A. No.

EDWARD MANTON. "In the winter of 1799, I was one morning with Judge Dorrance at his ſhop, and while I was there, Dr. Pardon Bowen came in and informed Judge Dorrance that the man had been buried according to his directions. After the Doctor was gone, I enquired of Judge Dorrance the meaning of what the Doctor alluded to. The Judge told me the ſtory of the application of the Scituate men, and their ſettlement with Dr. Bowen, when in they had agreed that the body ſhould be buried under his (the Judge's) directions. Which

directions

directions he had given the day before, and that Dr. Bowen had then come to tell him the directions had been complied with."

JOHN RANDALL, ſon of Benjamin Randall. "I carried the Beaver-hat from my father to Judge Dorrance, and aſked the Judge for a receipt or an order. The Judge ſaid that Dr. Bowen owed him nothing, and it was very impolite to draw upon a man who owed him nothing. He told me I might leave the hat with him or carry it home again as I pleaſed."

WILLIAM MOWRY, a Member of the Houſe of Repreſentatives. "On the 7th of May, 1800, being at the election, at Newport, I went with Dr. Comſtock to the Governor to conſult him concerning the election of certain officers. The Governor ſpoke of the Court of Common Pleas for the County of Providence, to which Judge Dorrance then belonged. He wiſhed Richard Jackſon, jun. might be put in Mr. Dorrance's room. He told me that Mr. Dorrance had ſold the dead body of a ſtranger who hung himſelf, and had received a Beaver-hat therefor, and related particularly ſome of the circumſtances about it. I afterward told Judge Dorrance that unleſs he cleared up the Governor's imputation againſt him, I ſhould vote againſt him. Judge Dorrance was however not oppoſed at that time; but was left out, the laſt year."

Q. By Defendant's Counſel. Did Governor Fenner tell you this ſtory pleaſantly?

A. "*Yes, pleaſantly.*"

EPHRAIM BOWEN, jun. "On or about the 23d day of April laſt, I went to the reſidence of Governor

Governor Fenner to deliver a letter from Col. Robert Rogers, of Newport, which had come under cover to Mr. John I. Clark, ſoliciting the influence of the Governor, in Mr. Rogers' favour, at the enſuing election, for the appointment of Clerk of the Court of Common Pleas for the county of Newport. Mr. Clark being in Boſton at the time the letter was delivered at his houſe, Mrs. Clark ſent it to me, with the cover, to be by me delivered to the Governor. As the letter to the Governor was open for Mr. Clark's peruſal, I read it and then ſealed it, as requeſted by Mr. Rogers, before I delivered it. It contained a Certificate from Judge Taber, highly in favour of Mr. Rogers, and was given in conſequence of an act of government requiring certificates from the Chief Juſtices, concerning the conduct of the Clerks in their offices.

I found the Governor in the road paſſing his houſe, where I delivered the letter. He opened and read it, and then invited me into his houſe. After we were ſeated, the Governor again read the letter, and ſaid, "*In regard to this affair of Mr. Rogers, I can inform you candidly, what I think of it. I think Mr. Rogers will be beat. They have carried matters ſo high in that County, that I am ſure he will not ſucceed; though I confeſs that* ROGERS *is a good officer; and in fact that* PECKHAM *is not fit for it. I ſhall not interfere in the election in that, or any of the other counties, except our own. But in this county I am determined to interfere in ſome caſes. There are two or three damned whore's-biras whom I intend to pay for the ill-treatment I have received from them, and amongſt the reſt, your Judge Dorrance.* I aſked the Governor what Judge Dorrance had done to deſerve being turned out? He replied, "*Dorrance has treated me ſcandalouſly on ſeveral occaſions, particularly one day in the Town-Council. Beſides*" (ſaid the Governor)

or) "*I don't think a man fit for an office who will be guilty of ſuch a ſcandalous breach of confidence as Dorrance has been, in ſelling the man's body who hung himſelf, to your brother Pardon, for a Beaver hat.*"— I obſerved, that this was an affair that I never heard of, as perhaps it took place during my abſence from home. The Governor replied, "*Why I believe it did; and will tell you how it was. Sometime in the winter before laſt, a ſtranger who appeared to be inſane, hanged himſelf in Scituate. When he was found and about being buried, there was a young man preſent who lived with Dr. Dyer or Dr. Bowen, and by his conduct the people ſuſpected that meaſures would be taken to carry away the body. Accordingly they watched the grave the firſt night; and nobody appearing, they omitted it on the ſecond, when ſome perſons went and took the body away. It cauſed conſiderable alarm in Scituate; and on enquiry, it was diſcovered that the body was brought to town. On which, John Harris, and two other of the members of the Town-Council of Scituate, came to me and informed me of the circumſtance, and aſked my advice how to proceed, ſaying they had diſcovered where the body lay, and would act according to my advice. I adviſed them to accomodate the affair, if any body appeared to indemnify them for the expences the town of Scituate had been at, and ſatisfy them for their own trouble and expence; which after ſome converſation, they conſented to do. They went to Judge Dorrance, where your brother Pardon met them, and agreed to pay all the expences; and the body was conſigned to Judge Dorrance, by agreement, to be decently buried: Inſtead of doing which, he ſold the body to your brother for a Beaver hat; and he had the impudence to wear the hat in Town-meeting, when he preſided as Moderator.*"

I obſerved, that I did not think the ſelling a man's dead body for diſſection was ſo criminal an act as

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ſome people conſidered it: For that in all countries, the bodies of malefactors were frequently conſigned to the Surgeons for diſſection, that thereby the living might be benefited. But, if Judge Dorrance had been guilty of a breach of confidence, I thought him much to blame. The Governor obſerved, that John Beverly happened to be in Randall's ſhop when Randall's boy returned from carrying the hat: That Randall had ordered the boy not to deliver the hat without a receipt; and the boy informed his father that Judge Dorrance refuſed to give a receipt, and ſaid it was a delicate matter, and he did not like to give one; That Beverly, on hearing the report of the boy, ſaid, "G—d! I know very well what the hat was given to Judge Dorrance for. It was for the dead man's body which he ſold to Dr. Bowen."—After much other converſation impertinent to the preſent caſe, I left the Governor with a full determination of enquiring into the truth of his information. Accordingly, having met Judge Dorrance next day, I related to him what had been told me, and aſked him if it was true. He replied, it was a ſcandalous falſhood which the Governor had before reported. He then related the circumſtances exactly in ſubſtance as he has ſince publiſhed; and obſerved, at the ſame time, that if the Governor did not deſiſt from telling ſuch ſcandalous lies about him, he would ſtate the whole tranſaction in the newſpapers. I gave full credit to the information I received from Judge Dorrance; but conſidering that Dr. Bowen would, if requeſted, ſtate the whole facts, if Judge Dorrance had not been correct, and relying on his veracity, I informed him of the report, and aſked him if there was any foundation in truth for it? He replied, that the report was totally falſe and groundleſs as reſpected the ſale of the body of the dead man, and his giving a Beaver-hat for it to Judge Dorrance. He then gave me a full detail of the buſineſs, as

publiſhed

publiſhed in his certificate. Thus believing poſitively that the Governor's information was groundleſs, and wiſhing to prevent any altercation in the newſpapers, which I was perſuaded would take place, unleſs the Governor modified his ſtory, I went again to the Governor, a few days after, and ſtated to him the information I had received both from Mr. Dorrance and Dr. Bowen, and concluded by telling him that he had been deceived. The Governor replied, "*What I have told you* IS TRUE. *My information* IS CORRECT; *and the man has never been buried, but is now above ground. I am informed they are taking depoſitions in the buſineſs. I intend to take depoſitions alſo; and the people muſt judge.*" After ſome other converſation, we came into town together, and I ſaid nothing more to him on the ſubject till, I think it was, the Monday preceding election; when I ſaw him near the Poſt-Office, and informed him that Judge Dorrance intended to publiſh a piece on the ſubject. I had previouſly informed the Judge, that the Governor adhered to his firſt declaration. I had alſo enquired of him whether he had any knowledge of the bones of the dead man being above ground. He informed me, that he had no knowledge of it. In a converſation I afterwards had with Dr. Pardon Bowen, I diſcovered, to my ſatisfaction, that the man's bones were then above ground. And at the time I informed the Governor that Judge Dorrance intended to publiſh his piece, I alſo informed him, that what he had ſaid reſpecting the bones being above ground I thought was correct."

WILLIAM HUNTER. "At the election in May, 1800, while I was a member of the General Aſſembly, the Governor and I lodged at the ſame houſe. The Governor and I, with ſeveral others, in an evening, had ſome converſation reſpecting the

choice of certain officers to be made at that election. In the courſe of which converſation, the Governor expreſſed a wiſh that Gen. William Allen might be elected to the office of Sheriff of the county of Providence. We then diſcourſed on the electionof Judge Dorrance to the office of Juſtice of the Court of Common Pleas for the ſame county. I obſerved, that Judge Dorrance was a reſpectable literary character, for whom I entertained a highly favourable opinion, and had no objection to his being elected to that office. The Governor inſinuated ſome objections. He finally related the ſtory of the dead body that was brought from Scituate to Providence, and left to the care of Judge Dorrance to be decently buried; that through the connivance and colluſion of Judge Dorrance, Dr. Pardon Bowen had been permitted to take the body for diſſection; and that Judge Dorrance had received a Beaver-hat as a compenſation for that breach of confidence. For the particulars of this ſtory, the Governor referred to a paper which he ſaid he had carried with him to the election, but, at the time of our converſation, he ſaid, was in the hands of one of the members of the Aſſembly. This paper he ſaid contained the whole ſtory of the body's being dug up and diſſected, and of Judge Dorrance's receiving the Beaver-hat for his connivance. He ſaid the ſame paper alſo contained an account of Judge Dorrance's conduct in the affair of the law-ſuit between Atwood and Beverly.

