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REPORT

*W. L. Brown
S. G.*

OF THE TRIAL OF AN ACTION

CHARLES LOWELL

921

AGAINST

JOHN FAXON AND MICAJAH HAWKS,

DOCTORS OF MEDICINE, DEFENDANTS,

For Malpractice in the capacity of Physicians and Surgeons,

AT THE

SUPREME JUDICIAL COURT OF MAINE

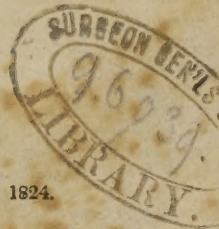
HOLDEN AT MACHIAS

FOR THE

COUNTY OF WASHINGTON—JUNE TERM, 1824.

Before the Hon. NATHAN WESTON, Jun.

JUSTICE OF THE COURT.



PORTLAND :

PRINTED FOR JAMES ADAMS, Jr.

BY DAVID AND SETH PAINE.

1825.

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DISTRICT OF MAINE, ss.

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L. S. BE IT REMEMBERED, That on this sixth day of April, in the
+++++ year of our Lord one thousand eight hundred and twenty five,
+++++ and the forty-ninth year of the Independence of the United States
of America, Mr. JAMES ADAMS, Junior, of the District of Maine, has deposit-
ed in this Office, the title of a Book, the right whereof he claims as Proprietor,
in the words following, viz :—

“REPORT of the trial of an action *Charles Lowell*, Plaintiff, against *John Faxon*
“ and *Micajah Hawks*, Doctors of Medicine, Defendants, for Malpractice
“ in the capacity of Physicians and Surgeons, at the Supreme Judicial Court of
“ Maine, holden at Machias, for the County of Washington—June Term, 1824.
“ Before the Hon. Nathan Weston, Jun. Justice of the Court.

“ Portland : Printed for JAMES ADAMS, Jr.

“ by David and Seth Paine, 1825.”

In conformity to the Act of the Congress of the United States, entitled, “ An
“ Act for the encouragement of learning, by securing the copies of Maps, Charts,
“ and Books, to the authors and proprietors of such copies, during the times
“ therein mentioned ;” and also, to an act, entitled, “ An Act supplementary to
“ an act, entitled, an act for the encouragement of learning, by securing the cop-
“ ies of Maps, charts, and books, to the authors and proprietors of such copies,
“ during the times therein mentioned, and extending the benefits thereof to the
“ arts of designing, engraving, and etching historical and other prints.”

J. MUSSEY, Clerk of the District Court of Maine.

▲ true copy as of record :

Attest, J. MUSSEY, Clerk D. C. Maine.

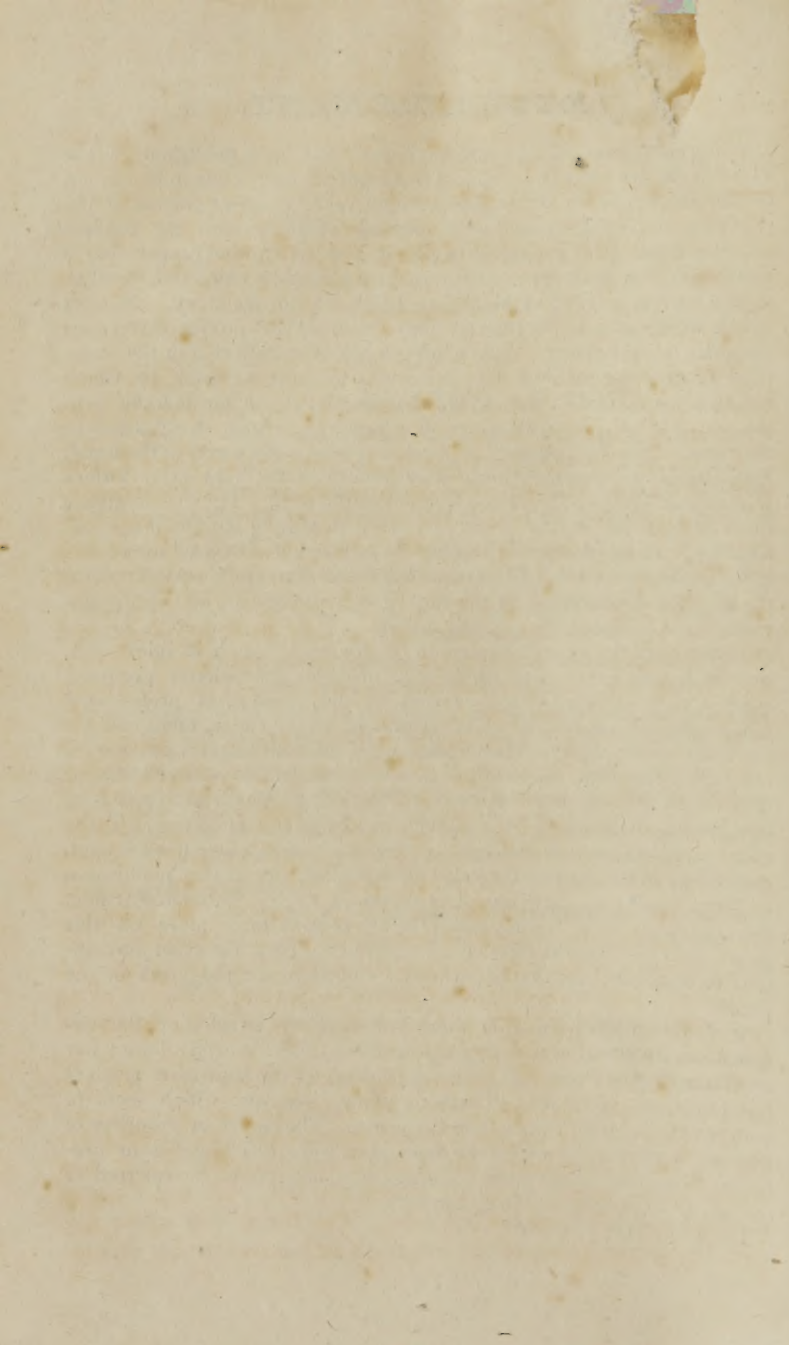
ADVERTISEMENT.

A partial account of this case having recently been published by the Plaintiff, in the form of an appeal to the public, purporting to be an authentic Report of the Trial, presenting a very imperfect portion of the evidence, and accompanied with unusual censures upon the conduct of the presiding Judge on that occasion, it seemed to be proper that a more complete statement of the evidence should be exhibited, together with a correct relation of the charge delivered to the Jury. Minutes of this were taken at the time and have received the proper corrections previous to publication. The evidence has been collected in the same manner from the minutes of the testimony taken at the trial, to which recourse could be had, as carefully as possible; and a considerable proportion of it remains in the shape of depositions, which were used in the case. That of Joshua G. Lowell is given as delivered on the stand, and may be compared with the deposition given by him at a former period contained in the publication of the Plaintiff. The arguments are derived from the original sources, reduced to writing with as much reliance as can be placed on the general recollection of counsel after some lapse of time; and it is to be regretted that the engagements of one of the gentlemen concerned in the cause have prevented him from contributing to complete the present report.

In the remarks which were made by the counsel on both sides without much reservation, and which were probably considered pertinent in their view, in relation to the testimony and opinions of professional gentlemen, whose evidence was introduced in the cause, there can be no doubt of the respect entertained for the eminent talents and virtues of those distinguished individuals, whose opinions are commented on or controverted. The extraordinary collision of sentiment and opposition of authority exhibited on this subject, will probably remain among the memorabilia of medical history. As the action was rested not less upon the charge of negligence than the want of skill, and as the publication of Mr. Lowell lays particular stress upon the neglect of the defendants, the arguments on both sides may possibly seem to turn more on this point, than the general view which might be taken of the case, may appear to demand; but that is perhaps a subject for the judgment of the public.

It would be idle to imagine there is no mystery enveloping the circumstances respecting the supposed luxation of Mr. Lowell's limb; nor any facts which it may not yet be interesting for the student of medical jurisprudence to explore. These are points perhaps, which seem to concern the surgeon rather than the jurist. The justice or propriety of the result however, by which the defendants were discharged from professional liability under these circumstances, must now be referred to the impartial opinion of the community.

Portland, May 15, 1825.



REPORT OF THE CASE.

The action came on for trial at the Supreme Judicial Court holden at Machias, before Mr. Justice WESTON, on Tuesday, the first day of the term, June 30, 1824.

CHARLES LOWELL, the Plaintiff, declared against JOHN FAXON and MICAJAH HAWKS, the Defendants, as having been engaged and employed by him in the capacity of Physicians and Surgeons, to reduce his left hip joint, which had been dislocated on the 7th September, 1821; and alledged that they undertook to do it; but proceeded so carelessly and managed with such ignorance, unskilfulness and negligence that they failed to reduce, and the plaintiff thereby lost the use of, the limb, with other injuries, &c. laying the damages ten thousand dollars.—The defendants pleaded severally not guilty.

Mutual challenges were made on both sides to the jurors, as they were called, on account of favour or prejudice; in consequence of which several were excluded, among whom were all the jurors summoned from Eastport, the place of Doct. Hawks' residence, who were objected to by the plaintiff's counsel. Some time was consumed in canvassing these objections, until a jury was finally empannelled and the trial proceeded. It occupied the two succeeding days and terminated on Thursday, by the disagreement of the jury, and the dismissal of the action by the advice of court and consent of parties.—Several questions of an incidental character arose and were disposed of in the course of the trial, some of which are noticed.

Counsel for Plaintiff, Messrs. Greenleaf, Wilson and Orr;—for Defendants, McGaw, Daveis and Crosby.

Mr. GREENLEAF for the Plaintiff opened the case to the jury. On the 7th of November, Mr. Lowell was riding a young and restive horse, which suddenly reared and fell. He was flung on his back and fell upon his left side. The horse fell upon him with his weight inside of the left thigh and occasioned a disloca-

tion of the left hip joint. The defendants were called in, first Faxon, then Hawks; undertook to reduce the dislocation, and failed. The patient continued in great uneasiness and pain for four or five days. At the end of this he sent for Dr. Hawks. But Dr. Hawks discovered so much indifference about the case, that the care of it fell for a time entirely on Dr. Faxon. Whether this neglect was from carelessness of the fate of Mr. Lowell, or any feeling of a professional sort towards Dr. Faxon, with a view to throw the blame of the consequences on him, it was in either case equally injurious to the plaintiff.

On the 12th September, Dr. Hawks was again sent for by the plaintiff. On the 22d, he came and made a short visit. The last of September or first of October Dr. Hawks called and examined the hip; pronounced that it was doing well; lulled him into false repose with the hope that he would soon be better; and left him with directions to send for him when he was wanted. On the 23d of October he came again and repeated his examination; at this visit he first discovered the leg to be longer, as it will appear in fact to have been from the first. But notwithstanding this, he still neglected to take the proper means to remedy it. Eight or ten days after this Dr. Hawks was again requested, and again promised, to come unless some uncommon accident prevented. But he still failed to make his appearance. On the 19th of November he paid the plaintiff a transient visit; and being then sensible that the injury was not cured, engaged to come again the next day; but he never did.

The ensuing December the plaintiff becoming able to take a voyage to Boston, there underwent an examination of the learned faculty and submitted to an operation under their superintendance at the most celebrated hospital in this part of the country. The result of this examination established the fact that a dislocation existed—and the effect of the experiment showed that it remained unreduced.

Should it be set up in defence of Dr. Hawks that this case did not come within his usual sphere of practice, which it might be pretended was principally confined to Eastport, it would be shown that this was the ground on which he was accustomed to practice. If it should be pretended again, that he was under engagements at Eastport, it would appear that he might easily have procured other attendance upon his patients there during his merely temporary and occasional absence. If the great name of Dr. Smith should be made use of on this occasion to shield the defendant

from merited damages, by an imaginary opinion that there was no dislocation whatever, it would be abundantly manifest that the learned doctor was mistaken—and that such a dislocation unreduced must continue to the end of existence. If it should be pretended further, that the bone was actually once set, but by some smart got out again, not only the probability but the impossibility of such an accident would be demonstrated by the structure of the bone—the power of the muscles—and other circumstances.—In fine it would be proved satisfactorily that the defendants utterly omitted to do that duty which they owed to the plaintiff; and for which he only sought to be indemnified by this action.

JOTHAM G. REYNOLDS deposed that he was the owner of the horse on which Lowell was riding, and was present when he received the injury. Lowell fell on his back; the horse fell obliquely across his thighs, and other parts of his body, so that his weight was more on one hip than the other.

JOSHUA A. LOWELL testified that he was clerk to the plaintiff in 1821, when he had his hip dislocated—He was called by Mr. Stearns into the room, where they were trying to set it. There were several persons present. The witness proceeded to give an account of the operation performed by Dr. Hawks with Dr. Faxon. Mr. Lowell was placed across the bed. A sheet was put round the well limb, and a towel tied round the knee of the lame one. Several persons took hold of the sheet, and several hold of the towel, extending in contrary directions. The limb pointed off in an awkward position. They first extended it, and then carried it in toward the other. Dr. Faxon had hold of the end of it by the ancle, carrying it in: Dr. Hawks was feeling for the head of the thigh bone.—When I first came I found Dr. Faxon trying to set the limb.—When Dr. Hawks arrived he first examined the hip; had some conversation with Dr. Faxon; went out a short time with him and returned. The examination was not more than four or five minutes. Lowell enquired of Dr. Hawks respecting his situation. Dr. Hawks answered that he thought the hip bone was dislocated, and the socket a little fractured; and said that they would set it; to this Dr. Faxon assented. They were not more than ten or fifteen minutes about it. They then said it was set and well set. Dr. Hawks assisted occasionally on taking hold of the end of the limb and the towel and bearing in towards the well limb. After this they put a handkerchief round both limbs. I saw no difference in the length of the limb. Dr. Faxon said, Lowell must lie here three

days. Dr. Hawks said "three days? you must lie there three times three: you must lie fourteen days." Lowell asked Hawks if it would not be necessary for him to come over next morning. Dr. Hawks said no, that Dr. Faxon would be there and he would give him particular charge how to proceed. Dr. Faxon was then in another room. When he returned, Dr. Hawks told him, that he must bleed him next day; for he had not bled very well; and said something about medicines. Dr. Faxon and Dr. Hawks both said that Lowell was doing very well and would not be detained from business but a short time.—Dr. Faxon called next day and was in occasionally and frequently at first; I was not knowing to his making any examination. He prescribed and brought liniments.—Lowell was in great pain, especially the fourth or fifth day; and complained and said he was afraid his hip was not set. On the 5th or 6th day I sent over by Mr. Brooks to tell Dr. Hawks, that my brother was in great pain and wished him to come immediately. He came on the fifteenth day after the operation. Lowell kept confined to his bed fifteen days after the injury. He got up immediately before Dr. Hawks came, to have his bed made. He rested on my shoulder and the bed post while it was made. I was not present at the interview. Dr. Hawks sent medicine soon after his return and at one other time. He kept his bed three days after that; making eighteen days. Ten days after this (1st of October) Dr. Hawks came the third time. He was not sent for at this time to my knowledge. I was present. I had hired another person to take care of the Store, and attended exclusively on my brother. This time Mr. Lowell stood up and rested on my shoulder and asked Dr. Hawks the cause of the hollow of his hip. Dr. Hawks did not examine it. It was apparent outside of his trowsers. Dr. Hawks said it was a natural consequence, and when he gained strength it would fill up. Dr. Hawks said he was doing well. That his case was an important one. Every thing was right then, and he would not be detained from his business more than a few weeks; but that he must be careful. It would be better that his house should burn down about his ears, than that he should make one mistep. Dr. Hawks told Lowell to write to him; and he would come or send medicines. He took hold of the limb and swung it, and said it was all right. I saw no comparison of the length of the limb. This lasted five or six minutes. He appeared to be in a hurry.—On the 23d of October, he came over the fourth time; and tarried then but a short

time. When he came, he observed, that he wanted to ask my brother a few questions. My brother said he wished to ask a question. "What is the cause of the difference in length between the limbs?" Hawks did not make an immediate answer; he waited for some minutes; and said it looked as though it was not set; that he was in a great hurry, and would be over again next day. His observation was either that it looked as if it was not set or was not in its place; and said "to-morrow I will come and give it a thorough examination."—Next time, eight or ten days after, saw Dr. Hawks at Eastport,—about the 3d of November; I told him my brother was anxious to see him; that he was in considerable pain. Hawks said he was so driven that he could not possibly leave; but he said that he would come over that afternoon. I asked him his opinion; he said he was afraid the bone was not set. He said, that he would come over that afternoon, unless the witches prevented. He came over on the 19th of November, with Dr. Whipple. I was not present.

Mr. Lowell's family was absent at this time. I attended on my brother carefully. The length of the limb and appearance continued the same; we did not discover the increased length till 23d of October. The injured leg very soon after the dislocation contracted, and my brother complained of pains in his hamstrings; this took place within a few days, and before he left his bed. He lay crooked up in bed with the bandage on—the limbs eight or ten inches apart—as to this I am not quite positive. The operation was performed in a small room. I saw no comparison of limbs at that time. After the operation I went to the boat. Hawks said Faxon was an old quack; that he was not fit or he would not trust him to doctor a goose, or something to that amount. I did not recollect this on the former trial nor in giving my deposition. It arose in my mind after hearing Winslow.—The witness being questioned concerning the first operation performed by Dr. Faxon, stated that the plaintiff was laid lengthwise of the bed; a ball of cloth was placed between the thighs; the injured limb was carried out; and the ball served as a fulcrum for the leg to pry over, and to be made use of as a lever. Dr. Faxon worked some time and said he believed it was set, and asked me if I did not think it was not. I said I could not tell. Coffin said he thought it was not; and advised to send for Dr. Hawks. Coffin and I went in another room, and he advised me to send for Dr. Hawks. I asked him why he did not advise Dr. Faxon so. We went in to the room where my brother was and

asked him about it. He mentioned it to Dr. Faxon and the Doctor consented to it.

Cross Examination.—The plaintiff lived at Lubec, near Dr. Faxon. Dr. Faxon was his family Physician. After Dr. Hawks and Dr. Faxon consulted, Dr. Faxon asked what part he should take in the operation? Dr. Hawks answered “what part would you like?” Dr. Faxon replied, a second hand’s birth.” Several persons assisted. Dr. Hawks directed. Dr. Faxon took hold of the foot. Dr. Faxon called frequently; he called two or three times a day for several days. The plaintiff was moved into another house before the 23d of October. I never testified this before. He was moved by walking; and went considerable distance. My brother made no complaint of Dr. Faxon; but said that he had never examined. When the operation was performed several observed there was a grating. Dr. Hawks said that was the noise of the bone going in to the socket. Dr. Hawks asked my brother whether it felt easier or more natural. He answered yes.

I did not hear my brother ask Dr. Hawks to attend further, nor request him to attend as a physician. He proposed to send a boat. Dr. Hawks never came with Dr. Faxon; always alone. Dr. Hawks did not make any new engagement. I have been reading law and have a power of attorney.—I have taken several depositions for my brother by a power.

ELIJAH STEARNS was present at the operation and assisted. Dr. Hawks and Faxon appeared to act in concert. The hip was pronounced to be set. The room was very small. He and Coffin and Dr. Hawks came away about together. Dr. Hawks was often at Lubec. Never knew him refuse to attend on any occasion there.

JACOB WINSLOW went for Dr. Hawks. Dr. Hawks made no objection; but came without hesitation.—Afterwards when he was returning, Dr. Hawks said that the bone was not broke, but out of joint; and that it was set, and would probably be well soon. He said he would as soon have a hog or a sheep, as Faxon. He did not say that he should attend Lowell; did not hear him say he had engaged to come again.

JOSEPH SUMNER was present at the operation; noticed no comparison of the limbs; did not observe any hurry; was satisfied with Dr. Hawks’s manner of proceeding. Dr. Hawks handled the knees and moved them one way and another. He did not intimate anything but that Lowell would get well. Dr. Hawks has

practiced in Lubec. He had a consultation with Dr. Faxon in 1818, as appeared by a bill.