"This ſtory related by the Governor made a deep impreſſion on my mind, and excited in me ſenſations unfavourable towards Judge Dorrance. I immediately applied to ſeveral members of the General Aſſembly for further information on the ſubject. I however found that the character of Dr. Pardon Bowen was oppoſed to the ſtory, and of courſe I did not believe it."

Q. By Plaintiff's Counſel. Did the Governor relate the ſtory to you as a matter of fact, or as a report from John Beverly?

A. He related it as a matter of fact, and referred to John Beverly as a witneſs. He urged the ſtory with great apparent zeal againſt Judge Dorrance, and expreſſed himſelf as if he believed it. The converſation on the ſubject laſted half or three quarters of an hour; in the courſe of which the Governor repeated the matter of the Beaver-hat ſeveral times, and ſometimes he mentioned Beverly as a witneſs, and ſometimes he related the fact without any authority whatever.

DAVID SAYLES. "In May, 1800, I was a member of the General Aſſembly, and went to the General Election, at Newport, on board the ſame Packet with Governor Fenner. In the courſe of the paſſage, there was ſome converſation between the Governor and me relative to the election of Richard Jackſon, jun. in the place of Judge Dorrance. The Governor was urgent for the election of Mr. Jackſon. He told me he had a paper in his pocket containing a ſtatement very black againſt John Dorrance. I requeſted him to let me ſee the paper, which he accordingly did. I read the firſt part of the paper which contained a ſtory charging Judge Dorrance with having contracted with ſome gentlemen of Scituate to bury the dead body of a man who had hanged himſelf; but inſtead of performing his contract, had ſold the body to Dr. Pardon Bowen for a Beaver-hat. According to the ſtory related in this paper, the body was not buried at all, but delivered by Judge Dorrance directly to Dr. Bowen. The ſtory further comprehended a long detail concerning the delivery of the hat to Judge Dorrance by Randall's ſon, and of the boy's demanding a re-

ceipt

ceipt for the hat which Judge Dorrance refuſed to give. Previouſly to my beginning to read, the Governor began to relate the ſtory verbally, which he continued during ſome part of the time while I was reading. I read the paper only as far as pertained to the ſtory of the dead man and Beaver-hat, but this was only a part of what was written on the paper. The Governor obſerved, that the remainder of the writing pertained to the ſtory of the law-ſuit between Atwood and Beverly, and was not concerning the dead man; and as I was then for ſome reaſon or other in ſome haſte (I do not recollect on what account) I handed the paper to the Governor."

Q. By the Governor. Was there any name ſigned to the paper which I then ſhewed you?

A. I believe there was not.

[The Governor here produced a copy of the agreement made between Dr. Bowen and the Sciuere men, concerning the burial of the body, and asked the witneſs if that was the paper?

The witneſs after examining it, declared that it was not.]

Q. By Defendant's Counſel. For what reaſons do you know that the paper here ſhewn by the Governor is not the one which he ſhewed you on board the packet?

A. This is a ſmall piece of paper written only on one ſide, and that was a whole ſheet of paper nearly covered with writing on every ſide. This paper is written by a different hand from that by which the other paper was written. It does not contain the

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ſtory which I read in that paper; neither did that paper contain the agreement written on this.

[The Governor now declared, poſitively, that the paper now ſhewn to the witneſs was the only one he ever had in his poſſeſſion, which in any manner concerned the dead man.]

Q. By the Governor. Is it not poſſible, Colonel Sayles, that you may be miſtaken about this paper's being different from the other?

A. I am clear, poſitive, and abſolutely certain that it is not the ſame paper.

(The Governor, after pauſing a few moments, ſaid, "Aye, I think I can now ſhew you the very ſame paper which I ſhewed you on board the Packet."—He then produced a paper which was a duplicate of the ſame copy he had been then ſhewing the witneſs, and aſked him whether that was the paper he alluded to?—The witneſs denied this paper alſo with the ſame poſitive certainty.)

Q. By Plaintiff's Counſel. What appeared to be the reaſon of the Governor's ſhewing you that paper on board the Packet, at the time he mentioned the ſtory of the dead man to you?

A. The Governor told me that the paper contained the whole ſtory of ſelling the dead body for a Beaver-hat, and gave me the paper, by reaſon, he ſaid, that it was more particular in the account than what he could then recollect to relate verbally.

Q. By Ditto. Had you ever heard the ſtory before the Governor told it you on board the Packet?

A.

A. No. I never before heard any thing of ſelling the body for a hat. While I was in Providence, on my way to election, I was told, in the ſtreet, that Judge Dorrance was to be oppoſed, but did not underſtand on what account.

Q. By Ditto. Do you ſay, on your oath, that the paper which Governor Fenner ſhewed you contained a ſtory of Judge Dorrance's ſelling that dead body for a Beaver-hat?

A. I have already ſaid, that I read ſuch a ſtory written on the paper which the Governor ſhewed me. I again repeat, on my oath, that the paper contained a ſtory purporting that Judge Dorrance ſold the dead body of a man who hung himſelf, to Dr. Bowen, for a Beaver-hat.—I am poſitively certain in my recollection, and it is impoſſible that I can be miſtaken.

Q. By Ditto. In what part of your paſſage from Providence to Newport, did Governor Fenner ſhew you that paper?

A. It was a little before we arrived at Newport. We had then performed conſiderably more than half the paſſage.

Dr. EZEKIEL COMSTOCK. "In May, 1800, I went to Newport, as a Repreſentative in the General Aſſembly, at the election. While on my paſſage, in the Packet, I was in company with Gov. Fenner, Gen. Barton and others. A converſation was introduced, between Gen. Barton and me, concerning the competition which was expected between Judge Dorrance and Richard Jackſon, jun. for the office of Juſtice of the Court of Common Pleas.—Gen. Barton told me he was confident that Judge

Dorrance

Dorrance would looſe his election, becauſe "*the Beaver-hat buſineſs was a Devil of a ſtroke at him.*" I aſked him for an explanation of his meaning, and he told me that Governor Fenner had a writing which contained the whole ſtory from beginning to end. He referred me to the Governor for a peruſal of the paper; upon which I immediately applied to the Governor, and aſked him to let me ſee it.—The manner in which Gen. Barton had communicated the ſubject of the paper was ſo unintelligible to me, that I ſcarcely knew how to deſcribe to the Governor the paper which I wiſhed to ſee. The Governor however ſoon underſtood my meaning, and told me he had a paper in his poſſeſſion which contained a full ſtatement of the whole tranſaction relative to the ſelling of the dead body for a Beaver-hat; and after ſearching ſome time among his papers in order to find it, he told me that he recollected to have lent it to one of the members of the General Aſſembly, and deſired me to call upon him at his lodgings, after we ſhould arrive at Newport, and he would ſhew me the paper. I did not however pay much regard to the ſtory, and never called on the Governor for the paper."

Q. By Plaintiff's Counsel. Did Governor Fenner tell you, that the paper which he referred to contained the ſtory of ſelling the body for a Beaver-hat?

A. I underſtood him that the whole ſtory was particularly detailed in that writing.

Q. In what part of your paſſage did you have this converſation with the Governor?

A. Soon after we left the wharf at Providence.

Q. Had you ever heard this ſtory before the Governor related it to you at that time?

A. No.

Dr. BENJAMIN DYER. This witneſs was called ſolely for the purpoſe of meeting the teſtimony of Dr. Anthony, and teſtified as follows:—

"The day before yeſterday, ſeveral gentlemen were in my ſtore, and I was aſked by one of them why I did not attend at this Court? I anſwered, that I was not concerned in the conteſt between Judge Dorrance and Governor Fenner, and did not ſuppoſe that my name would be made uſe of in the caſe; but that I was always angry with myſelf for paying ſix or ſeven dollars to the Scituate men to ſettle the buſineſs, in behalf of the young men who lived with me; and that I now grudged it to them more than ever, becauſe I *then* thought they were the Town-Council, or a committee appointed by the town, but had ſince learnt that they were a ſelf-created committee: That they were I thought much to blame for interfering in the buſineſs, as the diſſection of dead bodies was certainly an advantage to the living, and that there never was a more proper ſubject than the one in queſtion. We talked ſome upon the ſubject of Surgeon's diſſecting bodies for the purpoſe of gain in ſelling the bones. I obſerved that many people entertained that idea, and that it was very erroneous. As an inſtance of this I mentioned the only ſubject in which I was ever concerned in diſſecting, which was perhaps ten or twelve years ſince; the bones of which were ſold to one of the young men who attended, for about four or five dollars, which went in part to defray the little expences which had accrued, ſuch as liquors, &c."

CALEB

CALEB ORMSBEE teſtified, that he was applied to to make the coffin for the dead man, and was directed to make it ſix feet long, and one and a half foot wide: That he directed his young man to make the coffin, who afterward informed the witneſs that he had made it accordingly: That it was made of good wide boards; was wider at one end than the other, and was worth more than two dollars.

Dr. JOSEPH MASON. "Sometime in the winter of 1799, a young man who was a pupil of Dr. Pardon Bowen, called on me, and informed me that a ſtranger had hanged himſelf in Scituate, and that it was propoſed to procure the body for diſſection; and alſo aſked my opinion as to the manner in which it was beſt to proceed. I adviſed him to ſend ſome one to obſerve where they buried the body, and afterward to go out in the night and take it up and bring it into town. One of the Students, I think Mr. George W. Hoppin, went out on the buſineſs, and on his return, the ſecond evening following was fixed for going after the body. I had agreed to be one of the party, but was prevented by a profeſſional call. On the next day it was reported, that ſome men in Scituate were in town in ſearch of the body. On the following day, I was informed that Dr. Pardon Bowen was before a Court of Juſtices, at Hoyle's tavern, for examination reſpecting the ſtranger's body. Conceiving myſelf to be more implicated in the tranſaction than Dr. Bowen, I immediately went to Hoyle's; where, inſtead of finding the Doctor before a Court, I found him in the company of ſeveral men from Scituate, who called themſelves "*a committee of agents*" from that town, and with whom Dr. Bowen had juſt made an agreement, wherein he was to pay them forty dollars by way of compromiſe. I tried every method in my power to prevent the Doctor from conſenting to any

ſuch agreement, and obſerved to him, that it appeared to me that the town of Scituate had nothing to do with the buſineſs, and if it had, that thoſe men had ſhewn no authority from the town: That I believed they had come with the ſole view of picking money out of our pockets for their own private uſe. But Dr. Bowen, unwilling to have any further controverſy with them, converſed with me alone, and perſuaded me to give up my objections. He finiſhed the agreement with them which was in writing, and paid them the money; whereupon the Scituate men ſigned the writing, which contained the exact engagement as I underſtood it, of the parties reſpectively, and is I believe the ſame paper produced here in Court. Among the ſigners of the agreement, I recollect, John Harris, Gideon Auſtin, I think a Samuel Wilbour, and a man who called himſelf a member of the Town-Council of Scituate, and made his mark for his ſignature to the paper. As it was late before this buſineſs was finiſhed, I went immediately to Mr. Caleb Ormſbee, whoſe ſhop was in Capt. Godfrey's ſtore, and requeſted him to make a coffin, to be ready at 11 o'clock that night. He ſaid a coffin could not be made in that time. I then told him to make a box, ſix feet and an half long and large in proportion, and leave it at the out-ſide of the ſhop. I alſo left my ſleigh and harneſs, with directions where thoſe, with the box, might be found. About a week after this, I went to the houſe of Mr. George Sugden, in Weſtminſter-Street, and found the body prepared for diſſection. I there met ſeveral of the gentlemen who were to aſſiſt in the operations; but the body was in ſo frozen a ſtate that it was impoſſible to do any thing with it at that time; and that was the only time that I ever ſaw the body."

Q. By Plaintiff's Counsel. Was Judge Dorrance knowing to any part of the tranſaction in taking up the body and diſſecting it?

A. I do not know that he had any knowledge of any part of the tranſaction, in any manner whatever, either directly or indirectly.

Dr. HARDING HARRIS. "In the winter of 1799, at a ſmall diſtance from town. I met Dr. Daniel Knight. He told me he was coming into town to ſee ſome parts of the dead man diſſected.—He ſaid the body was then at Sugden's, and invited me to attend the operation with him. He obſerved that he thought they had a right to diſſect the body as they had bought it of the mob that came from Scituate, at ſuch an extravagant price; and that the whole expence of the buſineſs had been as much as ſixty or ſeventy dollars. He related to me the particulars reſpecting the burial of the body by the ſtudents; and I underſtood him that Dr. Bowen was not preſent at the burial, and that he did not ſee any part of the proceedings. He told me the body was then partly diſſected by the young gentlemen themſelves, and that Dr. Pardon Bowen had been prevailed on to inſtruct them in a further operation, which Mr. Knight conſidered as a politeneſs in the Doctor, and for which he was thankful."

The Witneſſes being thus far examined, the Counſel for the Plaintiff continued the arguments in ſupport of the action againſt the Defendant's Plea in Bar.

It was obſerved, that as the Defendant had by his Plea confeſſed the ſpeaking of the words, and had undertaken to juſtify himſelf in ſpeaking them, it only remained, to be determined, firſt, what might be a ſufficient juſ-

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tification of the words ſpoken; ſecondly, whether the Defendant had made out that juſtification for himſelf. The Defendant, in his Plea in juſtification, had no where averred the words to have been *true*; but he had merely ſet forth a hiſtory of circumſtances, apparently for the purpoſe of ſhewing, that from the exiſtence of theſe cicumſtances, he, at the time the words were ſpoken, *had reason to believe* them to be true. The inſufficiency of the Plea, ſuppoſing it to be ſubſtantiated, could be incontrovertibly ſhewn from an abundance of authorities at hand.—The Plaintiff however, *for certain reasons*, had not demurred to the Plea, and the jury were of courſe to try its ſufficiency. In the firſt place it was contended that the moſt material facts ſtated in the Plea were by no means proved. The Plea had ſtated that the Plaintiff had *agreed to and with the other contracting parties, that he would take the body in his care to be decently buried in Providence, under his care, superintendance and direction.* The evidence had proved no ſuch agreement on the part of the Plaintiff. Nothing more had been proved, than that the Plaintiff had *conſented* to give *directions* merely reſpecting the manner of the burial; and in this, he had not aſſumed the leaſt degree of reſponſibility.—The body was never in his cuſtody or controul; nor did he ever promiſe any care or ſuperintendence, in any part of the buſineſs.

It was ſaid, that the Counſel for the Defendant had gone beyond their Plea, which did not pretend to the truth of the words, and had laboured to induce in the Jury a preſumption of their being true: That this was more than the Defendant himſelf could have expected the Jury to preſume, or he would have ventured to aſſert in his plea that the words were true. The Plea itſelf, allowing it to be proved, could only avail the Defendant in mitigation of damages;

mages; but by the arguments of his Counſel, in ſupport of that Plea, he was to be entirely juſtified and the action barred: But ſo far from having demonſtrated the words to be true, or ſhewing a probability of their being true, the Defendant had neither pleaded or proved a fact, that could excite a preſumption worthy of refutation. The extreme abſurdity of ſuppoſing Dr. Bowen to have ſo unneceſſarily bribed Judge Dorrance to a mean and ſcandalous connivance in the diſpoſal of a dead body, of which he had not the care, and of which he knew not the exiſtence but by hearſay, was a miſerable ſubterfuge that could be adopted only by a Defendant, in the utmoſt extremity of a deſperate cauſe. It was an unpardonable outrage upon common ſenſe, to ſuppoſe that thoſe Surgeons, while they actually had the dead body in their poſſeſſion, and at their entire diſpoſal, ſhould think of purchaſing it of Judge Dorrance, who had not the leaſt poſſible controul over it, or even any poſitive knowledge of its exiſtence. Still more contemptibly ridiculous would it be, to ſuppoſe, that Judge Dorrance ever made himſelf reſponſible for that body's remaining in its grave undiſturbed. That would have been an engagement of an immenſe reſponſibility, and of which he could not have acquitted himſelf, but by perpetually and eternally watching the grave. However, there could not be reaſonably any controverſy reſpecting the nature of Judge Dorrance's engagement in that buſineſs. The agreement, containing every part and parcel of his undertaking was in writing, ſigned by the Scituate gentlemen themſelves, and there in Court ready to ſpeak for itſelf. In regard to Dr. Bowen, if the exalted opinion which ſociety uniformly acknowledged of his character, his talents and prudence, was inſufficient to relcue his underſtanding from the pitiful imputation of ſtupidly purchaſing a dead body which he already had in

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his own poſſeſſion, and at his own diſpoſal, of Judge Dorrance, who had no pretenſions to authority for ſelling it, the clear, poſitive and abſolute declarations of his teſtimony muſt be acknowledged ſufficient, unleſs the Doctor had unfortunately further tranſacted a ſtill more unthrifty ſpeculation, in being guilty of *wilful and deliberate perjury*; and that without the leaſt poſſible temptation.

The Defendant had ſet forth in his Plea that he had circulated the ſlander in conſequence of his having previouſly heard it from others. John Beverly had told him that he *gueſſed* the Beaver-hat was given for the dead body. Thoſe circumſtances the Plaintiff's Counſel contended afforded the Defendant no juſtification whatever. It was a principle laid down in all the books, that every man ſhall be anſwerable for his own ſlander. They cited 6 Bac. Abr. 239, Eſp. N. P. 517, Cro. Eliz. 400, 7 Term Rep. 19, Bul. N. P. 10, 12 Rep. 133, the Earl of Northampton's caſe.