WILLIAM M. BROOKS.—One Sunday in September, Lowell desired him to request Dr. Hawks to come over. He delivered the message.

ERASTUS RICHARDSON testified, that he and other physicians at Eastport would have attended on Dr. Hawks's patients, if desired in his absence. Dr. Hawks was in the habit of going to Campo Bello and Lubec on occasion. In most cases of injury to the muscles the leg would be shorter; but not always. Lowell's lameness was caused by defect in the hip; he formed his judgment from Lowell's manner of walking. Lowell did not offer to show his limb. Dr. Richardson said, he was not friendly to Dr. Hawks.

Interrogatories proposed to **JOHN C. WARREN, JAMES MANN, THOMAS WELSH, DAVID TOWNSEND** and **ROBERT HUGHS**, by the plaintiff :

Question 1st. Did you make an attempt last December to set or replace the head of my thigh bone, which had been displaced from its socket,—or were you in consultation on my situation, previous to any operation in your presence on me,—or were you present, or did you take any part in an operation for the above purpose?

Question 2d. Who were the persons with whom you consulted?

Question 3d. What was their opinion of my then situation and real injury—and were they unanimous in that opinion?

Question 4. Did their opinion coincide with yours—and what was yours, and is your opinion of my case?

Question 5. If a surgeon should undertake to set a dislocated limb of this kind, and should use no greater force than could be applied with the naked hands, without anything fastened about the parts, to enable them to hold on, &c.—and should not succeed at all, would you say that he used the means, or acted with the skill and management that a surgeon ought?

Question 6. Before a surgeon should give up in such a case, or say that the limb was set, when it was not, ought he not to bleed the patient, or use other means of relaxation, and then make another effort?

Question 7. If the limb in the case like the above, hung off from the body in a very awkward and unnatural position, and could not be moved in towards the other limb, without appearing to give

extreme pain, ought not a surgeon of common or ordinary skill, to know from that circumstance, as well as from the circumstance of the injured limb being three inches longer than the other, that it could not be in its proper place ?

Question 8. Is not the return of the thigh bone to its original socket usually accompanied with so loud a noise, that it must be heard by all in the room, and could not be mistaken, especially by a prudent and discerning surgeon ?

Question 9. Would not a common caution and attention require the attending surgeons to examine the limb occasionally—especially if the patient should complain of much pain, long after the injury ?

Question 10. Would not a surgeon of common and ordinary skill and care have compared the length of the injured limb with that of the other ?

Question 11. Is it not a general rule, that an injured limb like the above named, being several inches longer than the other, is an indication that such limb is not in its proper place ?

Question 12. In attempts to set and reduce a dislocated limb of this kind, is not a fulcrum, or something to answer its purpose, necessary ?

Question 13. If a person whose hip or thigh bone was dislocated, as mine is, and set in three hours after the injury, should lay on his back 14 days without turning, having his knees tied together, would it be in his individual power to get the bone out of the socket again, while in that situation,—or to make the necessary extension of the limb to lodge the head of the thigh bone three inches below the socket where mine is ?

Question 14. Is not the natural action and re-action of the muscles and cords about the hip, such as to require something of a relaxing nature, and a powerful force to be applied in order to extend the limb three inches, or even one inch, beyond its natural length ?

Question 15. If it were possible for one in the situation described in the thirteenth question, to get the bone out of the socket again, would not those strong cords and muscles immediately contract and draw the limb up, instead of causing such an extraordinary extension as to make it three inches longer ?

Question 16. Is my case anything more than a simple luxation ?

Question 17. From your examination of my case, do you think that the head of the thigh bone of my injured hip or thigh is lodged in the ischiatic notch ?

Question 18. Would it not be necessary to extend my leg considerably in length before the head of my thigh bone, last named, could be removed from its present lodgement ?

Question 19. In December, 1821, did you make an attempt to set or replace the head of my thigh bone which had been dislocated from its socket by a downward luxation ?

Question 20. Did you then, or do you now, consider my case any other than a simple luxation ?

Question 21. When the hip is disjoined, is not the difference in the length of the injured limb and the well one so great as to be a visible and decisive proof of dislocation existing ?

Question 22. If two surgeons were called in to see a person whose hip has been disjoined only two or three hours before, and they should operate—say that they had set the bone, and should subsequently attend the patient for the space of six or seven weeks, and in that time the patient should repeatedly tell them that he was in great pain and that he feared something was wrong; and they should at their several visits say that all was right, and that he was doing well,—but it should eventually prove that the bone was all the while out of joint, would you not say, that it was a strong mark of gross ignorance, or inattention on the part of the surgeons, that they had not discovered the true situation of the limb before.

Cross Interrogatories put to JOHN C. WARREN, M. D. and the other deponents on the part of the Defendants.

Interrogatory first. What is your profession or business, and how long have you been engaged in it ?

Second. Have you ever reduced a luxated hip joint ? and how many ? did you ever see a downward and inward luxation of the hip joint ? did you reduce it ? did you ever know any one reduce such a luxation ?

Third. Do you know Charles Lowell, of Lubec ? if you do, please state how, and when you became acquainted with him.

Fourth. Was Lowell's hip joint dislocated when you saw him—if so, what were the reasons that induced you to think so ? please state particularly and minutely all the facts and appearances respecting it ?

Fifth. Do you not think it possible you may have been in an error in your opinion in the case ?

Sixth. Have you never before in the course of your professional practice made as great a mistake as it would be to pronounce Lowell's hip joint dislocated when it was not ?

Seventh. Do you not consider Lowell's case of such a nature as that medical men of high standing in the profession would be likely to differ in opinion respecting its present situation, or at the time you saw him—that is whether it then was or now is dislocated or not?

Eighth. Would not a luxation of the joint, or fracture of the lower edge of the acetabulum, the necessary violence done to the parts in producing these and replacing the bone, together with a consequent rheumatic affection of the limb, hip and pelvis, attended with some distortion, particularly of the latter, be alone sufficient to account for all the appearances in Lowell's case, when you saw him, without supposing the head of the bone out of its proper socket.

Ninth. May not the soft and boney parts about the hip joint, especially in a muscular man, be so injured as to render it impossible for the most competent surgeon, some months after the injury, to judge what was the actual situation of the patient, or what ought to have been done for him at the time of the injury?

Tenth. Did you make any attempt to relieve Lowell's disability? if so what were the means made use of, and what was the result? please to be minute and particular.

Eleventh. Do you consider dislocation pullies necessary in reducing luxations of the hip joint? what proportion of cases can be, or are reduced without them? do not medical men differ in opinion with regard to their being used at all? and have you never known or heard of a case or cases being successfully treated by the hand after the pullies had failed?

Twelfth. Have you never known a case of dislocation where the Surgeon first called, declared the pullies necessary to reduce it, and while preparations were making therefor, another man stepped in and reduced it by hand? and who was the surgeon first called in the case?

Thirteenth. Do you think any blame should attach to a Surgeon for not using the pullies, when he succeeded perfectly well in reducing the dislocation without them?

Fourteenth. If you are of opinion that Lowell's hip joint is now out of place, do you not deem it possible that it might have been reduced at the time of the original injury, and afterwards displaced by accident or misconduct of the patient, and this done without the knowledge of the Surgeon, and without his being able to prove the fact in a Court of Justice?

Fifteenth. Is it customary for a surgeon after once reducing a luxation, to watch the patient night and day to prevent such accident or misconduct, or to take with him in his visits a credible witness to prove the correctness of his own conduct and guard himself against the malice and intrigue of a litigious patient ?

Sixteenth and Seventeenth Interrogatories in the original, *crossed out.*

Eighteenth. What weight would you give to the opinions of common people standing by or assisting to reduce a dislocated hip, as to the professional skill with which the operation was performed, or are people in general competent to describe the means used by a Surgeon to reduce a dislocated hip ?

Nineteenth. What is ROBERT HEWES's character as a Surgeon ?

Twentieth. Do you know any other matter or thing advantageous to the Defendants, or either of them ; if so, please to state the same as particularly and minutely, as if thereto specially interrogated.

Answers of Witnesses taken by LEMUEL SHAW, Esq. Commissioner, by virtue of a Commission issuing out of the Court of Common Pleas, for the County of Washington.

THOMAS WELSH of the City of Boston, in the County of Suffolk, and Commonwealth of Massachusetts, Doctor of Medicine, to the several interrogatories and cross interrogatories annexed to said Commission, doth answer and depose as follows :

1. To the first he saith, that some time in December last, he was called in his capacity as consulting Physician of the Massachusetts General Hospital, in this place, to consider the case of Mr. Charles Lowell, the person now here present ; that I was present at such consultation when an attempt was made to set or replace the said Lowell's thigh bone, and that he, this deponent, examined the same both before and after such attempt was made.

2. To the second he saith, that the Gentlemen present at such consultation were Dr. JOHN C. WARREN, Dr. WILLIAM SPOONER, Dr. DAVID TOWNSEND, Dr. JAMES MANN, and he thinks several others were present, but whose names he does not now distinctly recollect.

3. To the third he saith, that the real injury which said Lowell has sustained, was the dislocation of the head of the thigh bone, downward and backwards ; this was the opinion of the gentlemen engaged in the consultation, and in this opinion they were unanimous.

4. To the fourth he saith, that their opinion did coincide with his own respecting Mr. Lowell's case ; that his own opinion then was and still is as expressed in the last answer.

5. To the fifth he saith, that in the case stated, he should not suppose that proper means had been used, and that the patient had not had justice done him.

6. To the sixth he saith, that in such case bleeding and other means of relaxation certainly ought to be used.

7. To the seventh he saith, that in the case stated in this question, a Surgeon of ordinary skill, must, in his opinion, know that the bone was not in the proper place.

8. To the eighth he saith, that in all cases in which he has been present where a thigh bone has been restored to its place, it has been attended with a sound sufficient to indicate such restoration ; he is also of opinion that a Surgeon of ordinary skill, must be able to judge from sound, when the bone is replaced.

9. To the ninth he saith that in ordinary cases, after so severe an injury as the dislocation of a hip, he should think it the duty of a prudent Surgeon to examine the injured part occasionally, particularly as other diseases, sometimes of a severe and dangerous character are caused by such an injury and by the strain and violence done to the adjoining parts, by the means necessary to restore the limb ; and he should think it still more the duty of a prudent Surgeon to make such examination when the pain should be severe and of long continuance after the operation.

10. To the tenth he saith, that a Surgeon of ordinary skill and care would undoubtedly compare the length of the injured limb with the other, and it is usual to do so both before and after the operation.

11. To the eleventh he saith, that the injured limb being longer than the other is a manifest indication that the bone is not in its proper place.

12. To the twelfth he saith, that in such cases great power is necessary, together with a judicious application of it ; and something in the nature of a fulcrum, depending upon the direction and position of the dislocated bone, is necessary.

13. To the thirteenth he saith, that in his opinion, if a dislocated hip or thigh bone were restored to its place, it would not be possible for a patient to displace the bone again whilst lying in bed with his knees confined by a bandage.

14. To the fourteenth he saith, that means of relaxation together with the application of great force, are necessary to extend the limb.

15. To the fifteenth he saith, that as he before answered, he cannot conceive it possible for the bone to get out of place in the case stated ; but it is generally true, that the natural effect and operation of the muscles is to cause the limb to contract, and if a bone from any cause were wholly out of its socket, without lodging upon any part of it, the natural tendency of the muscles and ligaments would be to contract and shorten the limb.

16. To the sixteenth he saith, that the case of Mr. Lowell was that of simple luxation ; there are others, which it is unnecessary to particularize.

17. To the seventeenth he saith, that he is of opinion that the thigh bone is so lodged.

18. To the eighteenth he saith, that in the present position of that bone, he thinks it would be necessary very considerably to extend the limb in order to remove it from its lodgment, and that is what was attempted to be done in Mr. Lowell's case ; but after applying great force we were of opinion that the object could not be effected and that it was best to desist.

To the Cross Interrogatories he answers as follows :

1. To the first cross interrogatory he saith, his profession is that of a Physician and Surgeon, and that he has been in the practice of it ever since the year 1774.

2. To the second he saith, that he hath never himself reduced a luxated hip joint, but hath been present and assisted at such operations ; he has seen a downward and inward luxation of the hip joint. He thinks he has known two cases, in one of which, an attempt to reduce such luxation failed, and the other succeeded.

3. To the third he saith, that he does know the said Charles Lowell, that he first saw him at the General Hospital in this City about a year since, when he was called to a consultation on his case as above stated.

4. To the fourth he saith, that the said Lowell's hip joint was then dislocated ; I was led to this belief by a variety of facts and appearances all concurring in the same conclusion : some of which were that he could not regularly move the limb, that the limb was considerably longer than the other, the head of the bone was perceived and felt to be out of its socket, and the general appearance of the limb.

5. To the fifth he saith, that he never hath altered the opinion which he first formed of the case ; that he is still of the same opinion, and thinks that time hath confirmed it.

6. To the sixth he saith, that he considers the question altogether an improper one.

7 To the seventh he saith, that the case was not in his opinion of such a nature, that men eminent in their profession and of considerable experience would be likely to differ in opinion respecting it ; on the contrary he is of opinion, that it was of such a nature as to render it easy to determine what the real cause was, and whether the joint was dislocated or not.

8. To the eighth he saith, that in his opinion they would not.

9. To the ninth he saith, no.

10. To the tenth he saith, that an attempt was made at the Hospital as before stated, to reduce the luxation in question ; the means were the application of powerful mechanical force to extend the limb, but it proved ineffectual.

11. To the eleventh he saith, that he does consider the use of pullies necessary in reducing luxations of the hip joint and cannot say what proportion of cases, or whether in any, reduction can be effected without them ; he is not aware of any difference of opinion among eminent and experienced practioners upon this subject, and has never known a case successfully treated by the hand after the failure of the pully.

12. To the twelfth he saith, that he hath never known such a case.

13. To the thirteenth, No.

14. To the fourteenth he saith, that he refers to his answer to the thirteenth direct interrogatory, in which this question is answered.

15. To the fifteenth he saith, (the said Lowell being present and objecting to this question and also to the three succeeding questions, and to any and all answers that may be given to them upon the ground of their being improper questions) that is a question he does not feel called on to answer.

16. To the sixteenth he saith, that it is a question he cannot properly answer. As to the latter part of the question, he saith that as a general rule the earlier a surgeon has opportunity to examine the patient, the better judgment he can form both of the nature and extent of the injury and the fitness of any remedies or means of relief.

17. To the seventeenth he saith, that he hath never expressed nor formed any opinion upon the subject ; that he has never heard any statement of Doctor Hawks's treatment ; is not aware that he has heard his name before, and knew nothing of any controversy on the subject until called to testify this day.

18. To the eighteenth he saith, that he should give but little weight to such opinions, but he thinks any intelligent man competent to describe the external means used by a Surgeon in reducing a dislocated joint, such as the bandages and machinery used and the mode of operation.

19. To the nineteenth he saith that he does not know.

To the last he saith that he knows nothing more on the subject than he has already stated.

THOMAS WELSH.

DAVID TOWNSEND, of the City of Boston, Doctor of Medicine, to the several interrogatories on the part of the Plaintiff, answereth and saith as follows :

1. To the first he saith, that he was present at the General Hospital in this city when an attempt was made to set the thigh bone of Charles Lowell, the person here present, and was in consultation with other gentlemen relative to his situation, and examined the particular situation ; but thinks that he took no part in the operation, except by his counsel ; a sufficient number of persons were present to afford all the assistance necessary.

2. To the second he saith, that the gentlemen with whom he consulted were Doctor John C. Warren, Doctor James Mann, Doctor Thomas Welsh and Doctor William Spooner.

3. To the third he saith, that their opinion was stated to the patient by this deponent, and was as follows : that from an examination of the dislocation and the state of the limb and from his representation as to the length of time since he received the injury, there could be little hope of reducing the limb, and it was stated to him that an attempt to perform that operation would be attended with extreme pain, and it rested with him to determine whether or not he would endure that, when there was so small a chance of success in the operation. He replied, that he had made up his mind to submit to it. Suitable measures were then adopted to perform the operation, which however proved wholly unsuccessful. All the gentlemen present in consultation were of opinion, that the head of the bone was out of its socket ; and indeed of this no doubt could be entertained. The gentlemen were unanimous in all the opinions expressed on the subject, and, as far as I know, in all that had been formed.

4. To the fourth he saith, as already substantially expressed, that his opinion fully coincided with those of the other gentlemen ; and my opinion then was and still is that there was a dislocation

of the head of the thigh bone from its socket ; and this was so obviously the case, that I heard no doubt expressed on the subject.

5. To the fifth he saith, that it is difficult to give an opinion on the case supposed, on account of the variety of circumstances in which a patient may be placed. Ordinarily in the case of an athletic man, something more, than the force which could be applied by the hands, would be proper. But in some conditions of the system greater force might not be necessary ; and in other states, if there should be much inflammation, it might not be safe and judicious to apply greater force until such inflammation should have abated.

6. To sixth he saith, that it is undoubtedly true, that proper measures should be used by a Surgeon, in such a case, before giving it up. In certain cases, bleeding would be highly proper and necessary as in cases of inflammation ; but it is difficult, if not impossible, without seeing the patient in any particular case, to say whether bleeding would or would not be proper.

7. To the seventh he saith, that the circumstances and appearances stated in the question, would in my opinion be clear and satisfactory indications, that the bone was dislocated.

8. To the eighth he saith, that there is so much difference in different cases in this respect, that in his opinion no general usage can be stated.

9. To the ninth he saith, that he should think it the duty of a surgeon to make such examination, if the patient applied to him for the purpose.

10. To the tenth he saith, that there is no doubt he would.

11. To the eleventh he saith, that the injured limb being several inches longer than the other, is an indication that it is out of its proper place.

12. To the twelfth he saith, that it may often happen that in recent cases, mere manual force may be sufficient, whereas in obstinate cases a fulcrum may be necessary.

13. To the thirteenth he saith, that he thinks not.

14. To the fourteenth he saith, that such is the operation of the chords and muscles in question, in a healthy state, as to secure the bone strongly in its place, and to require some unnatural force to dislocate or greatly extend it, and may arise either from accident or disease.

15. To the fifteenth he saith, that in the first instance probably, in consequence of inflammation, the muscles would contract

in some degree, but ultimately would enlongate again, and the injured limb would be longer than the other.

16. To the sixteenth he saith, that the terms "luxation" and "dislocation" are often used indiscriminately; he is of opinion that the case of Mr. Lowell was that of "dislocation."

17. To the seventeenth he saith, that he believes that the bone is so lodged.

18. To the eighteenth he saith, that he presumes it would.

To the several Cross Interrogatories he answers as follows:

1. To the first he saith, that his profession and business are those of a Physician and Surgeon, in the practice of which he has been constantly engaged since the year 1774.

2. To the second he saith, that he never did reduce a luxated hip joint; that he does not recollect that he ever saw a case of downward and inward luxation of the hip joint.

3. To the third he saith, that he knows the said Charles Lowell, now here present; that he first saw him at the General Hospital when the attempt was made as above mentioned, and has once seen him in Boston previous to the present time.

4. To the fourth he saith, that when he first saw the said Lowell, he felt quite confident that his hip joint was dislocated; that he was induced to think so, because the head of the thigh bone was not near its socket in the hip, but had fallen downward and backward, and was bedded in the muscles below, and because the limb was manifestly elongated; all which appeared from examination.

5. To the fifth he saith, that he feels as confident in his opinion in this case, as in any case where he gives his opinion.

6. To the sixth he saith, he can confidently answer No.

7. To the seventh he saith, that he doth not. He thinks it so plain a case, that it could not easily be mistaken.

8. To the eighth he saith, that he is of opinion that no circumstances could account for the appearances in Lowell's case, consistently with the supposition that the head of the thigh bone was in its proper place.

9. To the ninth he saith, that it sometimes happens that the parts about the joint are so swollen or so inflamed, that it is not easy to ascertain the nature and extent of the injury at the time, and until such inflammation or swelling has subsided. It is therefore difficult for any Surgeon to say some months afterwards what was the situation of the patient, or determine precisely what course ought to have been adopted for his relief.