It was ſaid, that the attempt of the Defendant to ſhift the ſlander from himſelf upon John Beverly, was an expedient as futile as it was mean and unmanly. At the time Beverly communicated to him his ſurmiſes reſpecting the Beaver-hat, he alſo explained to him the circumſtances and reaſons why he had gueſſed that the hat was given for the dead body. The Governor had no more reaſon to believe the words to be true than Beverly had; becauſe he was equally with Beverly poſſeſſed of the grounds of their truth. It was in evidence that the Governor and Beverly had been ſo much at variance, that they had not ſpoken to each other for nearly a year and a half; yet at the time of propagating this ſlander, they had become ſtrangely reconciled. The Gov. was now courting an intimacy with Beverly, to whom

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he had not before, for a long time, deigned to ſpeak. Beverly was now continually at the Governor's houſe, publicly repeating the ſlander, in the Governor's preſence, in unqualified terms, to every perſon who came in; provided they came from a diſtant part of the State. The Governor was as conſtantly ſeconding Beverly's imputations, and encouraging and enforcing a belief of their truth; although Beverly had ſecretly explained to him the inconſiſtency and improbability attending the ſuppoſition of the fact. While the ſlander remained only in the mouth of Beverly, and in the circle of his acquaintance, it could never have found credit, or be followed by any injury, and would have remained wholly unworthy the notice of the Plaintiff; but as ſoon as the Governor ſeized with avidity upon the ſcandalous ſtory, and contributed his own name to give it authenticity, it then began originally to be ſlander, and the character of Judge Dorrance then began to be affected. Till then, the ſtory was but a baſe coin refuſed by every one to whom it was offered, but the moment it received the Governor's ſtamp, it obtained credit and currency. The Governor was acquainted with Beverly as well as with the manner in which he had fabricated the ſtory, and could not poſſibly believe the ſtory to be true. But, admitting that the Governor could poſſibly have believed the ſtory, ſtill he was little more juſtifiable in reporting it in the manner he did. He did not with a delicate and manly regard to the reputation of his neighbour, an officer who held an important commiſſion in the government, endeavor to acquire ſatisfactory information upon the idle and malicious report; though he might, at any time, in the courſe of a few minutes, have abundantly obtained it.—— He did not with a rectitude of heart, as a chief magiſtrate in whom an honeſt indignation was kindled by a belief of ſcandalous conduct in Judge Dorrance, require of him an explanation, reprove him to his

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face, publicly declare him to his neighbour's an object of cenſure, or openly denounce him in the Legiſlature as an offender unworthy of public truſt.—Inſtead of reſorting to ſuch direct and honourable meaſures, he ſecretly and equivocally, in a diſtant part of the State, inſinuated the miſerable falſehood to ſuch particular members of the General Aſſembly as he conceived he would be able to perſuade to give credit to it; and all for the expreſs purpoſe of indirectly preventing Judge Dorrance's re-election. Theſe inſinuations he always made without diſcloſing the grounds of his own informations. The name of John Beverly was never mentioned, but as a witneſs whoſe teſtimony would corroborate the Governor's own aſſertions. There was no evidence of the Governor's reporting the ſtory to the people of Providence, to whom the character of Judge Dorrance, the Governor and John Beverly were well known, till more than a year after he had reported it in other parts of the State where Beverly was totally unknown, From a conſideration of all theſe circumſtances, it was proper to pronounce the words complained of not only a falſehood in every ſenſe of the term, but alſo a cruel and *malicious* falſehood.

On the queſtion, whether the words were *actionable* it was admitted that the words did not impute a *felony* to the Plaintiff, a crime for which he would be liable to ſuffer death. But it was contended that digging up a dead body for the purpoſe of diſſection was an indictable *miſdemeanor*, for which the offender might be liable to fine and impriſonment. To eſtabliſh this, an authority in point was produced: 2 Term, Rep. 733. Lynn's Caſe. The caſe was as follows: "The Defendant having been convicted on an indictment charging him with entering on a certain burying-ground, and taking a coffin out of

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the earth, from which he took a dead body, and carried it away for the purpoſe of diſſecting it."—"*Garrow*, who was to ſupport this motion" (in arreſt of judgment) "mentioned that perhaps the circumſtance, ſtated in this indictment, of the Defendant's taking the body for *the purpoſe of diſſection*, might differ this from the common caſe of taking up dead bodies for any indecent exhibitions."—"The Court ſaid that common decency required that the practice ſhould be put a ſtop to. That the offence was cognizable in a criminal court, as being highly indecent, and *contra bonos mores*; at the bare idea alone of which nature revolted. That the purpoſe of taking up the body for diſſection did not make it leſs an indictable offence. And that as it had been the regular practice of the *Old Bailey* in modern times to try charges of this nature, many of which had induced puniſhment, the circumſtance of no writ of error having been brought to reverſe any of theſe judgments, was a ſtrong proof of the univerſal opinion of the profeſſion upon this ſubject. They therefore refuſed even to grant a rule to ſhew cauſe, leſt that alone ſhould convey to the public an idea that they entertained a doubt reſpecting the crime alledged. But inaſmuch as this Defendant might have committed the crime merely from ignorance, no perſon having been before puniſhed in this Court for this offence, they only fined him five marks."

This deciſion of the Court of King's Bench, as it was conceived, placed the matter beyond all doubt or heſitation, that the words ſpoken againſt Judge Dorrance were actionable; as Mr. Robbins had admitted that Judge Dorrance's connivance had made him as much a principal as if he had dug the body up with his own hands. It was obſerved, that what had been argued by the Counſel on the other ſide relative to the body's being unprotected by law, by

reaſon of the ſuicide, was frivolous, and of no ſubſtance whatever. It was unneceſſary to enquire whether the laws of England reſpecting the burial of the body of a ſuicide in the highway with a ſtake driven through it, applied at preſent in this State. It was ſufficient to obſerve that it was not done even in England, except in caſe of a *felo de ſe*; and it was not in evidence that the man who hanged himſelf at Scituate was declared by the Jury of Inqueſt to be a *felo de ſe*; but it was ſaid that the Inqueſt had pronounced his violence upon himſelf to have been the conſequence of *inſanity*.

[Here the Hon. Judge Martin interrupted the Counſel, and deſired him to repeat his laſt obſervation in clear Engliſh, that the Court might underſtand the meaning of *felo de ſe*. Upon which the Counſel gave the Court the neceſſary explanation, which they acknowledged they at laſt underſtood.]

It was further ſaid, that to dig up the body of a ſuicide whom the law had depoſited in the highway, for a particular purpoſe, would be a greater offence than the digging up of an ordinary perſon; becauſe in that caſe, the body would be totally in the cuſtody of the law, and entirely at its diſpoſal. The law, by ſuch particular appropriation, would make the body a particular property of government. And to take ſuch a body away would be to directly obſtruct the operation of a ſentance of the law.

In regard to ſpecial damages, it was contended that they were ſufficiently ſet out and proved: yet, as the words were plainly ſhewn to be actionable in themſelves, it was entirely unneceſſary for the Plaintiff to prove ſpecial damage. Actionable words implied malice; and the law preſumed them to be followed by damage to the perſon ſlandered. The

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Jury were therefore to conſider the wickedneſs of the diſpoſition which induced the ſlander, the enormity of the offence in ſociety, and the injury which the Plaintiff had ſuſtained; and would aſſeſs the Defendant in damages commenſurate with the crime and the injury.

In the cloſe of the firſt iſſue, Mr. Howell argued for the Defendant. He recapitulated and enforced the arguments of Mr. Robbins in the opening, excepting where Mr. Robbins argued that Judge Dorrance, by his connivance, at the taking up of the body, had made himſelf a principal in the tranſaction. Mr. Howell, in his comments on the caſe of the indictment for taking up a dead body, cited by the Plaintiff's Counſel, in 2 Term, Rep. 733, contended that Judge Dorrance in permitting other people to take up the body, did not make himſelf even an *acceſſary* to the offence. He ſaid that the indictment mentioned in 2 Term, Rep. 733, was for breaking and digging up the ground, and not for taking up and diſſecting the body. He produced another authority from Term Reports, in order to ſhew that breaking up the ground was what conſtituted the offence. (As this was a new authority introduced in the cloſe of the iſſue, the Counſel for the Plaintiff roſe to explain it on their part. But Mr. Howell inſiſted upon not being interrupted, and thereupon the Chief Juſtice commanded them to be ſilent. However on the motion being ſtrenuouſly repeated, the Court conſented that the Plaintiff ſhould be heard on that point after Mr. Howell had ended his argument.)

Mr. Howell obſerved, that his age, experience, and the character he was ambitious of ſupporting as a lawyer, were motives ſufficient to prevent him from aſſerting any matter to be law, which was con-

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trary to his opinion. His ſincerity therefore could not be ſcrupled when he pronounced the words complained of not to be actionable. He obſerved that in the preſent Caſe, the grounds of complaint were trifling: That Judge Dorrance had received no damage of conſequence: That the Governor had ſaid no more of him than what any freeman had a right to ſay of his neighbors: That ſuch principles as the Plaintiff contended for were tying the tongues of the citizens. It was a peculiar privilege which every free American citizen poſſeſſed, to ſay what he pleaſed of his fellow-citizens: The freedom of ſpeech was a bleſſing to the community which the preſent patriotic adminiſtration of the United States had long contended for, and had obtained. The official character of the Defendant ought to be conſidered by the Jury, and ought to ſhield him againſt light preſumptions, and even from accountability for petty faults. He was the firſt magiſtrate of the State, in whoſe character the Jury themſelves had an intereſt, which they were not under obligation, in the diſcharge of their duty to ſacrifice. He was the ſervant of the people; and every freeman had an intereſt in the character of his ſervant, which he could not be compelled to ſurrender. The character of the chief magiſtrate ought to be ſcrutinized with awe and with caution. His character was the hallowed repoſitory of the honour, the dignity and ſovereignty of the State; and the intereſts and happineſs of the State exiſted in the reſpect and obedience due to the dignity and authority of his office. His office ought to ſecure him from the indignity of revengeful attacks upon his private reputation, under the cover of groundleſs lawſuits. The Jury ought to be careful how they trifled with a ſuperior power. "What?" (ſaid Mr. Howell) "What I ſay? Are you to ſet up your firſt magiſtrate, like a Shrove-Tueſday-Cock, to be

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thrown at, and knocked down for ſport?" He obſerved, that the Governor had deſcended from a long and illuſtrious line of anceſtors, who had thro' all ages ſtood above the common claſſes of people. He poſſeſſed an independent fortune which alſo deſcended from thoſe illuſtrious anceſtors. He poſſeſſed an unparalleled brilliancy of talents, and a boundleſs capaciouſneſs of mind, adorned with every valuable accompliſhment, and replete with the moral and ſocial virtues. His heart flowed with the milk of human kindneſs, and was an exhauſtleſs treaſure of holy charity everlaſtingly flowing for the improvement and benefit of all mankind. Above all, he had, till the commencement of this wanton lawſuit of Judge Borrance, uniformly enjoyed the confidence and affections of his fellow-citizens. Till now he had been the idol of the State, and there had never been any one ſo hardy as to publicly impeach his character. "Who is he who has now done it? Is he one of the Browns, the Angels, the Arnolds, the Olneys, or one of the reſpectable deſcendants of good old Roger Williams? No: He is a ſtranger in the land; a growth of a foreign ſoil, of whom the State does not contain the bones of a ſingle illuſtrious anceſtor; a man whoſe fortune is of his own making. The private merits and public ſervices of his Excellency Governor Fenner, can be equalled only by his magnanimity and generoſity. To my ſhame, I confeſs, that I have myſelf entertained illiberal prejudices againſt him; but the great and good man has been indulgent to my errors, and has forgiven me."

Mr. Howell concluded his defence by inſiſting to the Jury that the Plaintiff had no cauſe of action: But if the Jury ſhould think otherwiſe, he was confident they would not find for the Plaintiff more than nominal damages.

On

On the ſecond Iſſue the Counſel for the Plaintiff ſpoke in the opening. The matter in iſſue was ſimply whether the Defendant did publiſh a ſcandalous libel purporting that the Plaintiff ſold the dead body for a Beaver-hat. It was admitted by both parties, that if it ſhould be proved that the Defendant actually ſhewed to any perſon a paper containing ſuch a ſtory, it would be a ſufficient publication to charge the Defendant with the ſlander.

In order to prove the publication of the libel by the Defendant, the Plaintiff's Counſel called the attention of the Jury to the teſtimony of Col. David Sayles, Dr. Ezekiel Comſtock and William Hunter, Eſq. who had given their teſtimony in the former iſſue. It was obſerved that the teſtimony of Col. Sayles was ſo poſitive, ſo correct and conſiſtent, that it abſolutely eſtabliſhed the fact, beyond a poſſibility of being otherwiſe, unleſs the Witneſs was wilfully perjured. The only queſtion that remained was, whether Col. Sayles was perjured or not. To ſecure that gentleman from ſo foul an imputation, there was in addition to his unblemiſhed character, and the many inſtances of public confidence with which he had been honoured, the teſtimony of Dr. Comſtock and Mr. Hunter which ſtrongly corroborated that of his own.

The Defendant, in the courſe of the Defence, called ſeveral Witneſſes for the purpoſe of doing away the teſtimony of the Plaintiff's witneſſes; the firſt of whom was JUDGE HARRIS, who teſtified as follows. "I was on board the Packet with the Governor in the paſſage to Election in May, 1800. I applied to the Governor for the written agreement concerning the dead body. He handed it to me, and deſired me to hand it to him again."

JUDGE

JUDGE MARTIN. "Three or four weeks ago, I had often heard that Governor Fenner had ſhewn a paper on board the packet, and that Col. Sayles had ſaid ſo. I aſked Sayles if it was true.—He ſaid yes. He ſaid the writing was on a whole ſheet of paper, and related the ſtory as particularly as he did yeſterday in this trial. He ſaid he did not hear the ſtory firſt on board the Packet, but a friend of Richard Jackſon, jun. had told it to him before he went on board."

SYLVANUS MARTIN. *Q. By the Governor.* Had not you ſome converſation with *one* David Sayles reſpecting this Caſe?

A. "Yes. In June laſt I was at Cumberland and ſaw David Sayles at his houſe. He informed me that he ſaw a paper on board the Packet relating the ſtory of the Beaver-hat. He ſaid that the ſtory had gone out of his mind, till Judge Dorrance's publication in the newſpaper revived it. He told me the paper did not appear to be in the Governor's hand writing."

DAVID SAYLES, called by the Plaintiff. "Sometime ago I ſaw Judge Martin, and he invited me into his houſe. He conducted me into a private room, and after ſhutting the door, cautioned me ſtrictly not to mention that he had ſpoken to me. He then enquired of me particularly what I knew of the diſpute between the Governor and Judge Dorrance. I was not perfectly ſatisfied with the manner in which Judge Martin conducted his enquiries, and did not therefore feel much diſpoſed to be communicative to him. I however recollect to have told him that a gentleman had mentioned to me that ſomething black had turned up.

"Sylvanus

"Sylvanus Martin came to my houſe one Monday morning. I was in the field at work; and when I came home, at noon, I found him there again. After he went away, my wife and mother-in-law informed me of Mr. Martin's being there in the morning, and that he had queſtioned them particularly whether they had ever heard me tell what I knew relative to the controverſy between the Governor and Judge Dorrance, but they gave him but little information about it. While Mr. Martin was preſent with me, he told me that the old matter had broken out again, and the Governor was going that day to compliment Judge Dorrance with a writ. He then aſked me what I knew about the paper, and ſaid that he ſuppoſed I ſhould be ſummoned as a witneſs in the Caſe. I told him I had ſeen a paper, reſpecting the Beaver-hat, in the Governor's hands; and that it did not appear to have been in the Governor's hand writing. He obſerved, that I could of courſe know nothing about the matter. He ſoon after went away."

CALEB HARRIS, called by the Plaintiff. "At the Election in May, 1800, I ſlept in the ſame room with Col. Sayles. One night, after we were a-bed, Sayles began to talk of Judge Dorrance, and highly diſapproved of his conduct. He ſaid that Governor Fenner, on their paſſage to Election, had ſhewn him a paper which contained an account of Judge Dorrance's ſelling a dead body for a Beaver-hat. He deſcribed the paper to me in much the ſame words which he has uſed in his teſtimony here. The ſtory was entirely new to me; and next morning I acquainted Judge Dorrance with what Sayles had told me. The Judge ſaid he had never heard of it before."

CHARLES DYER. "Sometime after the appearance of Judge Dorrance's publication, Benja-

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min Randall was at our ſtore, when there happened to be ſome converſation reſpecting the Beaver-hat and dead body. I aſked him ſome thing about his teſtimony which he had given in a depoſition taken by the Governor concerning the buſineſs. Randall ſaid they had lied about him like the Devil: That he knew not what the hat was given for; and that he was ſorry for what he had ſaid, and would not have ſaid it, had he foreſeen the conſequences. He ſaid that Dr. Bowen ſpoke to him for the hat before the man hung himſelf."

HENRY ALLEN. "Benjamin Randall was at our ſhop to buy ſome oil of vitriol. I heard him ſay that the Beaver-hat was ſpoken for before the man hung himſelf."

Q. By Defendant's Counſel. Did Randall pay you for the vitriol at that time?

A. Yes.

NEHEMIAH KNIGHT, called by the Governor. "I know nothing pertaining to the iſſue before the Jury. I received a letter from Governor Fenner, and went to his houſe. He ſhewed me a writing containing as much as twenty pages in folio, relating to the caſe of Atwood and Smith. I wiſhed to ſee the other gentlemen concerned in the buſineſs, and the Governor wiſhed it alſo. The gentlemen were accordingly ſent for, and attended. A great deal was ſaid about a ſettlement in that caſe; and the Governor ſeemed deſirous to promote a ſettlement in an eaſy way to the parties. The Governor ſaid the reaſon why he requeſted Beverly to commit the hiſtory of the caſe to writing, was that the matter might be made known to the parties. The Governor was of opinion that if Smith could

not be relieved by the General Aſſembly, the Judges of the Court would have the debt to pay. Judge Dorrance ſaid that he never had any thing to do in the buſineſs. I was Sheriff at that time and had the ſervice of the execution; but had no intercourſe with Judge Dorrance about it, and do not know of his ever paying any of the expences of the proceſs. The Governor appeared ſatisfied with Judge Dorrance's conduct."

JASON NEWELL, called by the Governor. "I know George W. Heppin, I ſaw him ſeveral days ago. He ſaid he was a witneſs in this caſe; and wiſhed that Governor Fenner might be ſo beaten in the cauſe that he could not be able to look his own ſon in the face. I aſked him if he was not willing that juſtice ſhould be done. He anſwered, that he wiſhed by all means to have juſtice done.

JOHN CARPENTER, called by the Governor. "I heard Charles Dyer ſay, that Benjamin Randall told him that the Beaver-hat was ſpoken for before the man hung himſelf, he obſerved alſo that Randall was intoxicated when he told him ſo."

Q. By Plaintiff's Counſel. Was you preſent when Randall gave a depoſition reſpecting this buſineſs, for the Governor's uſe, about the time of the commencement of his action againſt Judge Dorrance?

A. I was.

Q. Was Randall ſober at that time?

A. We took his firſt depoſition in an evening. He was then very much in liquor; and the next day *we* took his depoſition over again.