10. To the tenth he saith, that an attempt was made to relieve Lowell's disability, was made in the presence of the deponent at the General Hospital according to Dessault's method of reducing luxations, which is considered as the present most approved system. It consists in the use of a complicated apparatus, for the skilful application of mechanical power. He hath already stated that the attempt was entirely unsuccessful.

11. To the eleventh he saith, that according to his opinion pullies are never used, until manual power has been tried ; if this is unsuccessful, he does consider the use of mechanical power proper ; as to the proportion of cases reduced without the use of pullies he has formed no opinion ; he has never known any difference of opinion among medical men respecting the use of pullies in reducing dislocations. He has never known or heard of any cases successfully treated by the hand after the failure of pullies.

12. To the twelfth he saith, that he hath never known such a case.

13. To the thirteenth he saith, No.

14. To the fourteenth he saith, that he considers it extremely improbable, though it might be possible for the bone to become misplaced in the case supposed.

(These questions from the fifteenth to the eighteenth inclusive, objected to as before by the Plaintiff.)

15. To the fifteenth he saith, that he knows no usage on the subject.

16. To the sixteenth he saith, that he cannot consider himself bound to give any opinion on the subject. As to the latter part of the question, he considers that the means of judging what ought to be done by a surgeon first called, who has the means of seeing and examining the patient, are much better than those who are afterwards called to give an opinion.

17. To the seventeenth he saith, that to his knowledge he hath never expressed any opinion upon the subject, and he has formed no opinion on the question of Dr. Hawks's treatment of the case.

18. To the eighteenth he saith, that he should not attribute much weight to the opinions of persons of no professional skill and knowledge, as to the skill and judgment of a surgeon in performing an operation. He is also of opinion, that such persons could not describe the means used in performing such an operation, in a manner to be depended on.

19. To the nineteenth he saith, that the said Robert Hughes is not a professional man, and as this deponent believes, does not profess to practise in any department of surgery except that of setting bones. As a bone-setter he has considerable reputation.

20. To the twentieth he saith, he knows nothing further.

DAVID TOWNSEND.

JOHN C. WARREN of said Boston, Doctor of Medicine, to the said several interrogatories and cross interrogatories, doth testify, depose and say :

1. To the first he saith, that in December last he did make an attempt to replace the thigh bone of Charles Lowell, the person here present; this was done at the Massachusetts General Hospital. I did enter into consultation with several gentlemen, upon his situation, previous to any attempt being made to replace the dislocated bone, and took a principal part in that operation.

2. To the second he saith, the persons with whom he consulted were Doctors TOWNSEND, WELSH, MANN and SPOONER, Consulting Physicians of the Hospital.

3. To the third he saith, that they were unanimously of opinion that the hip was dislocated.

4. To the fourth he saith, that their opinion did coincide with that of this deponent. His opinion then was and still is, that the hip was dislocated.

5. To the fifth he saith, that it is difficult to give a precise answer to this question, on account of the generality of its terms. This deponent has heard of cases in which manual force only has been applied with success. But he is of opinion that in case a surgeon should use manual force only, and know that it did not succeed, such surgeon could not be said to have acted with proper skill and management, and used due means to reduce the dislocation, if he applied no further force than could be applied by the naked hands.

6. To the sixth he saith, certainly he should.

7. To the seventh he saith, the circumstances enumerated in the question, would lead this deponent strongly to suspect that the limb was out of its place, but he should not consider these indications decisive.

8. To the eighth he saith, it frequently happens that such an noise is heard, but not uniformly, when the bone is restored to its socket.

9. To the ninth he saith, that if the patient should remain apparently without much pain, he should not consider such exam-

ination necessary ; but if the patient should complain of much pain and for a considerable time after the injury, he should think such an examination ought to be made.

10. To the tenth he saith, Yes.

11. To the eleventh he saith, that the circumstance of the limb being three inches longer than the other, is an indication that the limb is disordered, but is not a necessary indication of a dislocation of the bone. It might proceed from two other causes ; either from a fracture of the neck of the bone, with a relaxation of the muscles, or from a simple relaxation of the muscles.

12. To the twelfth he saith, that it is generally necessary, but is not in all cases indispensable.

13. To the thirteenth he saith, that in his opinion it would not be in the power of the patient to displace the bone, under the circumstances stated.

14. To the fourteenth he saith, that the structure of the part is such as to require great force to extend the limb one inch beyond its natural length.

15. To the fifteenth he saith, that it would depend upon the direction in which the head of the bone should be forced out of its socket. If forced downward, the limb would be extended ; if upward, it would be shortened.

16. To the sixteenth he saith, that he has no reason to think that it is.

17. To the seventeenth he saith, that that is his opinion.

18. To the eighteenth he saith, No.

1. To the first cross interrogatory, put on the part of the Defendants, he saith, that his profession and business is that of a physician and Surgeon, in which he has been constantly engaged for the last twenty years.

2. To the second he saith, that he hath frequently reduced a luxated hip joint; the number of instances he cannot recollect. He does not recollect ever to have seen a downward and inward luxation of the hip joint.

3. To the third he saith, that he saw Mr. Lowell for the first time sometime during the last winter; the precise time he cannot tell. The place was Clark's Tavern in this place. He was removed in the course of a few days to the Hospital, during which time the deponent saw him several times.

4. To the fourth he saith, that in his opinion, the limb was dislocated at that time, and his reasons for believing so, were, first that the knee hung out from the other in an awkward and unnatural

manner—second, that the thigh of the injured side was longer than the other, or in other words, that the knee projected lower than the other—thirdly, that the flexor or hamstring muscles were contracted so as to keep the leg continually bent—fourthly, that the trochanter major was not to be felt in its proper place—fifthly, that the head of the dislocated bone could be felt in an unnatural position, in or about the ischiatic notch—sixth, that the patient had not a free and natural use of the limb, but its motions were constrained in such a manner as happens only in the case of a dislocated limb, by the head of the bone being lodged in the ischiatic notch, that is, in a dislocation backward and downward. The dislocation of Mr. Lowell, in the opinion of this deponent, was one of that character.

5. To the fifth he saith, he doth not.

6. To the sixth he saith, that he doth not recollect any.

7. To the seventh he saith, that it was a dislocation difficult to discover; but one about which, in his opinion, men of high standing in the profession could not differ.

8. To the eighth he saith, that he thinks the appearances in Mr. Lowell's case could not have been produced by any or all of the circumstances enumerated in this question.

9. To the ninth he saith, Yes, such a case may exist.

10. To the tenth he saith, that as before stated he did make such an attempt; the means were these: the patient was placed upon his right side and secured to a table, and further secured to a neighboring wall by a sheet passed between the thighs, and a force was applied immediately above the knee of the injured limb, in a direction to draw it forward and inward. At the same time a force was applied at about the middle of the thigh, at right angles with the limb, in such a direction as to draw the head of the bone toward the socket. The forces were gradually and alternately increased, for the space of about an hour, and till all prospect of success was at an end. The force at right angles was applied by pullies, and the other by the strength of several persons by means of bandages and cords. By way of preparatory measures, the patient took a powerful cathartic in the morning and went into a warm bath. And in order to relax the muscular powers more fully, immediately before the operation he took nauseating doses of tartrate of antimony, and was bled as freely as possible.

11. To the eleventh he saith, that he doth consider them necessary, though not indispensably so; the greater proportion of

cases can be and are reduced without them. There is some difference of opinion with respect to their use, though the most celebrated authors decidedly recommend their use. He has never known a case treated successfully by the hand after the use of pullies had failed.

12. To the twelfth he saith, he hath never known such a case.

13. To the thirteenth he saith, that he should not.

14. To the fourteenth he saith, that if the dislocation had been reduced, he should think it possible the bone might be thrown out of its place again, by the application of considerable force, or the use of considerable motion of the limb, soon after the reduction.

15. To the fifteenth (objected to with the three following as above) he saith, No.

16. To the sixteenth he saith, that in his opinion, a surgeon, who employs the best means in his power, ought not to be responsible in damages; and that a surgeon who has opportunity to examine a case of dislocation, immediately after the injury, other circumstances being equal, has better means of judging of the nature of the case, than one who examines the case several months afterwards. Still he is of opinion that the case may be such, that it may be quite apparent, several months afterwards, what the real nature of the injury was.

17. To the seventeenth he saith, that not having had a distinct account from Dr. Hawkes himself, of the mode of treatment practiced in Mr. Lowell's case, he does not feel qualified to give an opinion on his practice.

18. To the eighteenth he saith, that he should attach no importance to the opinions of persons thus situated as to the professional skill with which an operation was performed, but he thinks that intelligent persons, without professional skill, might describe with sufficient accuracy the visible means used in the operation.

19. To the nineteenth he saith, that the said Robert Hughes has some reputation for reducing dislocated limbs.

20. To the twentieth he saith, that he knows nothing more, unless it be material that the letter hereto annexed, dated April 12, 1822, marked A, was written by this deponent at the time it bears date, forwarded according to its direction. This letter is hereto annexed (the said Lowell objecting thereto) at the request of A. Peabody, Esq. representing Dr. Hawkes. At the time of

writing that letter, as far as this deponent can recollect, he was not aware that any judicial proceeding was pending on the subject.

JOHN C. WARREN.

JAMES MANN of Boston, in the County of Suffolk, Doctor of Medicine and Surgeon in the service of the United States, to the said several interrogatories and cross interrogatories, doth answer, testify and depose as follows, viz.

1. To the first he saith, that he was called as one of the consulting Physicians of the Massachusetts General Hospital, to consider the case of Mr. Lowell; such consultation took place previously to any attempt to replace the bone; that such attempt was then made in the presence of this deponent, at which he assisted, but the attempt was without success.

2. To the second he saith, that the persons present at such consultation were Doctors THOMAS WELSH, DAVID TOWNSEND, WILLIAM SPOONER and JOHN C. WARREN; many other persons were present, but the gentlemen named were the Physicians of the Hospital.

3. To the third he saith, their opinion was that the head of the thigh bone was displaced from its socket, backward and downward, and in this opinion they were unanimous.

4. To the fourth he saith, that in the above opinion this deponent fully coincided, that he then was and still is of opinion that the bone was dislocated in the manner and direction above mentioned.

5. To the fifth he saith, he should say that in the case stated the surgeon had not used the proper means.

6. To the sixth he saith, that bleeding and other means of relaxation in such cases are recommended by the most celebrated practitioners and writers, and in the opinion of this deponent are proper and suitable. He would not be understood to say that these means are used in all cases; because they sometimes prove unnecessary. But where there is great resistance and difficulty in reducing the dislocation, the means above mentioned ought to be resorted to.

7. To the seventh he saith, that unless there were some natural or previous deformity, this deponent would consider the circumstances enumerated in this question as decisive indications that the bone was out of its place.

8. To the eighth he saith, that usually the return of the bone to its place is attended with a sound sufficient to be heard by

persons present, particularly those in immediate attendance on the patient.

9. To the ninth he saith, that such examination would be highly proper and necessary. It is usual after such an operation to make some examination, and if attended with pain for some-time, it would be the more necessary.

10. To the tenth he saith, that it is usually done, and is regarded as one of the most decisive indications of dislocation.

11. To the eleventh, he saith, Yes.

12. To the twelfth he saith, Yes.

13. To the thirteenth he saith, that had it been reduced, it could not in his opinion have been displaced, under the circumstances stated in this question.

14. To the fourteenth he saith, that the muscles about the hip joint are so strong and powerful, that great force is necessary to overcome the action of the muscles, and extend the limb beyond its natural length.

15. To the fifteenth he saith, that if the bone should be thrown out of its place, under the circumstances stated, the limb would probably be apparently shorter than the other. It requires a force acting in a particular direction, to throw out the bone backward and downward, in the manner which Mr. Lowell's was, which force could not have been applied to a person lying in bed. The most usual dislocation is upward, which shortens the limb.

16. To the sixteenth he saith, the case was that of a luxation only; there was no fracture.

17. To the seventeenth he saith, that from his examination of the case he is of opinion, that the head of the thigh bone is thus lodged in the ischiatic notch.

18. To the eighteenth he saith, that such extension would be necessary in the first instance to disengage the bone from its position before it could be restored to its socket.

1. To the first cross interrogatory he saith, that his profession is that of a Physician and Surgeon, in the practice of which he has been engaged about forty four years.

2. To the second he saith, that he hath never reduced a luxated hip joint alone, but hath assisted in one in which the operation was successful. In that case, the operation was performed when the injury was recent. He has assisted in two cases when the injury was of long standing, and the attempt proved unsuccessful. Of the two last cases, one was of six

months standing and the other of about three months. The case which was of six months standing was that of a downward and inward luxation and was not reduced, nor has this deponent known such a luxation reduced.

3. To the third he saith, that he first saw Mr. Lowell at the Hospital about a year ago. He has seen him at no other time till the present.

4. To the fourth he saith, that he hath no doubt that Lowell's hip joint was dislocated at that time. His reasons are, that the natural prominence produced by the head of the bone, when in its proper and natural position, upon examination was wanting; but further downwards and backward an unnatural prominence was perceived, which was presumed to be produced by the head of the bone. There were several other indications, particularly the difference in the length of the limbs, which in the opinion of this deponent, put the fact beyond doubt.

5. To the fifth he saith, No; he feels so confident in this opinion, that he thinks he could not have been in an error respecting it.

6. To the sixth he saith, he is satisfied that he never did.

7. To the seventh he saith, that the injury in Mr. Lowell's case was of such a nature, that men of high standing in their profession, and acquainted with anatomy, would not be likely to differ in opinion upon the subject. The indications laid down in professional works upon this subject are so full and precise, that they are not easily mistaken by a careful observer.

8. To the eighth he saith, that the circumstances enumerated in this question would not be sufficient to account for the appearances in Mr. Lowell's case without supposing the bone out of its socket.

9. To the ninth he saith, that it is possible for the parts to be so injured, and to be so affected by swelling and inflammation as to prevent a surgeon from determining precisely the nature of the injury; when some months afterwards it might be ascertained more exactly.

10. To the tenth he saith, such an attempt was made in his presence, without success. The means made use of were considerably complicated; the patient was firmly secured by bandages, and great force applied, in different directions and principally by mechanical apparatus. The forces were applied in such directions as to extend the limb and raise the head of the bone from its actual situation, the partial socket which it was

supposed to have formed. The opinion of this deponent and of the consulting physicians was, that the attempt would prove unsuccessful; but it was by Mr. Lowell's particular request, with the knowledge of this opinion, that this attempt was made.

11. To the eleventh he saith, that generally speaking, in a recent case, he should not think the use of pullies necessary; but in obstinate cases, and more especially in cases of long standing, he should think they ought to be resorted to; he cannot state or give a satisfactory opinion as to the proportion of cases reduced without them. Medical men do differ in opinion with regard to their use; he hath never known a case successfully treated by hand after the use of pullies had failed, and he hath never been present at an operation where pullies were used, except in the case of Mr. Lowell, as before described.

12. To the twelfth he saith, that he hath never known such a case.

13. To the thirteenth he saith, No, he should not.

14. To the fourteenth he saith, that by a fall in attempting to get out of bed or other considerable force applied, the bone may have been displaced, after being reduced; but in the case of a hip joint it could not be done without the application of considerable force. If done it might obviously be so without the knowledge of the surgeon.

15. To the fifteenth (which together with any answer thereto is objected to as aforesaid, with the three succeeding questions) that it is customary for a Surgeon, after the reduction of a luxation to attend him occasionally.

16. } Both crossed by order of Court.
17. }

18. To the eighteenth he saith, that he should give but little weight to the opinions of persons not professional, as to the skill with which an operation were performed; but such persons are undoubtedly capable of describing the external and visible means used by a Surgeon in performing such operation.

19. To the nineteenth he saith, that his general character is, that in dislocations he is a good surgeon.

20. To the twentieth he saith, that he knows nothing further.

JAMES MANN.

DR. ESTABROOK deposed that Jan. 23, 1822, he examined Lowell's hip, and found it dislocated; the head of the bone was out of the socket. With skilful treatment he might have recovered the use of his hip.

I BENJAMIN BROWN, of Waldoborough, in the county of Lincoln, of sixty six years of age, on oath, do testify, declare and say, that I now am, and for forty six years last past have been, in the practice of physic and surgery, and that my employment with very short and few interruptions has been in that profession.

Question by Charles Lowell, the plaintiff.

Have you been in the service of the United States, and if so, how long, and have you, in the course of your professional practice, seen and reduced dislocations of the thigh or hip?

Answer by the deponent—

I have been employed in the medical and surgical department of the United States, during the term of five years, during which term I was engaged in the land and sea service, in the revolutionary war. I have been in several engagements both on the sea and on the land, in which I performed many surgical operations. I have seen and reduced several dislocations of the head of the *femur*, or thigh bone.

Question by plaintiff—

Do not chirurgical writers designate certain appearances, as decisive indications of dislocation in such cases?

Answer—They do.

Question by the same—

Does not the difference in the length of the injured limb and the well one, constitute one of the most decisive indications of such dislocations; and is it not usual to compare the length of the injured limb with that of the other for the purpose of ascertaining whether such dislocation exist?

Answer—Yes.

Question by the same—

Do you think it requires more than a common or ordinary degree of skill and discernment in a Physician or Surgeon to discover those unnatural appearances, which present themselves in such cases of dislocation?

Answer—Certainly not.

Question by the same—

If a Surgeon be unable to reduce a dislocation, ought he not to possess skill to know, and candor enough to inform the patient whether it be reduced or not?

Answer—I should think so.

Question by the same—

When the patient is a robust muscular man, and the dislocation downward and inward, or downward and backward, is it not

necessary in order to reduce it, that there should be some extension made obliquely outward?

Answer—My reading and observation confirm my opinion, that such extension is generally necessary.

Question by the same—

If the surgeons should use no other means in reducing a dislocation, such as is above mentioned, than the *direct* and *counter* extensions, and should not succeed, should you think that they had acted skilfully and used all due means to effect a reduction?

Answer—I should not think they had.

Question by the same.—

If a person, whose thigh was dislocated and the dislocation reduced in three hours after the injury, should lie on his back fourteen days without turning or being moved, having his knees tied together, would there be any probability of his getting the bone out of the socket again, while in that situation?

Answer.—It could not under those circumstances and in that situation be dislocated in the manner in which that of Charles Lowell, the plaintiff, now appears to be.

Question by the same.—

From your examination of my hip do you believe, that my present inability or lameness is a simple luxation of the head of the thigh bone, and that with skilful treatment and prudent management at the time of recent injury, I might now have the use of the limb?

Answer—I do most fully.

BENJAMIN BROWN.

MR. Mc GAW, of counsel for the defendants, opened the defence by remarking that the plaintiff's demand was grounded on the alleged negligence and unskilfulness of the defendants. A strong case was stated for the plaintiff; but the proof fell far short of the statement. It was not necessary on the part of the defendants to prove the highest degree of skill; ordinary was sufficient to establish; and it would appear that at least such skill was exercised; probably more than ordinary; certainly more than was exercised by the Physicians at Boston. It would be proved that there was no such dislocation as that which was described by those gentlemen. It would be shown by the highest authorities in surgical science. It would be proved by still higher evidence. It could be demonstrated to the senses of every man, and rendered obvious to ocular observation. No

complaint was ever made by the plaintiff against Dr. Faxon; yet he had thought proper to join him in this action to prevent his being introduced as a witness; and it was rendered necessary to proceed with Dr. Hawks's defence, as well as his own, without his testimony. After some other general observations and introducing the authorities afterwards commented upon in the defence, the following evidence was produced for the defendants.