Q.

Q. Who applied to him for his depoſition?

A. I applied to him at that time.

Q. At whoſe requeſt did you undertake this buſineſs?

A. I don't know but it was Judge Martin's——No, it was not Judge Martin.

Q. Did Governor Fenner employ you?

A. No.

Q. Did you undertake it all of your own head?

A. Y——N—N—No.

(Here Mr. Howell interfered, and requeſted the protection of the Court for the Witneſs, that he might not be compelled to anſwer queſtions that tend to criminate himſelf.)

JUDGE MARTIN. "I recollect about the taking of Randall's depoſition. John Carpenter applied to me and told me he wanted the depoſition taken, I conſidered the matter over, and concluded not to take it myſelf. *We* then concluded to apply to 'Squire Thurber, for him to do that buſineſs.—Randall at that time was very drunk."

WANTON STEERE. "Sometime paſt, I was with Mr. Thomas Brown at Col. Hoyle's, and ſaw Benjamin Randall there. We had ſome converſation reſpecting this ſuit, and the matter of the Beaver-hat. Randall told us that the Governor had privately talked with him a great many times, and deſired him when he ſhould come to teſtify in

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the Trial, to ſay things that were not true; and which Randall ſaid he ſhould not conſent to do. Truth; he ſaid, was the beſt policy."

THOMAS BROWN teſtified that he was preſent, and heard the ſame converſation with Randall, in the ſame manner as Capt. Steere had teſtified.

BENJAMIN RANDALL, called by the Governor, teſtified that the Governor never ſpoke to him in private *on the ſubject of the Beaver-hat.*

RESOLVED SMITH, called by the Governor, teſtified that he never heard the Governor direct Randall to miſſtate any fact in Court.

WILLIAM PECKHAM, called by the Governor, teſtified that he firſt gave Randall's depoſition to the Governor, while he was at Newport.

JOEL METCALF teſtified, that in the time of the yellow fever in 1800, he was a member of the Town-Council, and was preſent when the Governor had a diſpute with Judge Dorrance, who was then Preſident of the Town-Council.

CALEB HARRIS re-examined. *Q.* Did Governor Fenner ever tell you the reaſon why he employed Beverly to write that ſtory of the law-ſuit?

A. He told me that he deſired Beverly to commit the ſtory to writing, that he might ſee if Beverly could tell the ſtory twice alike.

The Counſel for the Defendant agreed, that as the evidence of the Defendant's publiſhing the libel depended chiefly on the teſtimony of Col. Sayles, the jury would not be warrantable in convicting him of

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the ſlander on ſuch ſlight grounds; becauſe it was probable that in ſuch a length of time his memory had failed him. The integrity ofCol. Sayles however was,in unlimited terms, by them acknowledged to be immoveable They inſiſted that the copy of the agreement was the paper which he had miſtaken for the libel.

The Plaintiff's Counſel, in the cloſe of the Caſe, confidently contended that there never was a caſe more fully and ſubſtantially proved. Col. Sayles, a man whoſe veracity or candour had never been queſtioned, had been ſo ſtubbornly poſitive in his teſtimony, that no ingenuity or management could evade it. It was in vain for the Defendant to triffle with his own character, by endeavoring to palm upon the Jury a preſumption that the copy of the agreement was actually the paper which he ſhewed to Col. Sayles. It was in vain to perplex the intelligence of common ſenſe by cavilling ſurmiſes of the inſufficiency of Sayles' memory. Col. Sayles, the very next day after he ſaw and read the paper on board the Packet, gave the ſame account of it to Judge Caleb Harris, which he had given in Court. Sylvanus Martin had alſo heard the witneſs relate the ſtory in the ſame manner. Dr. Comſtock and Mr. Hunter had both heard the Governor refer to a paper of the ſame deſcription, The queſtion wholly reſted on this point: Either thoſe witneſſes were guilty of deliberate perjury, or the Governor was really guilty of the ſlander.

On Saturday evening, being the fourth day of the trial, the arguments were cloſed, and the cauſe committed to the Jury. About nine o'clock, the ſame evening, the Jury retired to their room. They there continued, without agreeing on a verdict, till after the Court was opened, on Monday morning, when they appeared and informed the Court that there

there was no probability of their ever agreeing, and requeſted the Court to receive the papers of the Caſe. The Chief Juſtice refuſed to take the papers. He was of opinion that their diſagreement was owing chiefly to an unaccommodating party ſpirit, which they ought to endeavour to qualify and ſubdue. He told them it was their duty to agree, and that they ought not to relinquiſh the cauſe till they were all of one opinion. He thereupon ordered them to retire a ſecond time, which they accordingly did; and between three and four o'clock, in the afternoon, they returned, and informed the court that they had ſigned a verdict.—The Clerk took the verdict and read it aloud, in the following words "*We find for the Defendant his coſt.*" The Counſel for the Defendant upon this, requeſted the Clerk to enter the Verdict according to the two iſſues joined, and aſked the Plaintiff's Council if they had any objection. They were anſwered that the verdict was expected to be entered according to the intentions of the Jury. Whereupon ſeveral of the Jury declared to the Court that they did not mean to find the truth of the Defendant's Plea in Bar to the eight firſt Counts, and that they believed the Plaintiff entirely innocent of the facts charged againſt him in the Plea; and the foreman told the Court that the whole Jury had uniformly expreſſed the ſame opinion. While this converſation was paſſing, Mr. Howell had drawn the form of a verdict to be entered, which was nearly in theſe words: "We find for the Defendant upon the firſt iſſue: We alſo find for the Defendant on the ſecond iſſue, with coſt." This form was read and objected to. The Court ordered the Clerk to enter the verdict. The Clerk was at a loſs to know how to make the entry, and applied to the Court for their inſtructions. The Chief Juſtice ſaid, "*Write the verdict in the common manner. I don't know what elſe to ſay.*" Another

nother controverſy aroſe between the Counſel, when one of the Plaintiff's Counſel deſired the Jury to inform the Court what they meant to find in their verdict. Upon this the Chief Juſtice ſaid, "*The* JURIERS *ought to be diſmiſſed, becauſe they've been ſhut up ſo long, and haven't had no refreſhment, that they can't ſtand it any longer. The Court can do about the verdict, I gueſs.*" Several of the Jurors did not ſeem willing that the Jury ſhould leave the ſtand till the verdict was decided. One of them vehemently begged the attention of the Court, and told them that he meant to find for the Defendant only on the eight laſt counts, and offered to give his reaſons for ſigning the verdict in the manner he did. But the Court did not look towards the Juror, or take any notice of what he ſaid;—and the Juror therefore deſiſted. The Court were again applied to, to decide the form of entering the verdict. The Chief Juſtice ſaid, "*Write it as you commonly do. I don't know what elſe to ſay, n't I*" The Clerk finally entered the verdict in his minute book, in the words of the Jury, viz: "We find for the Defendant his coſt." He then ſpoke to the Jury in theſe words: "*Gentlemen of the Jury, hearken to your verdict as the Court have recorded it.* We find for the Defendant his coſt. *Is this your verdict, Gentlemen.*" Upon which, Nathaniel Bailey, one of the Jury, immediately roſe and ſaid, "No, it is not my opinion, I meant to find for the Defendant only on the laſt eight counts." He was proceeding further, while two or three other Jurors roſe to make their explanations. The Chief Juſtice, however, ſtopped the Jurors, and told them they were diſmiſſed, and muſt immediately retire.—Nathaniel Bailey ſtill urgently deſired to be heard; but the Court told him the Jury were regularly diſcharged of the cauſe; and that it was improper for the Court to hear them any more upon the ſubject.

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The Counſel for the Plaintiff now aſked the Court if the verdict was, at all events, to be recorded in its preſent ſituation. The Chief Juſtice ſaid, "*Why the* JURIERS *has all ſigned it, and I can't ſee why 'tiſn't a good verdict. I am willing tho', and I ſuppoſe the Court is, to hear all that can be ſaid upon it. What ha' ye got to ſay for yourſelf, Mr. Burrill?*" Mr. Burrill told the Court that his duty to his client required him to object to the verdict's been recorded; becauſe the Jury, when ſolemnly called on, according to the practice and uſage of that Court, had declared it not to be their verdict; and that it was totally againſt their ſentiments and intentions: That the Jury ſeemed to have ſigned the verdict for the very purpoſe of defeating its operation, by an explanation in Court; and they had been permitted to explain themſelves ſufficiently, in his opinion, to deſtroy the verdict.

(Here the Chief Juſtice interrupted and ſaid, "*Speak louder, Mr. Burrill, I'm ſome deaf, an'ts like I've not heard all't's been ſaid. The Court has a mind to do that's right. For matter o' that we'll hear you patiently, Mr. Burrill and Mr. Greene too. Proceed Mr. Burrill.*")

Upon this, the Counſel for the Defendant moved the Court that the Plaintiff's Counſel be not permitted to ſay any thing further upon the ſubject of the verdict. They ſaid the verdict was already recorded in the minute book, the Jury were diſcharged, and the Plaintiff was therefore entirely foreclosed in any objections he could make to the verdict's ſtanding on record as it then was. The Plaintiff's Counſel inſiſted on being heard, and offered to produce, in addition to the practice of the Court, ſundry authorities from the books, to ſhew the abſolute neceſſity of the verdict's being annulled.