Deposition of Dr. NATHAN SMITH—I NATHAN SMITH testify and say, that in the month of June, in the year 1822, I examined Charles Lowell, then at Eastport, respecting an injury of his hip which he stated to have happened the fall before. My examination was lengthy and critical, and my opinion then was, that the thigh bone was not out of joint; and I have not altered my opinion since. From the nature of the injury as described to me by the said Lowell, it could hardly be possible that the hip should be dislocated. A fall on the hip, with the weight of a horse upon it, would be likely to break the bones of the pelvis, and might drive the head of the bone through the bottom of the socket, but could not dislocate the joint; and in my opinion if there is any derangement of the bones, it is a fracture and not a dislocation. In that case it would not have been in the power of Dr. Hawks or any other medical man to have rendered the said Lowell any effectual assistance, more than to have administered remedies to keep down inflammation; they could not have altered the situation of the bones. As for the apparent lengthening of the affected limb, I think that is owing to the preternatural contraction and relaxation of the muscles situated about the hips; and is made to appear so by the twisting of the bones of the pelvis on the spine. Any person, when sitting in a chair, can by an exertion of the muscles make one knee project beyond the other, as much as Lowell's did when I saw him. The same lengthening of the limb takes place in a disease of the hip called the hip disease, which partakes of the nature of white swelling, where no external violence has been received. It is difficult to determine in case of injuries of the hip precisely what the injury of the bones is; but it has frequently happened within my knowledge, that by a fall directly on the hip joint, though the bone was not dislocated, as was evident by the natural position of the foot and limb generally, and from its being moved by the hand of the surgeon in all directions, yet the patient has never recovered from his lameness; and in several instances they have never been able to walk afterwards. In cases where the thigh bone is dislocated backwards, and the

head of the thigh bone rests on the back part of the broad hip bone, the limb will be a little shortened, and the foot will point towards the other foot, and cannot be turned outward in the least. In case the head of the thigh bone should be lodged in the ischiatic notch, so called, the limb would or might be a little lengthened; but the foot would be turned pointing towards the other foot, and could not be turned outward in the least. Both when the head of the bone is on the back of the hip bone and when in the ischiatic notch the head of the bone can be distinctly felt by the hand. When the head of the thigh bone is dislocated downwards and rests in the thyroid hole, so called, the trochanter will be misplaced and the head of the bone will be felt on the side of the perineum, between the scrotum and anus, and the foot will be turned out. Very great violence done to the parts and consequent swelling might render it difficult to ascertain by feeling the position of the head of the bone soon after the injury; but when the swelling had subsided, it might be ascertained by the touch. As to the length of time, which may elapse after a bone is dislocated, before it will be impossible to reduce it, it is uncertain, and probably may differ in different cases. But the time that a joint may remain dislocated and yet admit of being replaced, is longer than has been generally supposed. I reduced a dislocated shoulder that had been out seven weeks, another that had been out nine weeks, and one that had been out four yearly months. I should not think that a hip joint having been out of place six or even eight weeks, would render it impossible to reduce it. It might even be a more favorable time for the operation, than immediately after the accident, especially if the soft parts at first were much bruised and swollen.

I do not think that the mechanical powers, such as the wheel and axle, or the pullicies are necessary to reduce a dislocated hip, or any other dislocation. They have sometimes been used with effect, but they have oftener been injurious; and what can be effected with them can be effected without them. It is not the quantum of force which reduces dislocated bones, so much as it is the direction of the force; and this can be given by the hand of skill, better than by pullicies, &c. In reducing the hip joint it cannot be done by direct pulling; but we take advantage of the thigh bone as a lever to move the head of the bone from the place where it may be lodged, and bring it into its former situation. In some cases the fulcrum is some of the bones of the pelvis; in others we have to supply it by some external body.

Question by Defendants' attorney. Did you ever reduce a dislocated hip? And if so, please to state the manner.

Answer. I once reduced a dislocated hip joint. It was dislocated upward and backward; and after pulling it in every direction but the right, it was reduced easily by carrying the knee towards the patient's face. I had the assistance of two men only.

Question by the same. Would the distortion of the pelvis, by contraction of the muscles, produce an apparent lowering of the hip joint, or a hollow up the hip?

Answer. It might, and probably would.

Question by the same. If the head of the thigh bone were forced through the bones of the pelvis, would that produce in any measure the same effect?

Answer. It would.

Question by the same. Is the dislocation of the hip joint an unusual occurrence? and might a skilful surgeon fail in any attempt to reduce it?

Answer. A dislocation of the hip is very rare; and probably not one medical man in ten, would be able to reduce it.

Question by the same. Would a failure to reduce a dislocated hip subject a man to the just imputation of ignorance in his profession?

Answer. I should think not, for men of science and reputed skilful have failed.

Question by the same. Do you know Dr. Hawks of Eastport? And if so, what do you think of him as a man acquainted with his profession?

Answer. I have been acquainted with Dr. Hawks; and think him above mediocrity in the knowledge of his profession, especially in anatomy.

Question by the same. May not physicians and surgeons disagree in opinion respecting a disease of the hip, without the imputation of ignorance or negligence?

Answer. Men of science and skill have often disagreed in such cases.

Question by the same. Were the head of the thigh bone lodged in the ischiatic notch in Lowell's case, how would the limb act? Would it be as when you saw it at Eastport?

Answer. When the head of the bone is lodged in the ischiatic notch, the foot would be turned inward, which was not the case with Lowell when I saw him.

Question by the same. What is the situation of the ischiatic notch in the living subject? And is it filled or partially so, with any substance?

Answer. In the living subject the ischiatic notch is filled with a firm strong ligament, which is again covered with muscles, so that the head of the bone could not sink much into it.

Question by plaintiff's counsel. When you were at Eastport, before you examined Charles Lowell, and while you were at some distance from him, did you say to any one, that Lowell's hip was not dislocated or to that purport, and if so to whom did you make the observation?

Answer. I do not recollect that I did, and am very confident that I did not.

Question by the same. Did you tell Lowell he had better drop his action and try to get well, which would be better than to try to get damages of the Doctors?

Answer. I think I did

Question by the same. How long did you take to examine Lowell's hip joint, and did you attempt in any manner to restore it to its proper place and appearance?

Answer. I did not measure the time, but put him in various positions and examined him in company with Dr. Frye till I was satisfied it was not out of joint. I did not make any attempt to replace the bone.

Question by the same. What did you prescribe for the remedy of his limb, and what encouragement did you give him?

Answer. I believe I advised him to make an issue on his hip and keep it open a long time.

Question by the same. Did you tell him he would probably be a well man in a year, if he followed your prescription, or to that effect, and did you give it to him in writing?

Answer. I think it probable that I gave him encouragement that he might get well, or better than he was then; but do not recollect whether I gave him a written prescription or not.

Question by the same. Had you heard Dr. Hawks's representation of Lowell's case before you saw Lowell?

Answer. I had.

Question by the same. If there was a distortion of the pelvis so as to occasion the appearance of Lowell's limb, would it not have occasioned pain at or near the back bone?

Answer. I do not know that it would. In cases of disease of the hip joint, where the pelvis is distorted, the patient does not complain of pain in the back to my recollection.

Question by the same. If there were a dislocation of the head of the bone into what is called the ischiatic notch, would it not occasion the same appearance that Lowell's exhibited?

Answer. I think not.

Question by the same. How do you account for the hollow appearance in Lowell's hip, at the place where the head of the thigh bone was inserted, and did you feel it to be hollow when you examined it?

Answer. I did not perceive any more hollow on the hip joint, than might be accounted for from the effect of the muscles, or a fracture of the pelvis.

NATHAN SMITH.

I SAMUEL FRYE, of St. Andrews, in the Province of New-Brunswick, Physician, of lawful age, on oath, do testify and say that I was this day (June 13th 1822) present at an examination of Charles Lowell of Lubec, for a disease or affection of the left hip joint, and am of opinion that it does not arise from dislocation at present existing, but from affection of the muscles or some other cause.

Question by Plaintiff. Did you ever reduce and set a thigh bone which had been dislocated from its socket by a downward luxation.

Answer. I never did.

SAMUEL FRYE.

THEODORE LINCOLN was present at the examination by Dr. Smith. He laid Lowell down strait on his face—stripped him—drew lines to ascertain the right position of the parts—felt round the injured part. The plaintiff described the injury to Dr. Smith; and the witness was minute in stating the mode of examination.

I JOSIAH COFFIN, of Campobello, in the County of Charlotte, Province of New Brunswick, of lawful age, do testify and say, that I was at Lubec in September, 1821, near Charles Lowell, when he fell from a horse; received a bad injury of the hip by the horse falling on him. I helped carry him into the house; was present and assisted when Dr. Faxon operated upon him; after which, it was thought best to send for Dr. Hawks; he came

over as soon as possible, considering the distance and badness of the Ferry from Eastport to Lubec—I think in about two or three hours. After Dr. Hawks examined Mr. Lowell's hip, he took Dr. Faxon into another room; in a few minutes they returned, said Mr. Lowell's hip joint was out, and the socket that received the head of the thigh bone was fractured, and Lowell must suffer another operation.—Dr. Hawks ordered preparations to be made, and proceeded to operate on Lowell, and I assisted as directed.—Doctor Faxon assisted with others. Dr. Hawks gave directions and took his stand to manage the head of the bone. After some exertions of Dr. Hawks with our assistance, Lowell said that he felt the bone go into its place. Dr. Hawks said he felt it go into its place, and told us to give back; then asked Lowell if he did not feel more free from pain; Lowell said he did; then Hawks and Faxon examined the hip. Hawks took hold of the injured limb, raised it up and turned it in every direction with ease; it appeared to move easy without giving him pain. Lowell said it felt natural; but before Hawks operated, the injured limb stood in an unnatural position, standing outward from the other, and could not be carried inward without giving Lowell great pain; but it appeared at this time in its proper place. I saw Hawks and Faxon take hold of his knees; but I saw no difference in the length, but both legs were of a length for anything that I saw. Both Hawks and Faxon pronounced the bone set. Hawks was very minute in his directions—told Lowell that it was different from simple luxation; that the bones that formed the socket were fractured; that they must have time to unite; told Lowell that much depended on his taking good care of himself; that he feared that he would be a cripple for life—that he expected that he would be in much greater pain five or six days hence from inflammation; and that it could not be helped; that he should advise Dr. Faxon to make use of such means as was in reach of medical aid to keep back inflammation, and bleed him again next day; that he would send medicines over by the boat, if Dr. Faxon requested it. I am confident that Mr. Lowell's house keeper was not in the room after the bed was fixed, but she handed at the door sometimes such things as was called for; but Joshua Lowell generally went for what was wanted. Mr. C. Lowell asked Dr. Hawks to attend him. Dr. Hawks said that he had a large number of sick at Eastport that were depending on him constantly, which rendered it impossible. Lowell spoke about sending a boat for Hawks the next day; which Hawks

replied, if his business would admit he would come ; but told Lowell that he could not attend him, and desired him not to depend on him, for he did not know that he could come at all ; he did not think it necessary for him to come over, as Dr. Faxon was on the spot, and could come in at any time ; that there was not much to be done ; told Mr. Lowell he must keep still ; the case ought to be left mostly to nature, as the thigh bone was in its place ; and as the fractured socket was as well as the nature of the case would admit of, or words to that effect.

From twelve to eighteen days after the injury, I was present when Dr. Hawks examined Lowell's hip. Lowell asked him why he did not come over when he sent for him ; he replied that he was very busy and had many sick to attend, but at the time you sent for me I was engaged in midwifery. Mr. Lowell told Dr. Hawks that he had a fit, and was afraid that he had got the bone out of its place ; he then got off from the bed by the help of me ; then Dr. Hawks examined his hip. Lowell asked the reason of a hollow at the outside of his hip. Dr. Hawks said that his socket bone being fractured caused pain, and would for some-time, but when he gathered strength the hollow would fill up, but he did not see any thing but he was as well as the nature of the case would admit of.

Question by the Plaintiff. That evening or at any other time did you hear Dr. Hawks say, that if he had not come to me I should have been a cripple for life, and that it was a pity there was not some living spectacle of Dr. Faxon's ignorance and quackery or words to that effect ?

Answer. I do not recollect if it was, I do not recollect it.

Question by the same. Do you know that Dr. Hawks demanded the payment of his bill for services in this very case at ten o'clock at night on board the packet when he found that I was going to Boston to see Dr. Warren ?

Answer. I do not.

Question by the same. When you left my house on the evening of the operation by Drs. Hawks and Faxon, who remained in the room with me ?

Answer. I do not know, I believe there was two or three. I believe Mr. Stearns, Mr. Sumner and Mr. Bigelow.

Question by the same. Who was present when Dr. Hawks and I conversed that evening, as you have stated above ?

Answer. I could not say all that was there. I believe Mr. Stearns, Mr. Sumner and Dr. Faxon was there. I do not know but your brother was there.

Question by the same. Who went from my house that evening in company with you?

Answer. I think it was John Winslow,

Question by the same. Where was Dr. Hawks at that time?

Answer. I do not recollect whether Dr. Hawks was there or not, when I came away from the house.

JOSIAH COFFIN.

WILLIAM PHELPS testified that after Lowell returned from Boston, he talked about prosecuting the doctors. He said he was advised by his attorney to join Dr. Faxon in the suit to prevent his being a witness. The plaintiff said that he believed Dr. Faxon did the best he could or knew; and that he did not blame Faxon. Lowell said he was satisfied with Dr. Hawks's performance of the operation; but complained of inattention afterwards. Dr. Faxon said it would have been better for the plaintiff if he had not sued him. Does not recollect any thing said about the reason of his being a witness.

I GEORGE HOBBS, of Eastport, do depose testify and declare.

Question by C. Lowell, plaintiff in the case. Are you acquainted with Dr. Hawks?

Answer. I am.

Question by the same. What year did he commence practice in Eastport?

Answer. In the year 1817 or 1818, I do not distinctly recollect which.

Question by the same. Have you been a near neighbour and an intimate acquaintance of his?

Answer. I have been a near neighbour, but not a very intimate acquaintance.

Question by the same. Has he not been your family physician.

Answer. He has been my family physician since Dr. Barstow left Eastport, which was about six months after Dr. Hawks came.

Question by the same. Were Dr. Hawks and Mrs. Stearns at your house in conversation relative to my case during my confinement with my lame hip?

Answer. I have no recollection of any such conversation.

Question by the same. Have you never had any conversation with Dr. Hawks relative to my case?

Answer. I may have had ; I do not recollect any particular conversation.

Question by the same. Previous to the July term of the S. J. Court of 1823, have you heard Dr. Hawks say any thing in regard to Dr. Faxon's skill or treatment of my case ?

Answer. I never heard him say any thing about Dr. Faxon's skill either one way or other before the July term of 1823, or since.

Question by the same. Are you acquainted with Dr. Hawks' hand writing ?

Answer. I am some acquainted with his hand writing.

Question by the same. At the time Dr. Hawks commenced at Eastport, was there not some understanding between him and the inhabitants, that they would ensure him a certain income from his professional business, or that they would give him their support or influence ?

Answer. I never heard of any agreement of the kind ; he had friends when he came.

Question by defendants' attorney, F. Hobbs, Esq. When was your wife confined with your daughter Maria ?

Answer. The 20th of September 1821.

Question by the same. Was she so sick at that time that her life was despaired of ?

Answer. She was very dangerously sick.

Question by the same. Was she not dangerously sick for about six weeks afterwards, and was not Dr. Hawks, yourself and the rest of her friends extremely anxious about her during that time ?

Answer. She was very sick until the fifth week and we were very anxious about her.

Question by the same. Was it not apprehended that her life was in danger for a long time after her confinement, from complaints incident to child birth ?

Answer. It was ; she remained weak and low, had fainting turns and remained in that situation until the fifth week, after which the Dr. was absent for two or three days, and when he called again to visit her, was still alarmed for her fate. During the whole time the first six weeks she was in imminent danger.

Question by the same. Did you not feel it necessary for her safety during that time that Dr. Hawks should be hourly within call ?

To this question the plaintiff objects, as being improper.—

Answer. I did.

Question by the same. Was not Dr. Hawks cautioned by you to be at home some days previous to her confinement?

Answer. I told Dr. Hawks that my wife was every day in expectation of being confined, and requested him not to be out of the way.

Question by the plaintiff. Was there no time during the first six weeks of your wife's confinement, that she set up?

Answer. She set up but very little until after the fourth week.

Question by the same. Do you profess to be a surgeon or physician?

Answer. I do not.

Question by the same. Do you feel competent to decide how often a physician should attend a patient in all cases?

Answer. I do not feel competent to decide how often in all cases, but know how often I want them myself.

Question by the same. When you told Dr. Hawks your wife expected to be sick, did he say any thing about having patients at Lubec or elsewhere?

Answer. I do not recollect that he did; his answer was as near as I can recollect, that he would be in readiness.

Question by the same. Did you ever hear Dr. Hawks say that he regretted undertaking my case with Dr. Faxon, or words to that effect?

Answer. I never did.

Question by the same. Do you know that Dr. Hawks was not at Lubec twenty times while your wife was sick?

Answer. I know nothing about it.

GEORGE HOBBS.

I JOHN WEBSTER, of lawful age, do testify and say.

Question by defendants' attorney. When was your wife confined with your daughter Sarah?

Answer. 25th September, 1821.

Question by the same. How long before her confinement did you request Hawks to be in readiness?

Answer. Not short of ten, nor longer than fourteen days.

Question by the same. What were Hawks' engagements with you?

Answer. Not to be out of call ; that is, he would leave word with some branch of his family where I could find him in a few minutes.

Question by the same. Was there any other physician in Eastport at that time whom you would have trusted with her case ?

Answer. No other man on this earth would have been satisfactory ; neither was there any man on Moose Island that I or my wife had a confidence in.

Question by Lowell the plaintiff. Do you consider Dr. Hawks the best surgeon on this earth ?

Answer. I do, so far as I have knowledge of him I do.

Question by the same. Are you a professional man ?

Answer. I am not.

Question by the same. At the time your wife was confined as stated above, were not Doctors Sargent, Richardson and Mow residing in Eastport ?

Answer. I cannot say for a certainty.

Question by the same. Was not Dr. Hawks at that time in the habit of practicing at Lubec, Perry, Campobello and Indian and Deer Islands ?

Answer. I have known Dr. Hawks to visit some of the above places latterly, but with reluctance—whether he was in the habit of visiting those places in 1821, I cannot say.

Question by the same. When you told Dr. Hawks that your wife expected to be sick, did he say anything about my being lame, or of his having other patients at Lubec ?

Answer. I cannot recollect any answer, other than the general one, I will not be out of the way.

JOHN WEBSTER.

THOMAS GREENE. Mrs. Hobbs was his sister. She was dangerously sick for a week or ten days. Her illness was so extreme that we requested Dr. Hawks to be in attendance. Her first confinement was very dangerous. Dr. Hawks was requested not to leave town on any condition. There were a number of sick persons on the island. Dr. Hawks is the principal regular practicing physician. I was present at Dr. Smith's examination of Lowell. It was critical. He was stripped. Dr. Smith measured in all directions and felt of the parts to ascertain the state of the bone. Drs. Frye and Strong were present. Dr. Hawks was not present. When he was requested by us to stay, he said nothing about Lowell.

Dr. CHANDLER was introduced as a witness by the defendants, and was requested to explain to the jury the structure of the different parts of the subject and to exhibit the varieties of dislocation by the bones of the skeleton (viz. the pelvis and thigh bone) which were produced for that purpose. This mode of proceeding was objected to by the plaintiff's counsel; who proposed in that case to offer the plaintiff himself to the personal inspection of the jury. No opposition being made to this course by the defendants' counsel, the plaintiff was submitted to the examination of several of the jurors. Dr. Chandler exhibited the manner in which several dislocations took place; viz. two forward, one of which were upward and one downward, and two backward, both upward. He indicated the position of the ischiatic notch. In dislocation into that notch, he testified, that the knee and toe turn in. It was impossible for the knee to turn outwards in a dislocation into the ischiatic notch. The plaintiff's knee and foot are canted a little outward. Sir Astley Cooper was considered the greatest authority in surgery. The witness thought the plaintiff's injury was a fracture and derangement of the pelvis. The ischium might have been broken and some tuberosity forced and felt about the notch. From the nature of this testimony it is not capable of being perfectly reported. He testified to the respectable standing of Dr. Hawks in his profession.

Dr. WEATHERBEE concurred in the opinion of Dr. Chandler and confirmed the general points of his testimony. It was an injury to the bones of the pelvis. A surgeon could be no benefit to Lowell. He testified also to the respectability of Dr. Hawks.

The deposition of Dr. S. S. WHIPPLE was introduced; but the reading of it was objected to on account of an alleged informality in the caption, viz. that the oath was not regularly administered to the deponent, as the statute requires, before his examination. This objection, it was insisted, ought not to weigh, inasmuch as it appeared, that the plaintiff's attorney was present at the taking and put questions to the deponent; and the judge was at first inclined to admit the deposition *de bene esse*; but on his suggestion it was afterwards withdrawn.

I JAMES H. SARGENT, U. S. Army, of lawful age, do depose and say in answer to the following questions:

Question by Defendants' Attorney. Was Mr. Lowell present when a former deposition of yours was taken to be used in this case? if so, did he then refuse to let you examine his hip?

Answer. Col. Chadburn requested him to let Dr. Ayer and myself examine his hip, but he declined.

Question by the same. What opportunities have you had of forming an opinion with regard to the present situation of Lowell's hip? and what is that opinion?

Answer. I have had none, having only seen him at the time my former deposition was taken, and once before and once or twice since as he passed in the street.

Question by the same. From your knowledge of Dr. Faxon's medical or surgical skill, should you think him competent to take charge of a patient, whose hip had been dislocated, after the bone was reduced?

Answer. I have not known Dr. Faxon, but from report have no doubt of his capacity for the undertaking.

Question by the same. Should you think that Dr. Hawks, or a physician of equal skill, could have been of any service to Lowell by a daily attendance on him after the bone was reduced, and while he was in the care of Dr. Faxon?

Answer. No.

Question by the same. If Lowell's thigh bone is in its natural place or socket, would or would not an unsuccessful attempt to reduce it, on the supposition of its being dislocated, do the part material injury?

Answer. It would fatigue the muscles, and have a tendency to raise an inflammation in the parts.

Question by the same. Would it not be likely in a case like Lowell's to retard the cure of the hip, or prevent it from getting entirely well?

Answer. Yes.

Question by the same. Do you know Dr. Hawks? and what is his character as a physician and surgeon?

Answer. I have known Dr. Hawks between two or three years, have been in consultation with him in several cases, and consider him as master of his profession, and that he prescribes with judgment as a physician and operates skilfully as a surgeon.

Question by the same. Were you present with Dr. Hawks when he reduced a dislocated hip in 1822. If so, please to state the mode of operation, and whether he made use of pulleys? and did he perform with skill and success?

Answer. I was present at a reduction about the time mentioned. It was accomplished by placing the patient on his back, with his head near a door; a bandage passed under the sound side and fixed to a stick across the door-way for counter extension;

and another bandage round the knee of the affected side, at which several assistants made extension when Dr. Hawks reduced the luxation—pullies were not made use of, and Dr. Hawks performed with skill and success.

Question by J. A. Lowell, attorney for the plaintiff. Did you ever reduce a downward and backward luxation of the hip?

Answer. I do not recollect that I ever did.

Question by the same. Did you ever examine Mr. Lowell, or do you know any of the particulars of his injury?

Answer. No.

Question by the same. Has there ever been an understanding between Dr. Hawks and some of the inhabitants of Eastport that they should ensure him a certain income from his professional business, or that they would use their influence in his practice?

Answer. I do not know.

Question by the same. Do you know Dr. Nathan Smith of New Haven?

Answer. I am slightly acquainted with him.

Question by the same. What do you know of Dr. Smith's prescribing for Mr. Lowell's injury, or of his telling him that he would be a well man in a year or two if he complied with his directions?

Answer. I do not know any thing of the subject of the question.

Question by the same. Do you know, relative to this case, any other matter or thing that would benefit the plaintiff in this action?

Answer. No.

Question by the defendant's attorney. What is the reputation of Dr. Nathan Smith of New Haven?

Answer. I believe his reputation stands high.

J. H. SARGENT.

The defendant's counsel offered to read the deposition of HANNAH QUIGLEY, as taken before a magistrate under oath administered in due form; but not signed by the deponent. It was stated, that the deponent had signed and sworn to a similar one taken at the request of the plaintiff; and that the paper now offered in evidence was an exact copy transcribed by the magistrate for the use and at the instance of the defendants, and so certified by the magistrate, but which the deponent finally declined to sign; and as the plaintiff did not produce the original deposition,

the defendants' counsel prayed to be allowed to make use of the certified copy. The Judge ruled it was inadmissible.

No other testimony was offered on either side excepting a former deposition of Josiah Coffin taken by the plaintiff, which was read by his counsel to show some diversity in his statement. The defendants were not present at the taking of this deposition. The defendants' counsel also referred to a deposition of Joshua A. Lowell for a similar purpose. But as no essential variance exists in their general statements they are not thought necessary to be inserted.

The plaintiff also exhibited several bills of Dr. Hawks', for services in August, 1818, 7 visits—one for 1819—and also for the operation on the 7th of September, \$17--bill dated 17th Nov. 1821. Likewise a bill of Dr. Faxon for services in 1818.

The defendants' counsel, with the permission of the court, read several passages from a treatise of Sir Astley Cooper on Dislocations of the Joints; and also from the New-England Journal of Medicine and Surgery, Vol. XII, pages 275, 278, 280.

MR. CROSBY, counsel for Dr. Faxon, argued that the injury to the plaintiff's joint was of such a nature as might render it very difficult to restore, in all respects, to a perfectly sound state; that Dr. Faxon, although a physician of respectable reputation, acquired by extensive reading and experience, did not profess any extraordinary skill in surgery. At the time of the accident to the plaintiff, being his family physician and indeed the only regular physician in the place, he was called in suddenly and undertook upon the emergency to administer the best aid and relief he was capable of rendering. His naturally benevolent disposition induced him to endeavour to do his neighbour all the good in his power. The plaintiff not being satisfied with the success of Dr. Faxon, not only without any objection from him but with his perfect concurrence sent for Dr. Hawks, a practitioner of acknowledged respectability and surgical skill from Eastport, and thereby entirely discharged Dr. Faxon from all liability on that score. That Dr. Hawks having been summoned in this manner Dr. Faxon properly considered himself as discharged from all other duty, except as a temporary assistant or attending physician; and justly regarded himself as relieved from all further responsibility except in his own particular and appropriate sphere. The chief reliance in respect to the operation was placed by the plaintiff on Dr. Hawks. Dr. Faxon continued to attend Lowell every day during his confinement and as long

as was necessary. None of the evidence went to charge him with any neglect or mismanagement of the plaintiff's case. On the contrary he was constantly and well attended to by Dr. Faxon and sufficiently examined; and it appeared that Dr. Hawks occasionally attended and administered medicine, which was all he assumed or engaged to do. It was not their fault, if Lowell omitted to pursue the precautions prescribed by them to prevent the spasmodic affection of the injured muscles, thereby retarding the cure of the hip joint and rendering the operation less advantageous and the remedy less complete and beneficial. That if any injury was experienced in this interval, it was to be imputed therefore to the plaintiff's incautiousness and mismanagement and not by any means to be attributed to the directions of Dr. Faxon or Dr. Hawks, which were not observed. That from the time of the original operation performed by Dr. Hawks the plaintiff's hip joint was in no condition to be benefitted by a further operation. The defendants did not believe that any human power could do more for the restoration of the plaintiff; and therefore they could not conscientiously consent to subject him to any further torment. The event justified their opinion. It was moreover in proof, that the plaintiff never complained of the conduct of this defendant; but confessed he joined him in the action to prevent his being a witness for Dr. Hawks, as appeared by the testimony of Phelps. The testimony of Winslow was not deserving of notice. The counsel commented further on the evidence and enlarged on those views which he took of the cause, insisting strongly on the reasons, that existed why his client ought to be excused from any legal responsibility. Mr. Crosby remarked, that the discussion of the principles respecting the character of Mr. Lowell's dislocation, and the comparison of the conflicting opinions on that subject, would be left to the counsel who would follow him.

Mr. DAVEIS addressed the jury as counsel in behalf of the defendant, Dr. Hawks, and observed that in a case of this sort, which had created such extraordinary excitement, it might be presumptuous to entertain much expectation. This excitement had been industriously communicated to the remotest corners of the county of Washington; and so much pains had been taken by the plaintiff to produce a feeling in his favour and poison the sources of justice against this defendant, as to cause him almost to despair of a dispassionate hearing before any tribunal of the community.

By some means, he said, it was certain, a clamour had been raised against this individual in particular, which had been sustained and sanctioned by the influence of one of the most popular and powerful scientific institutions in the United States; an institution, it was proper to say, no less distinguished for its ornaments than its endowments.—Ever since the plaintiff had been stimulated by the unfortunate opinion, that he obtained from that ill-boding oracle, to the laudable resolution of prosecuting his humble benefactors here for the injury he had received from his horse, he had with the utmost assiduity devoted himself, in conjunction with his loving and learned brother and witness, to the prosecution of this virtuous enterprize; perambulating the country in all directions to spread his grief and seek out such further testimonials, as he could perchance light upon, to fortify the opinions of the Boston Medical Faculty. Of his alertness in the first respect he exhibits a living and moving example before the jury; and in the latter particular he has treated us with one or two remarkable specimens of the faithful power of the écho, among which the monotonous amens of Dr. Brown, are no less profound than the pontifical responses of Dr. Welsh. Again to eke out his case, the plaintiff has applied his own industry to the science of anatomy—illustrated in framing his interrogatories to the learned faculty, under whom he served his apprenticeship at Boston; while in order to prepare his cause more perfectly for trial, his faithful brother has been translated from the care of the shop to the study of the law.—The talents of eminent counsel moreover, almost monopolized by the activity of the plaintiff—the intrinsic difficulty of the case, so foreign from the ordinary routine of judicial business, added to the vast weight of medical authority to be encountered on this occasion, left very few inducements, it must be confessed, under many disadvantages, for the duty assigned by the courtesy of his respected brethren to the closing counsel for the defendants.

It was not, in truth, to either of the defendants, that the plaintiff attributed his original injury. He had the misfortune to be thrown from his horse, and to have the whole weight of the animal fall upon him in the manner testified by the witnesses, and afterwards described by the plaintiff himself to Dr. Smith. The weight of the horse fell between his legs, which were spread to receive the shock in their state of widest possible separation, with the force of the blow upon the left hip bone, sufficient in all probability either to crush it into its socket, or to dislodge it

with violence in some secret invisible direction. The office of rendering the surgical aid requisite in such an emergency was very little to be coveted; and nothing but the ready, generous and irresistible impulse of benevolence brought Dr. Hawks from the scene of his practice at Eastport within the range of the plaintiff's revengeful disposition. If he had refused to move from the spot, where he was surrounded by water, as he might have done at least without exposing himself to any legal liability, he would have saved himself from considerable vexation and been spared the persecution he has experienced at a quarter from which he was entitled to expect the most animated acknowledgments. Instead of this grateful return to the feelings of a physician, he has met with a vindictive demand of damages, to the amount of ten thousand dollars; more than sufficient to consume all the earnings of his past and mortgage all the fruits of his future industry.

But it was not merely the magnitude of the demand, nor even the duty involved to the defendant in regard to the serious influence of an unfavorable decision upon his professional prosperity, that presented the most appalling responsibility. Other considerations of sufficient cogency concerning their own character and the welfare of the community itself, might occur to an enlightened and conscientious jury. After the complete elucidation the case had undergone from the combined light of testimony and authority, it was submitted whether this did not cease to be a case confined to the parties upon the record, and become one in which the public itself was considerably interested. It was indeed a solemn question for the jury, whether they would suffer those faculties with which God had blessed them, to be spell-bound by this man's malignant spirit and delivered over to a strong delusion; or whether they would burst the bonds of prejudice—save the defendant from becoming the victim of a gross imposture—and put an end forever to a most scandalous and unrighteous prosecution.

It certainly would not be contested on the part of the defendants, that a physician was bound to use his best skill and ability. It is a condition, which lies at the corner stone of his undertaking. Nay, it is an engagement which it is impossible for him not to perform. Not merely sympathy and humanity, but every motive of principle and duty, every impulse of personal and professional sensibility—his whole heart and soul, are engaged, that every faculty shall be exerted to redeem this obligation. Dr. Hawks

does not ask to be exempted from this common law; nor does he seek to shield himself under any plea of incapacity to perform a simple operation. Although he does not pretend to the highest powers and honours of his profession, yet he cannot have his defense so humiliated as to implore the mercy of your verdict in favour of a very ignorant and illiterate pretender to practice physic in an exceeding obscure place—It is true that a learned English judge has, in a modern case, observed he was at a loss to state what degree of skill was demanded of a village surgeon; and it will probably not be disputed, indeed it cannot be disguised, that there are peculiar difficulties besetting the practice of the healing arts under all situations and circumstances. The universal sentiments of mankind speak a language on this subject, that cannot be misinterpreted. With constitutions of fearful and wonderful structure, exposed to an innumerable variety of shocks and accidents, continually changing their forms and character, confounding the most wise and learned practitioners, internal injuries occasionally occur of a mysterious nature, where the indications are extremely obscure and uncertain, and the most distressing perplexities presented to the physician. To few eminent geniuses is imparted the rare tact to discriminate all signs, and the not less extraordinary faculty to put in requisition all possible expedients. Various modes of treatment are adopted and various combinations of skill employed in very similar cases. Doctors are proverbial for their differences; it is seldom one physician approves another's practice; and they are oftentimes found to adopt and persevere in the most opposite conclusions in regard to the same class of cases. It follows, as no one could doubt and every body knows to be a fact, that mistakes must of necessity be sometimes made, both in regard to the characteristics of disease and the remedies best adapted for relief; and that these may well be made without involving any imputation on the general character and fidelity of the practitioner, or incurring any reasonable cause of legal responsibility. The work of a physician is all tentative and experimental; it is all as it were under water. While the science of physic, as we have great confidence, is continually improving, the system of practice is perpetually changing; and few of the theories of any note, that were in vogue fifty years ago, remain without some revolution. New observations and discoveries are continually enlarging the field and changing the instruments of professional power. Physicians themselves, with whom in common

parlance we confound surgeons, as we find them generally combined in the country, are of the most unequal grades of natural capacity; and their advantages for instruction and opportunities for experience are as various as their original talents. They rise in reputation as they advance in usefulness, according to all these circumstances united with the favourable means which their situation affords for the products of emulation and improvement. No earthly degree of excellence after all affords a perfect degree of security for the sagacity and skill of this, more than any other of the learned professions. They are neither prophets nor the sons of prophets. It is not much that art can do at the utmost. The powers of medicine and nature themselves fail at last. The history of the art is itself a chapter of accidents; and the works of surgery are full of the most tragical catastrophes, though few perhaps so melancholy as that which seems to have attended the outset of the Massachusetts General Hospital. None of the institutions of society, it may be added, contain more than imperfect remedies for the necessary evils of its condition; and the legal sanctions of social obligation cannot afford to deal with the more dubious and equivocal cases; but are only able to guard against infractions of a grosser and more intrepid and charlatanical character. A scale of all the talent within a given circuit is gradually formed in public estimation; and practitioners in any branch are, in some measure certainly, employed at the proper peril of those who are at liberty to use their own discretion. The same degree of skill cannot be expected in all places nor exacted of all persons. A young physician cannot be equal to an old one, nor a village apothecary set up to rival a college professor. The plaintiff was not excluded by Dr. Hawks from applying to Dr. Faxon, or Dr. Richardson; and if he could find no better physician, even after Dr. Whipple came, without going to Boston, it is no fault to be visited on the defendant. The least skilful are surely not to be considered any more responsible for results, than the most gifted; and if the danger, to which the unfortunate may be exposed even in the hands of regular physicians, sometimes extends to life as well as limb, it is one which can scarcely be guarded against by the laws. It is not a very commendable any more than a very customary sight to see a patient prosecuting his physician. It is rather doubtful whether the intensity of moral obligation can be increased to advantage by any legal action. Perhaps it would hardly be considered worth while to diminish the doctrine of

chances in favour of patients by not leaving them partly in the hands of nature—or to multiply the risks of mortality by the perils of prosecution. If much of this responsibility must necessarily be incurred towards those who are not living to enforce it, if physicians and surgeons are only to be rendered amenable for half measures, it might seem hardly expedient to make it their interest not to leave their work unfinished. Public judgment, not practiced upon, is the proper tribunal to regulate this species of responsibility. It is not the true principle, that every practitioner is obliged to exercise the highest degree of skill competent for the most accomplished proficient in science and experience to attain ; but that he is only bound to employ the best that he possesses. A degree from a learned faculty of medicine is at the same time a warrant for the public confidence under these conditions, and a security to the fair candidate for the patronage of the community against any consequences, besides those of neglect, except the mere effects of rashness and empiricism ;—and we think there is no right to look behind the diploma, either for the evidence of ordinary skill, or indemnity for its honest exercise.—It is not disputed that Dr. Hawks possesses the competent evidence of ordinary skill ; and with these prefatory remarks, I proceed to the testimony.

Reynolds, one of the Plaintiff's witnesses who was present at the accident, describes the manner in which it happened. Josiah Coffin, a friend of Lowell's, was also near him at the moment, and lifted him off the ground, and helped him into the house. Dr. Faxon, a neighbor of the plaintiff, living at Lubec near the spot where this took place, being immediately called, gave it as his opinion, that the limb was dislocated ; and he accordingly proceeded to set it, with what means he had, in the best manner of which he was capable ; and, as he at first thought, with success. Not confident in his own judgment however, he applied to the bystanders for their opinion. The plaintiff's brother, now so swift in his evidence, then professed his ignorance ; but Coffin, who had seen some cases of this kind before, signified his belief that the bone was not set ; and suggested sending for Dr. Hawks. The plaintiff himself entertaining the same apprehension, with the advice of Coffin, urged also by his brother, and with the consent of Dr. Faxon, a messenger was dispatched to Eastport, a space of several miles across the Peninsular, unacquainted with the defendant ; and who testifies that he made not the slightest demur to complying with the request.

No fault seems to be found with Dr. Hawks for not making needful despatch. He arrived in about two or three hours, an interval, considering the distance and the time necessarily consumed in crossing the bay, as brief as possible. After the best examination he could make at the moment, being called to act on the emergency, he pronounced his opinion, that there was a fracture of the bones of the pelvis about the head of the thigh bone, and also that the bone itself was shot out of its socket. Joshua A. Lowell and Coffin both say the limb was then standing out in an awkward and unnatural position :—the plaintiff himself said he was convinced it was not right ; and after having retired a few minutes to consult with Dr. Faxon, Dr. Hawks agreed with him to undertake another operation. The priority was immediately yielded by Dr. Faxon to Dr. Hawks, who directed the necessary preparations ; and with the assistance of Faxon, and aid of other persons present, including Coffin and the plaintiff's brother, proceeded to perform the operation. Joshua A. Lowell describes, with the utmost particularity, the mode in which they proceeded. The patient was placed across the bed ; a sheet put round the other thigh of the well limb, and several men were employed to draw upon it ; others took hold under the arms ; and two or three were engaged with Dr. Faxon in extending the injured limb, making use of a towel taken round the knee. Dr. Hawks took his principal station at the head of the thigh bone, and was chiefly employed in tracing it, and giving his directions to the assistants ; and occasionally acted in making the extension and managing the ancle. Dr. Faxon had hold of the end of the leg, which was borne in towards the other, at the same time the extension was made. No other means are mentioned by the witnesses ; and the operation lasted, it seems according to the brother's account, from ten to fifteen minutes. The process was observed to be attended by a grating sound, which the doctors said was occasioned by the returning of the bone into the socket. Coffin testifies, that Lowell first stated he felt the bone go into its place. Dr. Hawks also said he perceived the same ; and directed them to give back ; and he asked Lowell if he did not feel more free from pain. Lowell declared that he did. The doctors then examined the hip. Dr. Hawks took hold of the injured limb, raised it up, and turned it in every direction with perfect ease, and without appearing to give the patient any pain. The difference between the two successive operations, performed by Faxon and Hawks, is apparent from

their results. After the first, the limb still continued to retain its forced and unnatural position and was incapable of motion without great pain ; while after the second operation by Dr. Hawks, the position was quite easy and the rotation was perfect. Sumner, one of the plaintiff's own witnesses saw no precipitation ; was satisfied with the manner of proceeding ; and says that Dr. Hawks handled the knees after the operation and moved them in every direction. This criterion is deemed to be infallible. Coffin, who appeared to have some notion of these things, agrees with Joshua respecting the previous position of the limb, and says that it could not be carried in without great pain ; and he, who was so sceptical before respecting the success of Dr. Faxon's operation, was now satisfied and saw no reason to doubt the united declaration of the doctors, that the bone was perfectly restored to its proper place. The plaintiff said he felt it so ; and nothing was signified or suggested by any person to the contrary. Indeed it is evident, this was the opinion of all parties. Joshua acknowledges, that his brother declared it felt easier or more natural. No difference was discerned after this operation in the length of the limb. Both Coffin and Joshua say they saw none ; and as the limb was examined by the doctors, and the knees bound together with a bandage, it will be judged whether it could have escaped their observation.