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The Court, after whiſpering among themſelves for about the ſpace of fifteen minutes, declared they would hear nothing further ſaid upon the matter at that time. They however ſaid they would at a future day hear ſome further arguments, *if the Plaintiff inſiſted on it.*

Such being the ſituation of the cauſe, the Counſel for the Plaintiff drew up a remonſtrance againſt the eſtabliſhment of the verdict, praying that the ſame might be annulled and held for nought.*— For reaſons, they ſet forth the circumſtances attending the delivery of the verdict, the conduct of the Jury, and the proceedings of the Court thereon. This paper the Counſel for the Plaintiff preſented to the Court, and requeſted that the ſame might be received on file, in order that the ſubject of its contents might be argued at ſuch time as the Court ſhould appoint. The paper being read to the Court, the Counſel for the Defendant objected to its being received by the Court. They declared it to be a libel on the Court, inaſmuch as it contained inſinuations of irregular proceedings of the Court. They ſaid the verdict was already entered on the minutes as a record of Court, and the Court themſelves had not power to alter it.

The Counſel on the other ſide declared they had ſtated facts preciſely as they occurred, and offered to prove every fact by them ſtated on the paper; but they were anſwered that they could not be permitted

* A copy of this paper would have been inſerted here, had it been poſſible to have obtained it. The Plaintiff's Counſel applied to the Court for the paper, after they had refuſed to receive it on file; but the paper was unaccountably miſlaid. *Some* of the Judges examined their pockets over and over again, but all to no purpoſe. They finally declared that it was not to be found!!

mitted to prove things done in the preſence, and under the view of the Court itſelf.

The Court, after whiſpering ſome time, declared that the paper ſhould not at that time be entered on file, but that they would take it, and carry it a few days in their pockets, and at a convenient time would ſay whether they would formally receive it. The Chief Juſtice ſaid "*The Court has no objection to let the paper be. I'll put the paper in my pocket till the Court can ſee about it. We'll hear what the parties ha'to ſay before the Court's done. Ye ha'nt no objection I'ſpoſe to that, ha'ye? Heh!*"

The Court refuſed to appoint a particular day for hearing the motion for their receiving the paper; but they ſaid they would *ſee about it* before the riſing of the Court. They kept the paper in their poſſeſſion till the tenth day after the return of the verdict, when the motion was again brought before them, and they conſented to hear the arguments upon the ſubject. The Defendant's Counſel again repeated their objections to the paper's being received, or the Plaintiff's being ſuffered to ſay any thing more againſt the propriety of the verdict. The Plaintiff's Counſel inſiſted, that the verdict was incomplete, irregular, and abſolutely void of itſelf. They ſaid it had always been the uniform practice, and cuſtom of the Court, not to conſider a verdict compiete till the Jury had ſolemnly acknowledged it as their verdict, and perſiſted in it, after the Court had entered it in their minute-book. That ſuch was the practice alſo in the Supreme Court, where ſeveral verdicts were recollected to have been ſet aſide, by reaſon of ſome of the Jurors diſſenting to it after the Court had entered it on the minute-book: That in the preſent Caſe, ſeveral of the Jury had ſolemnly declared their ſaid diſſent to the verdict, before they were

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diſmiſſed from the cauſe; and it could not therefore be ſaid to be the verdict of twelve men.

Here the Chief Juſtice interrupted, and ſaid, "*What d'ye ſay, Mr. Greene? If I underſtand the matter right, the queſtion now afore the Court is, whether there ſhall be no more ſaid about the verdict, and whether or no the Court ſhall receive the paper. For my parts, I wiſh to do one thing to a time.*"

After this the arguments were confined to the queſtion of receiving the paper; and when the opinion of the court was taken the Chief Juſtice, after whiſpering a few minutes with the Court, ſpoke nearly as follows: "*'Tis the 'pinion of the Court the paper dont ought to be received in its preſent form. Ye may though make another motion to the Court an 'ye will, an the Court will hear ye.*"

The Counſel obſerved, that the four days from the return of the verdict had expired, which the law allowed for filing motions for ſetting aſide verdicts; and the Court, they well knew could not hear another motion upon the ſubject. They alſo obſerved, that they knew of no other form different from the one already decided on. They had ſet forth all the facts on which their motion was grounded, and it was impoſſible to draw a different form without miſſtating facts; they therefore informed the Court that they ſhould not trouble their honours with any more motions on the ſubject. Upon this the Chief Juſtice ſaid "*The Court's quite willing to keep a hearing motions as long as there's any thing to ſay.*" There was however nothing further ſaid; and the verdict was eſtabliſhed, and entered on record.

The following Certificates are preſented by two of the Jurors, for the purpoſe of publicly vindicating their own conduct in ſigning the verdict:

"I certify that I was a Juror in the Caſe of John Dorrance, Eſq. againſt Arthur Fenner, Eſq. tried at the December Term of the Court of Common Pleas in the County of Providence, 1801—That I with the other Jurors ſigned the verdict in the following words, "We find for the Defendant his coſt:"—My ſigning this verdict was owing wholly to the abſolute neceſſity at the time of my being immediately relieved from the cauſe. I was ſhut up with the Jury from 9 o'clock on Saturday evening till late in the forenoon of the Monday following, more then ſix and thirty hours, ſuffering under ſevere indiſpoſition from the pleuriſy, before we could be permitted to appear before Court. We had not then agreed on a verdict, and the Court inſiſted on our retiring again, for the purpoſe of agreeing, if poſſible. We again retired, and continued in debating upon the verdict, myſelf refuſing to ſign it in favour of the Defendant on the eight firſt Counts of the Declaration, till ſome time in the afternoon of the ſame day, when my indiſpoſition was encreaſing upon me, I was compelled, at all events, to get rid of the buſineſs. I therefore ſet my name to the verdict, with an intention of explaining myſelf to the Court when the verdict ſhould be delivered to them; and with an expectation of being able to prevent its operation as a verdict by expreſſing my diſſent to it, after it ſhould be read by the Clerk, and offered to the Jury on the ſtand for their acknowledgment. But when the Clerk read the verdict before the Court, and aſked the Jury if it was their verdict? The Court ordered the Jury to immediately retire from the ſtand. I at the ſame time declared my diſſent to the verdict,

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but was refuſed a hearing. Had not the Court compelled the Jury to ſuddenly depart, I ſhould have immediately told the Court my ſituation in regard to my health, my reaſons for ſigning the verdict, and my utter diſſent to its being recorded; as it was intirely againſt my opinion and intention.

NATHANIEL BAILEY."

"I certify, that I was a Juror in the Caſe of John Dorrance, Eſq. againſt Arthur Fenner, Eſq. tried at the December Term of the Court of Common Pleas in the county of Providence, 1801. That I with the other Jurors ſigned the verdict in the following words. "We find for the Defendant his coſt."—My ſigning this verdict was owing to the long time we were confined in the Caſe, and ſeeing no proſpect of being relieved by the Court, when we were called before them on Monday, late in the forenoon. At this time we had not agreed on a verdict, and the Court directed us to retire again, and agree if poſſible. We again retired and continued debating on the verdict, myſelf and Capt. Bailey refuſing to ſign it in favour of the Defendant, till ſometime in the afternoon of the ſame day, when being very much fatigued in debating on the ſubject I was compelled to ſign the verdict to get relieved from the buſineſs, with an expectation that there would have been ſomething ſaid by ſome of the Jurors that would have induced the court to reject the verdict.

GEORGE BURTON."

In the Case
ARTHUR FENNER vs. JOHN DORRANCE,
Commenced at the December Term of the Court of Common Pleas, in the County of Providence, A. D. 1801.

THIS was an Action of the Caſe commenced by His Excellency Arthur Fenner, Eſq. againſt John Dorrance, Eſq. charging the Defendant with having publiſhed a falſe and ſcandalous Libel againſt the Plaintiff, which appeared in the Providence Journal of the 6th of May, 1801. The Caſe was called for trial in the morning of the 21ſt day of the Term, and the 13th day of January, 1802. The ſame Jurors were firſt called who were originally called in the former caſe between the ſame parties, as ſtated in the former part of this publication. Naaman Aldrich, Nathan Dyer, James Hammon and Charles Low were challenged by the Governor, on the ſame grounds that they were challenged formerly; and the ſame arguments upon the challenges were repeated, excepting the obſervations of Mr. Dorrance's Counſel, that the ſame grounds for the challenge of Mr. Hammon did not exiſt as in the former Caſe; becauſe, as he was challenged for having made up a previous judgment of the Caſe, the ſame objection muſt certainly now equally applied to all the Jurors who heard the other Caſe, and were to decide in this alſo, for the ſame principles, facts and evidences were to be inveſtigated in this as in the other Caſe. The Court however diſmiſſed theſe four Jurors in the ſame manner as before. At the time

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the court adjourned to dine, the Jury was completed and conſiſted of the ſame Jurors as in the other caſe, excepting Nathaniel Bailey, who had, at the time the verdict in the other caſe was returned, obtained a temporary excuſe on account of his being unwell.—His place was ſupplied by *George Nicholas*, another of the drawn Jurors.