Of all dislocations, it will probably not be denied, those of the hip are the most difficult to determine, and reduction most difficult to accomplish. The different parts of the pelvis are all so crowded together and thickly covered with muscles, that it is extremely difficult to distinguish between the injuries done to the bones and those to the ligaments and muscles. The power of the muscles themselves is prodigious ; as shewn in the execution of Damians, where the most furious horses were not able to overcome it ;—also a case of dislocation of the hip in Guy's Hospital, in which the contraction of the muscles was so violent, as to render reduction impracticable in the space of three hours. This contraction is so great, that it is no doubt sometimes necessary to employ mechanical power. But the means are not always to be had ; and in their absence nothing is to be charged to Dr. Hawks for proceeding to operate with the best he could command, while the injury was recent and the operation may be said to have been already commenced, and to follow up the purchase that was acquired upon the muscles by the use of fresh force.

It seems that bleeding was in the first place employed; though not particularly described by the witnesses, both Coffin and J. A. Lowell mention Hawks's direction to bleed him again. It is true, that no pullies were employed and no mattresses and compresses made use of by Dr. Hawks. There was probably nothing of that sort to be found in the forest. These soft appliances are not so easy to be had at the eastward. Dr. Warren does not consider pullies indispensable, though with some partiality to the vast advantages enjoyed at the Boston institution, he considers them useful. Dr. Smith on the other hand, from the experience he has had and the judgment he is able to form, is not without some doubts respecting their utility; and sometimes even thinks they do more hurt than good. Manual strength he considers in general to be quite sufficient; and that to operate with success frequently depends more upon the hand of skill than the degree of force. From the exertion of force without skill, it is obvious that nothing but mischief can result. He mentions a case in which after turning the limb every way but the right, he at last succeeded in reducing it with singular felicity by simply carrying the leg upwards toward the face. A curious circumstance is mentioned by Sir Astley Cooper, of a person, upon whom he had himself operated in vain for a dislocation of the hip, having it restored by a sudden lurch of a vessel which he was on board, and being thrown out of his birth. These are facts—and although authorities equally high may favour the employment of mechanical powers, certainly no blame will be attached to Dr. Hawks for not using them where they were not to be had; and especially when he seems for the season to have succeeded sufficiently well without. A sheet well secured round the well thigh, hauled upon by several strong men, with others hold of his shoulders drawing him across the bed, and another force employed in the contrary direction by a towel round the knee, and extension exerted by several powerful hands in this manner, judiciously directed and skilfully applied, would not seem inadequate to this object; and humanity would recommend the use of no more force than was requisite. It may be observed that Dr. Mann is exceedingly cautious in his answers respecting the importance of making use of any thing more than manual force and even concerning the means of relaxation; and he is considerably reserved respecting his own experience on this point. He thinks that pullies are only to be resorted to in extreme cases; I believe he declares in so many

words, that he does not think them of any necessity, except in very obstinate cases, and never saw them employed except on the plaintiff himself. In the only case, that he ever pretends to have reduced, he does not seem to have used any extraordinary power.

Supposing that a dislocation did exist, as the plaintiff and the defendants equally believed, it is considered however to have been one of such an uncommon character, that failure to reduce it would imply no want of ordinary skill. Dislocations of the hip are acknowledged by the highest surgical authorities to be the most difficult not only to detect, but to reduce; as well on account of the obscurity of the injury, as of the obstacles opposed by the ligaments and muscles to reduction. The cases are rare; and practitioners even in large places and of extensive experience have few opportunities for actual observation. Surgeons, who have served in the army, for example, have hardly seen an instance. Dr. Mann, who was out in the service during the last war, and had upwards of forty years practice, never saw but three cases of luxation, nor reduced a single one alone. He never assisted except in one which was successful, and there the injury was very recent. In two others, that were of longer standing, he is obliged to acknowledge he was unsuccessful. Dr. Townsend, who was a surgeon in the revolutionary army and has been engaged in practice ever since the year 1774, never reduced one in his life, and does not say he ever saw one, though he is so perfectly confident about this. Even his ancient contemporary Dr. Welsh in all the course of his experience never enjoyed an opportunity for actual operation. Dr. Warren alone professes to have operated often; although he does not charge his memory with the number of instances. He admits that this was a dislocation difficult to discover; although men of high standing in the profession could not differ about it;—and in this opinion he is fully borne out by the rest of his learned brethren, who have been called to give their testimony on this occasion. It is also a remarkable circumstance, that Dr. Nathan Smith, who has seen this very case, and whose conclusion respecting it forms rather a singular comment upon this confident assertion, speaks only of a single case occurring within his great range of practice; and that was a case of dislocation backward and upward, and which he succeeded in reducing with the faculty he has of doing every thing. He declares however, that dislocation of the hip is of very rare occurrence; and probably not one medical man in ten is competent to reduce it; that it is frequently

difficult to determine what the injury to the hip is; and that one may be very liable to be deceived by the appearance of dislocation, where none exists. This circumstance is barely noted at this moment in conjunction with the memorable coincidence of opinion expressed by the learned faculty at Boston. In this view however it becomes quite edifying to observe the exquisite harmony prevailing in the sentiments of the other parts of the choir, swelling altogether beyond the gentle cadence of their candid preceptor, that a dislocation of this nature was not entirely without its difficulty. In Dr. Welsh's opinion this case was not of such a nature, that men of eminence and experience in their profession would be likely to differ respecting it; on the contrary, it was extremely easy to determine, not only whether there was a dislocation, but also what the real cause was. Dr. Mann is of the same opinion respecting persons of distinguished standing in their profession and competently acquainted with anatomy; moreover the indications laid down in professional works on this subject were so full and precise, that they were not easily mistaken by a careful observer. Even Dr. Townsend, who does not seem ever to have seen a single case in his life, and only assisted at this as a sort of *corps de reserve*, undertakes to testify point-blank, that it was so plain a case—he was sure he never made such a mistake in the whole course of his practice. Had the other gentlemen never made so great a mistake in their professional practice, as it would be to pronounce this hip joint dislocated, when it was not? Dr. Warren gives his mild answer, that he has no recollection of any instance. Dr. Mann is satisfied he never did. Dr. Welsh considers the question altogether an improper one; a reply, from the stile of which the learned doctor leaves us at a loss to understand whether he means to resent an imagined indignity or decline an unpleasant interrogatory.

These gentlemen are respectively interrogated again, whether they ever knew a downward and inward luxation of this joint, and what success they ever had with such a one. Dr. Warren does not recollect that he ever saw one. Dr. Townsend of course never saw any thing of the kind. Dr. Mann was present at an operation for such a dislocation; but it was not reduced, and he acknowledges he had never known a reduction. Dr. Welsh had seen one, and thinks he had known two, in one of which the attempt failed, and the other succeeded;—but he does not say that the one he is sure he saw was the one, which he knew succeeded. Now it might be interesting to inquire whether

this was not the character of Lowell's luxation; viz. downward and inward into the *foramen ovale*? In this luxation the limb points out; and such was the position of Lowell's leg before it was set. The mode of reduction directed in this case is by extending the limb and taking hold of the ankle, carrying it in gradually towards the other and thus canting the head of the thigh bone back into its socket;—and such was the method employed by Dr. Hawks. If that were the case; if there were any luxation, and there is no other reason to doubt it, except in regard to what comes from Dr. Smith, who did not see the form which it exhibited in the first place; it was certainly to the credit of Dr. Hawks, that he should have had the tact to divine a dislocation of this unusual character and the skill to make use immediately of the proper means for reduction. If there were a simple dislocation existing therefore, it was certainly reduced; and there is at least nothing to show, that the operation was not performed with sufficient skill, nor that every thing was not done that was necessary, and in the best manner that circumstances permitted.

It might be a subject of question however from all circumstances, whether this was merely a simple luxation of the hip joint, or whether it was not probably an injury of a more serious and violent character to the parts of the pelvis at that place. A dislocation into the foramen ovale would naturally be attended with a rupture of the ligaments; and if it were also accompanied with an injury to the socket itself, it is evident that such an injury would be very difficult to heal. It certainly would not be a very easy thing to heal the acetabulum; and perhaps it would even be impossible to prevent the head of the bone from working out of it, as often as it should be restored. The neck of the thigh bone, when broken, cannot be reunited; and the fracture of the back part of the ischium, or what is termed the *os innominatum*, is difficult to distinguish from dislocation. However successful an operation might seem to be for a luxation, still if there were a more general shock to the system and a violent injury to the socket, the operator might do all that was in his power; he might even effect an apparent or a real reduction; and yet, in consequence of the derangement of the bones or the destruction of the parts, be unable to produce a perfect restoration. Lowell no doubt received all the relief that his situation afforded or required; and yet, if there was something more radical than a mere dislocation existing, it might be out of

the power of Dr. Hawks or any other human being to effect a perfect cure. All, that man could do, he might accomplish without being able to make his patient a new person, or supply him with a new pelvis. If there were a fracture of the bones of this part, or an injury done to the socket of the thigh bone, in addition to the necessary rupture of the ligaments accompanying a luxation of this joint, the surgeon might perhaps have reason to flatter himself with the first appearance of his operation, without being able by any means to complete the reorganization of the system.

The evidence in this case consists of two kinds,—facts and opinions; and there are two points of time to which the attention of the jury will naturally be turned, viz: the period of the original operation at Lubec, and that of the subsequent examination in Boston.—It is perhaps a misfortune in this case, that we, as well as the witnesses, are necessarily obliged to make use of some terms, which cannot be perfectly intelligible without explanation. It no doubt happens sometimes, as Dr. Townsend states, that the parts about the joint are so swollen and inflamed, that it is not easy to ascertain the exact nature or extent of the injury at the instant; or until the inflammation has subsided; and Dr. Mann considers it possible for the parts to be so injured and affected by swelling and inflammation, as to prevent a surgeon from being able to determine it for some months. Dr. Warren however is of opinion, that a surgeon who has an opportunity to examine a case of dislocation immediately after the injury, other circumstances being equal, has the best means of judging of the nature of the case. He also says, he should not attach much importance to the opinions of ordinary by-standers with respect to the professional skill of performing an operation, though he thinks they might be sufficient to give a satisfactory account of what they were seeing to. Even as to this point however, Dr. Townsend does not seem to think they can be depended upon.—Supposing therefore, that it may still be possible for the real nature of the injury to remain quite apparent for months afterwards, as Dr. Warren imagines, it will nevertheless not be denied to be of the first importance to ascertain the original impression of those, who are best qualified to judge of the subject by professional genius and experience. The only persons of this description present, of any pretensions to skill or science at the period in question, were the defendants;—each and both of whom by the manoeuvre of the plaintiff in the mode of bringing this action are ex-

cluded from giving their testimony—although he has confessed he had no fault to find with Dr. Faxon whatever—and you are thus called upon to decide this case in the absence of that sort of evidence, in which you would naturally repose the most confidence. This is not only an injury to the defendants, but also to the jury. —However faithful persons accidentally present may intend to be in their account, it is manifest that we ought not to receive it from their mouths but from their masters'. Dr. Hawks having been called so suddenly to the assistance of Dr. Faxon, and having retired to consult with him as soon as he arrived, is entitled upon every principle of fair and honorable behaviour towards a physician under those circumstances, to the benefit of his testimony of what passed in that interview. But contrivance is not always complete ; and notwithstanding the not very worthy artifice adopted by this plaintiff, it so happens that all the light, that might be useful on this subject, is not entirely excluded ; but a few scattered rays have made their escape through the gloom, with which he has endeavoured to invest this cause, impervious as he may have thought to render it. Although you may not have the benefit of the private consultation between the defendants, in a situation where there was no reason for reserve between themselves, the result pronounced by Dr. Hawks on their return into the room is plainly enough in evidence from the testimony of Josiah Coffin, who was honest and observant, and also of Joshua A. Lowell, who is not deficient in intelligence. Joshua relates that Dr. Hawks did declare there was some fracture of the socket : and Coffin testifies that the plaintiff asked Dr. Hawks what his situation was, and that the doctor stated that his hip joint was out, and the socket that received the head of the thigh bone was fractured, and he proposed to him to undergo another operation. He informed him distinctly, that it was different from simple luxation ; that the bones which formed the socket were fractured ; and that they must have time to unite ; and expressed his fear that he would be a cripple for life. Such a violence and dislodgement, it must be evident, could have been of no ordinary character. Whether anything is indicated by the grating that was noticed, in the room of the snapping that is sometimes heard into the socket, to distinguish the character of this accident, is a subject of professional inference, but not perhaps of argument—A bandage was bound round his knees ; and the patient was directed to lie perfectly quiet on his back for fourteen days.

Joshua A. Lowell says, his brother then asked Hawks, if it would not be necessary for him to come over the next day and see him ; that Hawks declined, observing it would be unnecessary, as he would give particular directions to Dr. Faxon how to proceed ; and then directed Dr. Faxon to bleed him again and take care that an inflammation did not set in, with other directions which the witness does not recollect ; cautioning his patient not to be in too great a hurry to get out, telling him his case was a very important one, and very possibly comforting him with the idea, that he might not be detained from his business many weeks. All this is entirely consistent with the substance of Coffin's deposition, taken with notice to the plaintiff, while the defendants had no notice of the first. He testifies that Hawks told Lowell much depended on his taking good care of himself ; that he expected he would be in much greater pain five or six days hence from inflammation ; and that it could not be prevented ; but he should advise Dr. Faxon to make use of such means as were within medical reach to back inflammation, and bleed him again next day, and he would send medicines over by the boat, if they were wanted. He says further, that Lowell asked Hawks to attend him ; but Dr. Hawks said he had a considerable number of sick at Eastport, that were constantly dependant on him, which rendered it impossible. He says Lowell spoke about sending a boat for Hawks the next day ; and that Hawks said he would come, if his business permitted. Joshua A. Lowell however contradicts Coffin in this particular ; and expressly declares, that Hawks declined to come ; and Coffin states that Hawks told Lowell distinctly, that he could not attend him, and desired him not to depend upon him ; as he did not know whether he could come at all—that it was not necessary, as Faxon was present, and could come at call ; that there was not much to be done—that he must keep still, and the cure must be left mostly to nature ; as he thought the thigh bone was in its place and the fractured socket as well as the nature of the case admitted.

Notwithstanding Dr. Hawks declined coming under any engagement, and never made any further charge, nor ever received any other compensation for his trouble, it appears that he actually visited Lowell several times voluntarily, and sometimes when he was sent for ; availing himself of such opportunities as presented for that purpose, and taking every occasion which he thought might be useful. Once or twice when he was

sent for, it is said that he did not come. As a heavy charge of neglect against him is grounded on these alleged omissions, it may be useful for the jury to examine first the evidence of any further engagement on his part, and consider the circumstances which might have interfered with his attendance. It will be a subject of further enquiry, how far he could have been of any benefit.

It is sufficiently proved, that he originally declined to enter into any further engagement. Joshua A. Lowell does not even pretend to say, that the plaintiff made any request of him to attend upon him, except to ask whether he could not come over the next day; and Coffin's testimony goes directly to prove, that Hawks absolutely refused to continue to attend upon him in a professional capacity. Whatever were his motives, he had a right to determine for himself. He had already departed from his ordinary limit to administer relief to the plaintiff, and having done all that was incumbent, his mind naturally reverted to the superior duties he owed towards those patients, who placed their entire dependence upon him, and some of whom were then in a most anxious and critical situation. I allude particularly to those cases, in regard to which it is proved by ample evidence that he was placed under the most indispensable engagements by no means to be out of the way at the approaching hour. This was on the 7th of September, that the operation was performed on Mr. Lowell. The ladies were both confined in the same month, and he was engaged to attend upon both for a number of days previous. Mrs. Hobbs's former confinement had been very perilous, and she was dangerously ill for five or six weeks at this time. Her husband says in his deposition, that he does not know how often a physician ought to attend, but he knew how often he wanted him. Mr. Webster says there was no man on Moose Island, that he or his wife had confidence in on these occasions but Dr. Hawks; and there was no other man on earth, that he would have trusted. While it is said by them that he agreed to be ready at a moment's warning, let not Dr. Hawks be charged with inconsistency and inhumanity because he did actually, while these ladies and their friends were chiefly under the influence of their apprehensions, visit Lowell, first to set his limb, and once or twice afterward of his own accord or at the plaintiff's importunity to look after it. But he had a number of other patients under his care besides; and the more extensive a physician's practice becomes, and his engagements multiply, every

body knows the more impossible it becomes for him to fulfil them all without interference. Dr. Hawks did not conceive it to be his duty to abandon his own patients to the kind care of Dr. Richardson or Dr. Mow. One of them confesses he does not love Dr. Hawks—and if he did, the defendant might not feel under any obligations to deliver his patients over to the disciples of a school, in which he was not initiated. It was his duty therefore to decline any engagement to Mr. Lowell; and whatever his brother may afterwards say or swear to the contrary in this respect is without foundation.

A further reason existed in regard to Dr. Faxon. He was the regular physician at Lubec; almost the next door neighbour to Mr. Lowell, and his attending family physician. Dr. Faxon is a man of liberal education. He was older than Dr. Hawks; had been several years established there in practice, and had enjoyed opportunities of much longer experience. It is well known, how unpleasant it is for one physician to interfere in the practice of another: and although in this particular case Dr. Faxon civilly gave way to the superior skill of Dr. Hawks and modestly accepted a second hand's birth in performing the operation, there is no cause to conclude, that he was not perfectly competent to the charge of every thing that remained to be done afterwards, as appears by the testimony of Phelps in regard to the entire satisfaction expressed by Lowell. Dr. Hawks therefore did not abandon Lowell without professional assistance; and having done all himself, which he might have supposed Dr. Faxon less adequate to, he saw nothing left to be done, to which Dr. Faxon was not perfectly equal. However he might have judged of Dr. Faxon's ability to perform a difficult operation, there is nothing to shew that he was not capable of bleeding or applying emollients or administering medicine. He must otherwise have been even below the level of the mean and pitiful expressions which the boatman and the brother have joined to put into the mouth of Dr. Hawks, without being able to agree what they were. Whatever pique or prejudice moreover Dr. Faxon's friends might be disposed to impute to Dr. Hawks, unfavourable to his professional character, or disrespectful to himself, it was the more important for him to avoid lending any countenance to such suggestions by interfering with his practice further than might seem absolutely necessary—Dr. Faxon was particularly directed to guard against any danger of inflammation; and, according to Joshua A. Lowell's testimony, called the next

morning and continued to attend upon the plaintiff several weeks, visiting frequently at first and occasionally afterwards; and he repeatedly applied liniments, although the witness does not know that he ever looked at the limb;—as if they were like to be applied without looking.

Joshua A. Lowell says his brother continued in great pain, particularly on the fourth and fifth days after the operation. This was precisely what Dr. Hawks predicted. Brooks was sent with a message to him to come immediately; it does not appear that he came; nor that there was any other need of it, except the restlessness of the patient. Ten days after this, making fifteen from the operation, which was the time he directed the plaintiff to be kept still upon his back without removing the bandage, he called voluntarily, without being requested. This was the first time that Lowell arose from his bed; two or three days after Mrs. Hobbs's confinement, and a day or two before Mrs. Webster's; and Dr. Hawks embraced this opportunity to take a boat over to Lubec, on purpose to see Lowell, at the end of this appointed period. Joshua A. Lowell happened not to be present at this interview; though he undertakes to say that Dr. Hawks came a few minutes after his brother had been raised from his bed to have it made. Coffin however was present at this time, and testifies that he helped Lowell off the bed and that he saw Dr. Hawks examine the hip. Lowell inquired of him, why he did not come when he sent for him; to which Hawks answered, that he was very busy, and had many sick to attend, and was particularly engaged in midwifery at that moment. A hollow was then observed at the outside of the hip, of which Lowell asked the reason; and Dr. Hawks told him it was owing to the socket bone being fractured and causing pain, as it would for some time; but as he gathered strength the hollow would fill up; and he did not see but he was otherwise as well as the nature of the case allowed.

After his return from this visit, Joshua A. Lowell says that Dr. Hawks sent over medicines twice; and that his brother kept his bed three days more, making eighteen. In about eight or ten days after, bringing it to about the last of November, or 1st of October, Dr. Hawks came the second time without being sent for. J. A. Lowell was now present, having given up the shop to a substitute that he had hired, that he might devote himself entirely to his brother, and mount guard upon the doctors; in connexion with one Mrs. Quigley, whose name has already made some figure in this cause. He now represents himself as

having become very watchful of Dr. Hawks's movements. The plaintiff again stood up and rested on his shoulder and asked Dr. Hawks the cause of the hollow of his hip ;—it was obvious without examination outside of his trowsers ; and that Dr. Hawks observed it was a natural consequence of the weakness ; and as the hip gained strength so as to bear an equal proportion of the weight of the body, it would fill up. He further told him, it was an important case, and that every thing appeared to be right and looked as though he was doing well ; but that he must be very careful. He must not be in too great a hurry to get out. He might eventually be as well as ever, and not be detained from his business many weeks ; but one mistep might make him a cripple for life ; and it would be better to have his house burn down round his ears, than he should make one slip. At this time Dr. Hawks took hold of the limb, and swung it every way, and pronounced it to be right. The witness saw no particular comparison of the length of the limbs, and did not observe any difference between them. This lasted according to his account but a few minutes ; and Dr. Hawks seemed to be in a great hurry. He told him however, to write and state particularly how he felt, and that he would either bring or send over such medicines, as he might need.—From these observations and directions it is evident, that Dr. Hawks considered it a mere case for medical attention, and that he did not then contemplate the necessity of any further operation.

In two or three weeks after this, bringing it to about the 23d of October, Dr. Hawks was over again, and staid a short time ; he said he could not stop long, but wished to ask the plaintiff a few questions ; to which Lowell smartly retorted, I wish to ask you one first ; “ Doctor, what is the cause of the lame limb being so much longer than the other ? ” The witness says, that Dr. Hawks seemed to be somewhat posed, and did not instantly make any answer ; but stood considering some minutes ; and then said that he was afraid either, that it was not set or that it was not in its place ; for the witness Joshua A. Lowell states it various ways in his testimony and in his deposition. He declares however, that the doctor promised he would be over the next day and give it a thorough examination ; but that he did not come. Again J. A. Lowell says, that eight or ten days after he was over to Eastport, and told the doctor his brother was anxious to see him, and was in considerable pain, and asked why he had not been over ; to which Dr. Hawks answered that he

was so driven, that he could not possibly leave ; but he would go that afternoon, if the witches did not prevent him. The witness says he asked him what he thought about the lame limb being longer than the other, and that Hawks answered roundly he was afraid it was not set ; but he says the doctor did not come until about the nineteenth of November, when he came with Dr. Whipple, but the witness was not present. All this is the story of Joshua A. Lowell ; and depends entirely upon the truth of his testimony.

Joshua A. Lowell's testimony requires to be taken with some consideration. In the first place he is the brother of the plaintiff ; and while all the rest of the plaintiff's affectionate family took occasion to be absent, during the whole time of his lingering confinement, he seems to have abandoned every other concern to devote himself like a dragon, with the faithful dame Quigley, to the care of his deserted brother. Dr. Hawks could not heal the broken bones of the pelvis, or prevent the hollowing of the hip, the lengthening of the limb, or contraction of the hamstrings ; and after he or somebody else put it into his brother's head to make a voyage to Boston, and ever since he returned with the warrant from the Massachusetts General Hospital to prosecute the defendants, he has been the active and faithful agent of his brother,—his busy and industrious emissary in all parts of the country—his attorney by regular power in taking depositions, and his counsel learned in the law—and possibly advising in the project for excluding Dr. Faxon as a witness. His testimony is, on the whole, rather a remarkable example of the powerful effect of viewing circumstances at a distant period through a distorted and exaggerated medium. In the last conversation, to which he testifies with Dr. Hawks, he has him all to himself, with no check upon the freedom of his recollection. Time has probably added some little embellishments to the fancy-scene at Eastport ; and except a few variations in order of time and some other circumstances, his testimony seems to have been delivered by rote from his original deposition. The lips of the defendant are sealed by law from disclosing his own knowledge of the truth, and stating his recollections of the conversation. But he apprehends, that he is under no false restraint by any technical impediment to prevent him from pronouncing the testimony of this witness in this, as in several other particulars, essentially incorrect ; nor from suggesting that it is seasoned, as he conceives, with several ingredients unfriendly to the fair exhibition of truth.

It will not escape notice, that there is no witness, except Joshua A. Lowell, who testifies to any opinion expressed by Dr. Hawks that the limb continued in a state of dislocation, or to any engagements to attend upon the plaintiff at this period. Neither do those things come out from Joshua, until after his brother returned from Boston with his ticket of discharge from the hospital, as incurable. In truth Dr. Hawks had at this time a variety of engagements on his hands ; he was in particular attendance upon a number of patients ; and Mrs. Hobbs still remained in a dangerous way. For six weeks after her confinement, which was on the 20th of September, her life was despaired of ; and although there was a day or two when she was better, that he took a flying opportunity to pay his last visit to the plaintiff, she afterwards relapsed, and they were as much concerned about her as ever. Although there were other practitioners on the ground ; whether any of them were of the hot-crop persuasion, or Thompson school, or from whatever cause it does not appear ; but the witches as the witness says Hawks called them, would have nobody but him. Every body wanted Hawks. The fact was, he was so driven, as he expressed it, that he could not possibly leave. If at this season of anxiety and hurry on the island, he made any hasty answers or excuses to the plaintiff's witness, every word is not to be weighed with the solemnity of an oath. Besides Dr. Hawks did not keep a boat, and if the plaintiff wanted him so much, he should have sent one for him. The defendant was not obliged to take a pair of oars in answer to every whistle, that might be heard across the waters of Passamaquoddy. As soon as it appears that Mrs. Hobbs was out of danger however, he accompanied Dr. Whipple to Lubec, for the purpose of visiting Lowell, and introducing Dr. Whipple, who proposed to settle at Lubec ; and they together made an examination of his case at the time when Joshua with his usual adroitness chanced to be out of the way ; and Dr. Whipple's deposition offered by us, taken with notice to the plaintiff, who was present and put his questions, is excluded in consequence of an objection now made to it by him on account of a merely formal mistake in the caption. This last examination took place about the 19th of November.

But there is one fact, which Joshua A. Lowell, often as he has been on oath to testify the whole truth in this cause, has uniformly forgotten to mention until this trial ; and that is, that his brother was guilty of the extreme indiscretion of undertaking to travel on foot to a considerable distance to another house, some time

which the witness cannot or is not disposed to ascertain, save that it was before the 23d of October. This was the time, it will be recollected, at which the increased length of the limb, according to his account, was first discovered. Joshua follows this up, to be sure, by declaring that the leg had contracted before—soon after the dislocation—and that his brother complained of pains in his hamstrings, before he left his bed, where he lay crooked up, with the bandage on, his knees ten inches apart. Some part of this last story seems very likely to be doubtful; but where to fix it is very uncertain, as this is without all evidence, except that of J. A. Lowell. The plaintiff excludes all other testimony; and will neither introduce Mrs. Quigley, who was by all the time, and the only other person in the household, nor let the defendant have the use of her evidence. Nothing of all this appears ever to have been communicated to Dr. Hawks; and we are not allowed to show, whether it was to Dr. Faxon. It is manifest that any movement, while the muscles were in their weak state, must be injurious. Dr. Warren thinks, that there may be danger of displacing the limb by the use of considerable motion not long after the reduction—and how late or how long afterward this imprudent promenade was undertaken by Lowell, does not appear from the testimony of his brother. Dr. Mann states, that the injury may be liable to be renewed, by a fall, for example, in getting out of bed, or any other considerable force, and such an accident might easily occur without the knowledge of the surgeon. The plaintiff asks very deliberately in his interrogatories, whether it would have been possible for him to have got his hip out again while he was lying in bed with his knees bound together; and whether if he had, the limb would not have contracted in the room of lengthening. Dr. Welsh says, that the natural effect of muscular action would be to contract. But then, Dr. Townsend says, they would elongate again. Dr. Mann says it would probably be shortened; and Dr. Warren says it would depend upon the direction. But not a syllable is said to the deponents all this while by way of inquiry into the consequence of his romantic expedition, which took place, at all events, before the lengthening of the knee. Why this circumstance should have been so studiously concealed from Dr. Hawks, by the plaintiff and his brother, does not appear and cannot easily be accounted for unless on the supposition, that they were unwilling, that he should know how regardless they had been of his directions, and still disposed to hold him to all the responsibility of their observance.

Another circumstance will not escape recollection; about a fortnight or three weeks after the operation, before the hollow of the hip was presented to the notice of Dr. Hawks, Coffin testifies that the plaintiff stated, that he was afraid he had got his hip out again either in a sort of struggle, or as he expresses it in his last deposition, a kind of fit; expressions, which may very naturally be understood to convey the same signification. Whether this was the mode, in which they meant to apprise the defendant of something wrong that had taken place, without having the candor or the courage to acquaint him distinctly with the fact of his wild and foolish excursion, we have no means of being advised. Whether the plaintiff actually suffered any further injury from accident or imprudence after the first operation, it may be difficult for us to ascertain. It is impossible for the defendants to determine. They could have neither watchers nor witnesses about the plaintiff. Joshua A. Lowell and Mrs. Quigley regularly relieved guard. It was out of our power therefore to prevent the consequences of such carelessness or misconduct, as much it is to prove them now. These duties devolved on his faithful nurses. And while Dr. Hawks may have been distressed by some doubt concerning the real condition of the plaintiff, more causes might have existed for anxiety than were explained to him; and more information, than they could have afforded, might still have been wanting, to warrant an undertaking at that period to perform a further operation, the probable success of which is now no longer problematical. Nothing appears at this time to shew, but that Dr. Hawks thought Lowell was doing as well as the nature of the case admitted, as far as all the circumstances were communicated to him.—It is very natural to suppose, that the plaintiff might have suffered considerable anguish awhile after the operation, and especially as inflammation may be deemed to have proceeded from disorganization of the bones. Something of this was foretold by Dr. Hawks;—hence his extreme anxiety and earnestness that the plaintiff should avoid all unnecessary motion; and no new cause was ever disclosed to change his course of treatment. Dr. Hawks had no apprehension that the plaintiff could dislocate his own leg again, so long as he continued confined in bed with both knees bound together as he had secured them; and whatever weight the circumstance of the plaintiff's pilgrimage at so unseasonable a period might have had in the estimate of evidence, it was not for Joshua to determine that it would amount to nothing at all.

Now if the joint was, in the first place, set as perfectly as possible, and the bone afterwards got out of its place again by any accidental circumstance, whether it was owing to the plaintiff's imprudence or to any involuntary cause, either concealed from the defendants, or one over which they could have no controul, it is not for Mr. Lowell to lay the blame on the defendants. Whether it was done in delirium, or in a convulsion, if such a thing were possible, or took place from mere imprudence as may possibly be supposed,—still if the bone did get out again in this manner, and under circumstances of no more violence than can be conceived to have occurred from such causes, is it not probable that some considerable injury must have been originally done to the acetabulum; and that it was probably so serious and extensive that no permanent restoration could be effected of the joint? How far such a fracture extended, it would evidently be impossible to determine, except by the irregularity afterwards exhibited in the limb, ensuing upon a gradual disorganization.

Whatsoever may be the impression about this matter, it does not appear, that Dr. Hawks ever had any reason to alter his original opinion, that it had been in the first instances a dislocation, downward and forward, attended with a severe injury to the surrounding parts of the pelvis and accompanied with a rupture of the round and capsular ligaments. Such a fracture, it is obvious, whether it were confined to the socket alone, or was a still more formidable injury extending to the ischium, or other portions of the bone in that region, it might be impossible absolutely to determine. There are some injuries, that are totally irremediable;—for example, a fracture of the neck of the thigh bone itself, through the trochanter. Suffice it, that Dr. Hawks was always satisfied, that there was some interior injury of this kind, which his art could not reach, and which he thought best to be trusted to the healing process of nature; and accordingly his apprehension, that Lowell would be a cripple for life and his unremitting injunction to keep perfectly quiet and wait this restorative principle. Sir Astley Cooper observes that there are no cases more critical or trying to the character of a surgeon than those relating to dislocation of the hip; and he mentions an instance in a grave consultation of several sage surgeons, who congratulated themselves exceedingly upon an opinion, which turned out to be a most egregious error. Whether Dr. Hawks is to be regarded as the mountebank in question remains to be determined.

That Dr. Hawks does not stand below the ordinary level of his professional brethren may be inferred from the testimonials in the case. Dr. Smith says he considers him above mediocrity, especially in the knowledge of anatomy. Dr. Sargent of the United States army, attached to the garrison at Eastport, from his acquaintance with Dr. Hawks for several years and his opportunities of consultation with him, says he regards him as a master of his profession; and declares that he prescribes with judgment as a physician and operates skilfully as a surgeon. That he is a man of genius is unquestionable. Whether he is the quack, the plaintiff would make him appear, heady, overconfident and presumptuous, is the question to be disposed of in this action. It may not be improper however to state, that he has already had more experience than half the faculty at the hospital. Dr. Sargent mentions a case, at which he was present, of Dr. Hawks's reducing a dislocated hip, the year after Lowell's, with the most signal success and without any mechanical prowess. Indeed it is marvellous to see how nature works, when she is left to herself under the handicraft of a man of genius; and it is a happy circumstance in a scattered population, whose limbs are so often in jeopardy as ours, where these splendid inventions for supplying the deficiencies of genius do not exist, that the practitioners half of the time get along about as well without them. It is one among the many benevolent provisions of providence; otherwise how Dr. Brown ever contrived to reduce the number of dislocations he speaks of in all his engagements by sea and land, heaven only knows; only that the extravagant absurdities, into which his reading and observation on both elements have betrayed him, show that it could not have been *secundum artem*.

It is not pretended by Dr. Hawks, that he made the plaintiff a perfectly sound and well man;—that could only be done by him who made him first. He had no doubt there was some disorder among the bones besides the original dislocation; and he was further satisfied there was a fracture of the socket, which led him to fear that Lowell would long suffer the consequence without the utmost caution on his part; a caution, of which perhaps his natural impatience and impetuosity render him incapable. All Dr. Hawks does contend is, that he did Lowell all the good in his power, and leaves him to prove, who there is that has done or can do him more—or what there was incumbent on the defendant which he has omitted.

Supposing Dr. Hawks was not perfectly satisfied at this period, as it is very possible to conceive he might not have been, that every thing was exactly as it ought to be ; even if he was not entirely certain—a doubt which certainly might be pardonable in him, considering the prodigious mistake, that was made about it afterwards—whether the bone was perfectly in its place ; there being perhaps such a disorder of the joint, that the head of the thigh bone might be started either in or out of the broken socket, and slip one way or the other, as chance determined ; still he might be convinced that any further attempt on his part would be fruitless, and that where nature had failed to perform her process, there was nothing left for the power of man. If under those circumstances it had become so fixed in its position, that it could not be started at all, it does not follow by any means, that it was owing either to what he had done or had not done. What could have been done, can only be determined by him, who can penetrate into the inmost chambers of the human frame, and discern the most infant and critical process of articulation, even to the dividing asunder of the joints and marrow.—That Dr. Hawks did not volunteer at this time to perform a further experiment, is admitted. That he would have declined the responsibility of undertaking one, had he been requested, may be inferred. That exploit he prudently left for more intrepid minds and determined experimenters. It certainly does not appear, that the request was ever made to him ; and if there is any question, whether it was not his duty to have made the proposition himself, a previous and a very proper question to settle, would seem to be whether there was any probability of benefit to result from performing a further operation ?

It is not to be granted, that a correct idea can be formed of the true state of the limb before Lowell went to Boston, from its appearance after his return ; but nevertheless it is not denied, that if it was not dislocated there, it was probably in that condition when he left Lubec, and at the last time he was visited by Dr. Hawks ; and if there were a dislocation existing at that time, which it was in his power to have reduced, it no doubt continued up to the time of the operation in Boston ; for no attempt was made by Dr. Hawks, or any other person that we hear of in the interim, to reduce it.—To ascertain this, the jury must look to the evidence ; see what it is—whence it comes—what it amounts to—and what weight it is entitled to ?

It cannot be denied, that the opinion comes with an air of authority sufficiently imposing—with nought less than the gravity of the whole combined faculty of the Massachusetts General Hospital.—The annals of this establishment bear record of a certain dislocation into the Ischiatic Notch, which an attempt was made to reduce, on the 9th of December, 1821. The learned faculty of that eminent institution was summoned together by Dr. John C. Warren, to examine the case of an unfortunate victim of village quackery, just arrived and removed from Clark's tavern. The conclave consisted of Doctors Warren, Townsend, Welsh, Mann and Spooner, consulting physicians of the hospital. This learned body was clearly and unanimously of opinion, first, that the hip was dislocated. Although with a modest concession to the superior acuteness requisite to detect it, they acknowledged it to be a dislocation at that period rather difficult to discover; still it was one, concerning which men of high standing in the profession could not differ. Men of eminence and experience acquainted with anatomy could not doubt. The indications laid down in professional works on this point were so precise, that they could not escape a careful observer. In a word, it was so plain a case, it was impossible to be mistaken.

Preparations were accordingly made to put this opinion to the test. The hour is appointed for the experiment. The squadron of pupils was drawn out with an indefinite expectation to see an operation performed upon a limb, that had been imperfectly reduced; the rising usefulness of this grand institution was to be attested by a decisive achievement—and a day of glory was about to dawn upon the Massachusetts General Hospital. By way of preparatory measures, the patient is stated to have taken a powerful cathartic in the morning and been put into a warm bath; and in order to relax the muscular powers more completely, nauseating doses of tartrate of antimony were administered; and he was bled as freely as possible. The patient was then in due form installed upon a table and placed upon his right side. He was again secured to a neighboring wall by a sheet passed between his thighs. A force was then applied immediately above the knee of the injured limb, by means of bandages and cords to draw it forward and inward extended by the main strength of several persons. At the same time a force by means of pulleys was applied at about the middle of the thigh, at right angles with the limb, in such a direction, as to draw the head of the bone toward the socket. These forces were gradually and alternately

increased for the space of about an hour--and these bandages and cords and pulleys were exerted at their utmost stretch, until all prospect of success was perceived to be entirely at an end.