At the opening of the Court at three o'Clock, P. M. after Mr. Burrill had begun the opening of the Caſe on the part of the Defendant, Mr. Howell interrupted him, and challenged George Nicholas, a Juror. He ſuggeſted its having been diſcovered that Mr. Nicholas had publicly expreſſed his ſentiments upon the merits of the Caſe. He thereupon queſtioned the Juror on the ſubject. The Juror declared that to his recollection and confident belief, he had never expreſſed any opinion, or any thing whatever, to any perſon, concerning the Caſe, nor had he ever converſed upon the ſubject in any manner. He was almoſt entirely ignorant of the ſubject of the ſuit. He was then informed that the action was concerning a libel by Judge Dorrance againſt the Governor, which was publiſhed in a newſpaper; and was aſked if he had ever read the publication.—He anſwered, that he had never read the publication or heard it read. On being queſtioned, he declared he had no bias upon his mind that could poſſibly operate to prejudice or favour either of the parties: He obſerved, that he made theſe explanations merely to do away the inſinuations againſt his honour and rectitude, which implied that he had concealed his ſituation for the purpoſe of holding a place on the Jury to manage the intereſts of a particular party.—He deſired heartily to be releaſed from the cauſe; and as there exiſted, in one of the parties, ſcruples in regard to his competency, he conceived there was a ſtrong propriety in his being diſcharged.—BENJA-

MIN

BENJAMIN JENKS was then called, by the Governor, as a witneſs. He teſtified that he lived in the village of Pawtucket, in the neighborhood of Mr. Nicholas. That he (the witneſs) was one day, in the fore part of laſt May, at the time of the firſt appearance of Judge Dorrance's publication, at a place called *Poet's Corner*, in company with Abraham Wilkinſon, Timothy Greene, Samuel Slater and George Nicholas, the Juror: That ſome of the company talked about Judge Dorrance's publication;—ſome of them commended it, and ſome condemned it: That during this converſation, Mr. Nicholas ſtood by, ſaid nothing, and ſeemed to take but little notice of what was ſaid. At laſt Nicholas left the company, and juſt as he was going, one Bagley happened to be paſſing by. Nicholas ſpoke to Bagley, but ſo low, and in ſuch a manner, that the *witneſs could not diſtinguiſh a word that he ſaid*; but it *ſeemed* to imply as much as to ſay "*The publication was good enough for Governor Fenner; or ſomething to that purport.*" The Juror was aſked if he recollected the converſation ſpoken of by Jenks. He however declared himſelf abſolutely certain that no ſuch converſation ever happened; and that Jenks was totally miſtaken (to ſpeak the beſt of it) in every thing he had ſaid. He ſaid that Benjamin Jenks was a man with whom he did not aſſociate, and ſuch a converſation could not have happened without his remembering it.

TIMOTHY GREENE was called by Mr. Dorrance, and after taking his affirmation, was asked if he remembered any ſuch converſation in the preſence of Jenks. He ſaid that he did not; and ſaid he was perfectly ſure that no ſuch converſation ever happened in his (the witneſs') preſence. He added that Jenks was a perſon uniformly ſhunned by all the people whom he mentioned to have converſed with at *Poet's Corner*.

ABRAHAM

ABRAHAM WILKINSON alſo poſitively denied the poſſibility of any ſuch converſation's taking place in his preſence. He ſcarcely ever ſpoke to Jenks, and avoided his company as much as poſſible. He repeated the teſtimony of Timothy Greene in much the ſame manner.*

Timothy Greene, Abraham Wilkinſon, Sylvanus Brown, John Jenckes and Eliſha Olney, were all queſtioned reſpecting the general reputation of Benjamin Jenks in regard to *truth* and *veracity*. They all unanimouſly teſtified, that they were acquainted with him, and that he was generally conſidered in his neighbourhood as a man unworthy of belief, and as one who had but little regard to his own reputation.

Mr. Howell inſiſted on the witneſſes teſtifying to their opinion, whether Benjamin Jenks was to be believed when under oath. Some of the witneſſes heſitated in giving their opinion upon that point. Mr. John Jenckes, however, declared that he ſhould have no kind of confidence or belief in what he ſaid, whether he was under oath or not. He ſaid he had no kind of grudge againſt him, but he ſo well knew the man, as well as his character for truth, that he did not ſcruple to pronounce him totally unworthy of belief. Mr. Howell was now called on to produce ſome perſon to ſpeak in favour of Benjamin Jenks. He however produced nobody.

The Governor's Counſel now inſiſted that Mr. Nicholas ought to be removed from the Jury, as Benjamin Jenks had ſeen him betray geſtures, and

* Slater and Bagley, who were not preſent at the trial, have ſince declared poſitively that no ſuch converſation or meeting ever happened at Fry's Corner, or any other place to their knowledge.

heard him mutter unintelligible words, which ſeemed to be unfavourable to the Governor. Mr. Dorrance's Counſel obſerved, that they hardly knew what arguments to uſe againſt the motion for removing the Juror. There were ſuch groſs and glaring marks of falſhood in what Benjamin Jenks had ſworn to, and ſuch palpable grounds for preſumption, that he was procured as a ſuitable man to ſwear Nicholas off the Jury, that they conceived the Court would not heſitate in pronouncing it wholly unworthy of their regard. Some time late in the evening, the Court were called on for their deciſion. They whiſpered an unuſual length of time, till at laſt the Chief Juſtice ſpoke aloud, in nearly the following words: — "*Why I do'na what to say, n't I. It ſeems there's not quite evidence enough againſt the* JURIER *to diſmiſs him, but ſome of the Court ſeems to think ſo for all. They ſeem to want him off. For my part, I'm for having it right. I do'na what's beſt to do. Governor Fenner, I would aſk you if any of the Wilkinſon's, has ever affronted you, or the like o' that; in particular the one here?*" Hereupon the Governor roſe up, and talked to the Court in a voice ſo low that it could not be diſtinctly heard by the audience. Part of his information however amounted to ſay that Oziel Wilkinſon, father of the young gentleman preſent, was generally oppoſed to him (the Governor) in public matters. — Upon this Judge Martin queſtioned the Juror, whether he was not ſometimes employed by ſome of the Wilkinſons, or ſome of their connections. The Juror anſwered, that he had ſometimes worked in the buſineſs of his trade, a houſe-carpenter, for Samuel Slater: That Samuel Slater married the daughter of Oziel Wilkinſon, who was father to the young man preſent in Court. He was then aſked if he had ever converſed with Mr. Slater reſpecting the caſe on trial. He anſwered that he had not; and that he did not recollect to have ever heard Mr. Slater, or

any

any of the Wilkinſon's ſpeak concerning the caſe.—The Court at length came to a deciſion. After whiſpering a few minutes, the Chief Juſtice ſaid, "*Aye, the Court thinks it beſt that the* JURIER *come off.*"

By the voluntary information of George Burton, a Juror, to the Court, that he had expreſſed an opinion of the merits of the caſe to certain perſons, he was alſo excuſed by the Court. Two Jurors were thereupon wanting to ſupply the places of Nicholas and Burton, when the Clerk called Nathaniel Bailey, who had officiated as Juror in the former caſe, and was now again preſent. But the Chief Juſtice ſaid, "*The Court has excuſed all the drawn* JURIERS, *and I don't ſee as how Mr. Bailey can be one now.*" A *venire* was now ordered, out of which the Jury was filled up. Whereupon the Counſel for Mr. Dorrance obſerved, that from the manner in which the Jury had been empannelled, and the ſentiments which the Jurors were known to entertain, there was no hope of a fair trial. They therefore SUBMITTED JUDGEMENT and appealed.

At the opening of this Trial, Judge Dorrance read before the Court a propoſal to ſubmit this Cauſe together with the former one, "*to the determination of either three of the Judges of the Supreme Court of the State of Maſſachuſetts or Connecticut, or to any three good men living out of this State;*" Mr. Dorrance agreeing at the ſame time to pay all the Coſts up to the time of the propoſal.—To this propoſal the Governor utterly refuſed to accede. Mr. Howell obſerved that he ſhould not endeavor to prevent an amicable accommodation between the parties; but for Governor Fenner to remove the cauſe from among his affectionate conſtituents to the State of Maſſachuſetts or Connecticut, would, in

his

his opinion, be an extremely impolitic ſtep. As to the Governor's going to Connecticut, Mr. Howell obſerved, that he would make a "*pretty figure.*"—He ſaid, "*Why your Honours know that Governor Fenner is uniformly the ſcorn and deriſion of the people in Connecticut. Ha! Their Poet Laureat, as your Honours have ſeen in the newſpaper, has doggreiled him off with peculiar ſcurrility, about white-waſhing old Fenner's ſmoaky coat.*"—In regard to the Judges of the Supreme Court in Maſſachuſetts, Mr. Howell ſaid, "*The Judges of the Supreme Court of Maſſachuſetts I am perſonally acquainted with. They are, like thoſe of Connecticut, what are called good Federaliſts. They muſt of neceſſity be biaſſed towards the intereſts of their party. Why my Federaliſm has been ſo much doubted, that I ſhould not myſelf conſent to ſubmit a cauſe of my own to the Judges of the Supreme Court of Maſſachuſetts. Why are all theſe Federaliſts particularly pitched upon to decide in this cauſe? Are they willing to ſubmit the cauſe to Mr.* Jefferſon *and Col.* Burr?" Mr. Dorrance ſaid he would with all his heart, ſubmit the cauſe to Mr. *Jefferſon* and Col. *Burr.* This it was ſaid on the other ſide would be improper. Mr. Dorrance then propoſed the Judges of the Supreme Court of Pennſylvania, or any State other than Rhode-Iſland; or even any three reſpectable diſintereſted men of Rhode-Iſland.—It was all however totally REJECTED.

FINIS.