Such is the description given by Dr. Warren of the means used to effect the reduction of this suppositious dislocation. It consisted in the employment of a most powerful and complicated mechanical apparatus, with an intense application of its various and compound forces in different directions, such as to extend the limb and raise the head of the bone from its situation in the partial socket, which it was supposed to have formed. This was according to what is called Dessaults' method of reducing luxations, which Dr. Townsend says is the present most approved system. He hath already stated that the attempt was entirely unsuccessful. Dr. Mann deposes that it was his opinion, and that of the other consulting physicians, that the attempt would prove unsuccessful; and that it was by Mr. Lowell's particular request and with a full advice of this opinion, that the attempt was made. This was frank in them, and perhaps not quite so foolhardy in the plaintiff; supposing there was a real dislocation existing as they assured him; the lapse of one, two or even three months in that case would not render the reduction impracticable. Dr. Smith is of opinion, that a future time might even be more favorable for the operation, especially if the soft parts at first were much bruised and swollen. It is also stated by Sir Astley Cooper, that reductions are perfectly practicable at the distance of four and even six months, as he himself has witnessed; although he does not recommend them in regard to very muscular persons much after three months; and considers that the injury arising from extension is greater than the advantage received from reduction after that period, except in very emaciated, relaxed or aged persons. Any way however, it was not too late to effect the object with sufficient force, if there were any rational and practical object to be accomplished.

During this long protracted process, it does not appear that any rising doubt induced the learned faculty to relent in their opinion. The operators accordingly yet declare with one voice and one heart that their opinion was and still is, notwithstanding the failure of the experiment, that there was a dislocation of the head of thigh bone from its socket; and this was so clear, says Dr. Townsend, that he heard no sort of doubt about it. Indeed the gentlemen were unanimous, he says, not only in all the opinions expressed, but as far as he knew in all that were formed.

To the question, whether it were not possible they might have been in error on this subject, they unite one and all in giving a decided negative. Dr. Warren with his usual suavity says, he thinks not. Dr. Townsend with the greatest gravity declares, he feels just as confident in this opinion, as he does in any case in which he ever gives it. Dr. Mann simply considers it impossible; and Dr. Welsh devoutly affirms, that he hath never altered the opinion which he first formed, and that time has only strengthened it.—But the question is asked, may not the soft and bony parts about the hip joint, especially of a muscular man, be so injured as to render it impossible for the most competent surgeon, some months after the injury, to judge what was the actual situation of the patient, or what ought to have been done at the time? Says Dr. Welsh—No. Dr. Warren—Yes. Dr. Townsend admits with Dr. Warren, that it is difficult for a surgeon some months afterwards to determine. Dr. Mann conceives it might be much easier some months after, when swelling and inflammation have subsided, even to ascertain it more exactly. And Dr. Warren himself is also of opinion, that the nature of the case may be such as to make it quite apparent several months afterwards, what the real nature of the injury was.

But again, would not a luxation of the joint, fracture of the socket, the necessary violence done to the parts in producing those and in replacing the bone, together with a consequent rheumatic affection of the limb, hip and pelvis, attended with some muscular distortion, of the latter, be sufficient to account for all the appearances in Lowell's case when they saw him, without supposing the head of the bone out of his proper socket? The unanimous opinion of those gentlemen, is that they could not. Nothing will satisfy them but a simple dislocation. Dr. Townsend goes on to add, that no circumstances could account for those appearances consistent with the supposition, that the head of the thigh bone was in its proper place. The force of testimony, to say the least, can no further go.

Thus then we have the positive, unequivocal and unanimous testimony of the whole Boston faculty to the point, that there was a simple luxation existing at the time of their undertaking to perform the operation; and one therefore which, with proper attention applied in season, might have been reduced. Indeed of this, says Dr. Townsend, no doubt could be entertained. The indications were so plain, that the merest itinerant could not err about them. For a man of any pretensions to science on the

other hand, it would indeed be most astonishing. Would it seem to be within the limits of possibility, that any fallacy could be detected in an opinion so confidently entertained and so positively pronounced? Nay, might it not be deemed the height of temerity, under almost any circumstances, to call in question the correctness of a judgment emanating from such high authority? Could it be conceived, that men of their eminence in the profession should be capable of erring upon so simple a point of opinion in anatomy, as they represent this to be? Would it not seem surprising indeed, that an opinion supported by such a weight of character should be liable to be shaken—that it should be capable of being refuted at all? What then if it should be reduced to a point of positive certainty, that this opinion is nothing short of a perfect absurdity, and the dislocation they describe in this case a physical impossibility? What if it should not merely be shewn on authority superior to their own, but reduced even to absolute demonstration; rendered so certain, that the error should be susceptible of refutation to the senses of the simplest person in the community? What then becomes of this boasted infallibility of the Boston Medical Faculty? And what shall be the judgment on this defendant, if it should appear that the sure instinct of genius should have imparted to an obscure, though not quite unlettered, practitioner here at the end of the earth, at this extremity of the union, studying by his own solitary taper, with his closet containing but a single skeleton, a revelation which was refused to one of the most illustrious and powerful associations of science, and talent and wealth and learning, invested with all the advantages of books and lights and apparatus in the United States?

Can such things be, and overcome us like a summer cloud,
Without our special wonder?

To illustrate Dr. Townsend's remark of the surprising unanimity of his colleagues extending even to their inmost thoughts and secret purposes, and at the same time to relax our faith in the infallibility of this irrefragable school, it may serve for a moment to point out one or two particular discrepancies in their depositions, in addition to some diversities already adverted to; for while they join in full chorus that this was a case of simple luxation alone, without any fracture, yet they are not quite so harmonious in their opinion when they come to detail their particular reasons for so thinking.

Two or three of these circumstances may be selected, having some bearing on the distinguishing features of the case.—It is remarkable, in the first place, that almost all the testimony of the plaintiff points to the lengthening of the limb as a very important circumstance in the view taken of the question.—Dr. Mann considers, that the comparative length of the limb is one of the most decisive evidences of dislocation; and he observes that the most usual dislocation is upwards, which shortens the limb. Dr. Richardson says, that in most cases of injury to the muscles, the leg would be shorter; and Dr. Welsh very justly states it to be generally true, that the natural effect of muscular action is to contract, and if a bone were from any cause entirely out of its socket, the natural tendency of the muscles and ligaments would be to shorten the limb. Now the phenomenon to be accounted for in this case was the preternatural lengthening of the injured limb; and the circumstance, of its being three inches longer than the other, was considered conclusive evidence of its lodgment in the Ischiatic Notch. Dr. Brown also, who hardly seems, to have the faculty of denying a stated proposition, who speaks no more than is set down to him, and whose complaisance seems, to say the least, quite equal to his sagacity, declares that difference in the length of the limb constitutes one of the most decisive indications of dislocation designated by surgical writers. If the doctor's chirurgery had been rather not superior to his science, it is doubtful whether he would have had all the success he speaks of. But the unfortunate Doctor was undoubtedly led astray by the copies of the depositions, that were displayed before him.

In regard to the extraordinary lengthening of the limb—they are inquired of, whether the circumstance of the injured limb being several inches longer than the other, is not of itself an absolute and decisive indication, that the limb is not in its proper place. Dr. Welsh says it is manifest. Dr. Mann and Dr. Townsend agree with him—while Dr. Warren declares, that this circumstance is an indication that the limb is disordered, but is not an absolute indication of a dislocation. This lengthening he says might proceed from two other causes; namely, from a fracture of the neck of the bone with a relaxation of the muscles; or it might be accounted for by supposing a simple relaxation of the muscles.

But supposing the injured limb to be three inches longer than the other, and that it also hung off in a very awkward and

unnatural manner, so that it could not be moved inwards without causing extreme pain; would not these circumstances combined be so conclusive that the most ordinary surgeon must know that the limb was out of its proper place? Inevitably, says Dr. Welsh. Decisively, says Dr. Mann. Dr. Townsend declares they are clear and satisfactory indications of dislocation.—What is the answer of Dr. Warren? These circumstances would lead him strongly to suspect that the limb was not in its proper place; but he should not consider them decisive.—These may serve as specimens how well these gentlemen agree in gross, and at the same time differ in detail.

What then are the criteria in which they all agree? and what are those indications of its existence, in which these dogmatic doctors receive the concurrence of the more chary and circumspect Dr. Warren? The reasons for this opinion are thus recapitulated by him, namely: 1st, that the bone hung out from the other in an awkward and unnatural manner; 2d. that the thigh of the injured side was longer than the other: or in other words, that the knee projected lower than the other; 3dly, that the flexor or hamstring muscles were contracted so as to keep the leg continually bent; 4thly, that the trochanter major was not to be felt in its proper place; 5thly, that the head of the dislocated bone could be felt in an unnatural position in or about the ischiatic notch; 6thly, that the patient had not a free and natural use of the limb, but its motions were constrained in such a manner as happens only in the case of a dislocated limb by the head of the bone being lodged in the ischiatic notch; that is a dislocation downward and backward. Here we have the conclusion of the whole matter. And this is the character, as they all agree, of Mr. Lowell's dislocation.

This then according to their account was a dislocation—backwards—and downwards—into the ischiatic notch;—and the signs of it were that the knee stuck out and the limb was lengthened. These were after all the only specifications of any importance; the other marks could not have been peculiar; and it remains to be seen, whether Dr. Warren was much wiser than his learned colleagues. The contraction of the hamstrings was only a muscular affection. Although the doctor says, that he could not feel the trochanter in its right place, he declares he could feel the head of the bone at the ischiatic notch; and the motions of the limb were constrained exactly as they always are in that species of dislocation exclusively.

Taking the account given by Dr. Warren of their reasons as the text—and reading their result by its own light, there needs no more satisfactory test for trying its own truth. Its condemnation shall come out of its own mouth ; and on a critical examination it will not only prove to be a perfect fallacy—and shown to be a most egregious error, but demonstrated to be one of the most absurd, unaccountable and incredible description. Its refutation can be established upon the most obvious principles of anatomy, which it will appear have not only been disregarded by these learned doctors, but that their conclusion has been adopted in absolute defiance of them—a hallucination of the most extraordinary character itself—such as could hardly have been expected of a surgeon of three months standing. If this statement be strong ; recollect the declaration of those doctors, that this was a case so clear that the most ordinary physician could not mistake the dislocation. If it sounds harsh ; bear in mind that this opinion has laid the foundation of the present prosecution, and almost led to the destruction of these defendants.—If it savours in any degree of the presumption which it censures, let the question of its correctness be finally determined between the confidence with which the opinion has been advanced, and the authority and reason, upon which it stands confuted.

Intending to contrast the opinions of these learned gentlemen by the strongest lights of the science itself, the noble and beautiful science, which they profess to teach and to apply to practice, it need not be remarked that this is a science continually progressive in its character, proceeding upon the most careful ground of observation, entirely avoiding the bold course of conjecture and speculation ; thus exhibiting those lights and setting up from time to time those landmarks which it is the duty of the more distinguished professors of the science above all others to descry and to announce from their elevated positions in the learned world. Those on the other hand, who are not professionally conversant with scientific subjects, are necessarily obliged to rely on some measure on authority ; and that reliance should be principally on those, who have had the most extensive opportunities for knowledge and experience. Such reliance rests not on the authority of opinion, so much as the authenticity of evidence ; and it is safest to repose it on those, who have enjoyed the amplest advantages ; combined with those extraordinary gifts of genius which may become matured by practice, but which no art or education can alone compensate.

Such individuals soon become conspicuous among their compeers and are distinguished by the increasing confidence of the community, accompanied at the same time by the general concession and respectful deference of their professional brethren. Such a person by the agreement of all the learned world is Sir ASTLEY COOPER. His advantages arising from his situation in the metropolis of the English empire, from his acquaintance with all the hospitals of that city for more than thirty years, and his vast practice among all classes, not only of the rich and noble but the poor and miserable, who afford the most frequent cases for surgical skill, thousands of whom have thronged his door at those early hours of the day, which he did not devote to more lucrative engagements; these, with his peculiar natural genius for the profession, the whole force of which has been bent to the single department of surgery, have raised him to the highest eminence of reputation and practice, and therefore rendered the results of his professional experience and judgment of the greatest weight and authority. In consequence of this eminence he is continually receiving reports of new cases from all quarters of England. In addition to this, he has the finest opportunities for anatomical dissection and critical examination. He has long occupied the chairs of St. Thomas's and Guy's Hospitals. He is enrolled as a fellow of the Royal Society; has been knighted for no other merit or service to the state, and appointed surgeon to the King. If the king of England should break his leg, Sir Astley Cooper is the man to set it. This is the author of the latest and most perfect treatise in the possession of the profession on the subject of dislocations and fractures of the joints, which he originally published a few years since in a minor form, and to which he has lately given in a more perfect shape in an improved edition. To this work therefore the liberty will be taken to refer, and to draw from it those facts and observations recorded by him, which may serve to place the points of the present controversy in their true light.

According to the signs of dislocation described by this eminent author, the immediate effect of it in general is to produce an alteration in the form of the joint—and frequently a change in the length of the limb—to cause a loss of the power of motion when the muscles have become contracted—and also to alter the position of the limb. The peculiar posture of the limb under each species of dislocation is found to be nearly invariable; and therefore the conclusions, drawn from the distinct appearances,

exhibited under the different kinds of dislocations, are the more certainly to be depended upon. It is one fact, that the thigh bone has but little capacity to revolve upon its axis, when it is dislocated;—and another, that the knee is apt to be turned inwards.

Dr. Welsh declares, that the case of Mr. Lowell was one of simple luxation;—there are others, he adds, which it is unnecessary to particularize. On that subject however, Sir Astley Cooper does not seem to be quite so dry. He says, he has seen the thigh bone dislocated in four directions only. “First backwards and upwards or upon the dorsum of the ilium. Secondly, forwards and downwards, or into the foramen ovale. Thirdly, backwards and upwards, or into the ischiatic notch. Fourthly, forwards and upwards, or upon the body of the pubes.” From all his experience, in other words, he has known but four species of dislocation of the thigh bone; two of which are forward and two backward; and three of them upward and one downward. One of the dislocations forward is upward and one downward. The two dislocations backwards are both upward. These are all the kinds that he has ever observed, and form therefore the only varieties, of which he allows the existence. There is no fifth diversity known. A spurious species is spoken of by him as being described by some surgeons, viz. : a dislocation downwards and backwards. A notion of this kind does seem to have existed among some members of the profession; and he relates a number of anecdotes respecting it, and states the reasons in his mind for refusing it his belief, together with those results of his own examination, which led him finally to deny its possibility.

In the first addition of his essays published a few years since, Cooper observes, “I have to remark that no dislocation of that description has occurred at St. Thomas’s or Guy’s hospital within the last thirty years, or in my private practice; and I doubt its existence, although I would not deny the possibility of its occurrence; being disposed to believe that some mistake has arisen upon this subject.”

At a subsequent period of his publication he says; “I have already mentioned, that I have seen no instance of a dislocation downward and backward; and when I state that I have been an attentive observer of the practice of our hospitals for thirty years: was also for many years in the habit of daily seeing the poor of London at my house early in the morning; and have had a considerable share of private practice, if such a case does ever occur, it must be extremely rare. I cannot help thinking also

that some anatomical error must have given rise to this opinion ; as in the dislocation downward and backwards the head of the bone is described as being received still into the ischiatic notch ; but this notch is, in the natural position of the pelvis, above the level of the line, drawn through the middle of the acetabulum ; and hence it is, that the leg is shorter, not longer, when the bone is dislocated into the ischiatic notch.

He then proceeds to give an account of a genuine dislocation of the thigh bone into the ischiatic notch, contained in a letter from Mr. Rogers, an intelligent surgeon at Manningtree ;—the case of William Dawson, who met with an accident of this kind at harvest home, on the 5th of August, 1818. The precise nature of the injury was not satisfactorily apparent, but it was thought by the surgeons, who were called in to advise with Mr. Rogers, that there was a luxation. “ The only difficulty we had to reconcile this to ourselves, was the belief in our minds, that no author had noticed this accident to have happened without an alteration in the length of the limb, except it might be Mr. Astley Cooper in his new publication, which neither of us had yet seen. We accordingly had recourse to a minute examination of the skeleton ; when we immediately fancied, we could account for this sort of luxation not being attended with the usual marked signs of displacement of the head of the bone, excepting the knee and foot being turned inwards. Mr. Rogers was particularly struck with the appearances of the knee and foot on the same side, in this case, which were very much turned inwards. The gentlemen concluded to adjourn, to have an opportunity of consulting Mr. Cooper’s book ; and met again on the 30th of August. The swelling having subsided, the whole of the femoral bone was satisfactorily traced to its rounded head, which was lodged in the ischiatic notch. Upon reference to the *Essays of Cooper*, which they then had before them, they found the case delineated, and they had only to pursue the description in the plate to accomplish the reduction of the bone.”—In the last revised and extended edition of his work, published in 1822, Sir Astley Cooper makes the following final remarks :—

“ The dislocation in the ischiatic notch has been, as far as I know, in every author who has written on the subject, incorrectly described ; for it has been stated, that the limb was lengthened in the accident ; and I need scarcely mention the mistakes in practice, to which so erroneous an opinion has given rise. One instance however of such an error, I must here give. A gentle-

man wrote to me from the country—"I have a case under my care, of injury to the hip; and I should suppose it a dislocation into the ischiatic notch, but that the limb is shorter, instead of being longer, as authors state it to be." This error, adds the author, must have arisen from their having examined a pelvis separated from the skeleton, and observed that the ischiatic notch was below the level of the acetabulum, when the pelvis was horizontal—although it is above the acetabulum in the natural oblique position of the pelvis, at least as regards the horizontal axis of the two cavities. *It is to be remembered*, concludes Sir Astley Cooper, in 1822, "*that there is no such accident as dislocation of the hip downwards and backwards.*"†

Respecting the proper dislocation into the ischiatic notch, Sir Astley observes, that it is a dislocation, backwards and somewhat upwards. The signs of it are, that the limb is from half an inch, to an inch shorter than the other; the trochanter major is behind its usual place, but still remains at right angles with the ilium, with a slight inclination towards the acetabulum. The head of the bone is so buried in the ischiatic notch, that it cannot be distinctly felt, except in thin persons. The knee and foot are turned inwards; and the toe rests against the ball of the great toe of the other foot. The limb is fixed, so that rotation and flexion are in a great degree prevented. This is the dislocation which he describes, as most difficult both to detect and to reduce.

If the observations of Sir Astley Cooper are to be relied upon, it is reduced to certainty, that the dislocation into the ischiatic notch, under the circumstances in Lowell's case and with the appearances described by the surgeons in Boston, and indeed proved by the witnesses to have previously existed, is a matter of physical impossibility. Such a dislocation in the first place is backward, and in every backward dislocation it is obvious from the position of the head of the bone being thrown back, and of the trochanter bent forward, that the knee must be turned inward;—it cannot be turned out. A position, in which the trochanter should be thrown back if the head of the thigh bone, is utterly impossible; and would be accompanied with the most inconceivable distortion. Again, the dislocation backward is always upward. A dislocation downward does not and cannot exist. There is nothing but the ischiatic notch to receive the head of the bone. There is nothing else below to rest upon so as to counteract the contracting force of the muscles. In the ischiatic notch it must be upward;—consequently the limb is shortened.

† Treatise on Dislocations, &c. p. 84.

Yet these, to wit, the lengthened limb and the knee turned out, are the principal signs of the dislocation backward and downward into the ischiatic notch, so much relied upon by the learned gentlemen in Boston to justify their decided opinion—Allowing there might have been some room for mistake respecting the lengthening, how is it possible they could have been deceived about the inclination, of the knee? Dr. Warren says there was something, which he felt about the region of the ischiatic notch:—what that was, we do not know; we only know what it was not; it certainly could not have been the head of the thigh bone. That there might have been some protuberance, such as Dr. Chandler supposes, is perhaps conceivable; but it is singular to observe how deeply imbedded the bone must have been in the muscles to escape the examination of all others, except Dr. Warren. These were the reasons however, on which they rested their idea of a backward and downward dislocation. Whether the essays of Astley Cooper were lost in their immense collection of learned works in Boston, it is very clear that Dr. Hawks could have no access to them at Eastport—and while he was satisfied that there was something else in the case, these gentlemen on the other hand, with a confidence in their own judgment which hardly any human wisdom could warrant, did not hesitate to act upon this extraordinary presumption contrary entirely to all the principles that are presented by the science of anatomy.

If any thing could add to our perplexity on this occasion, it would be to consider the determination with which these learned gentlemen undertook to put this poor plaintiff so resolutely to the rack, upon the strength of this precipitate and ill advised opinion. It is true, Dr. Townsend says, they thought there was no great chance for him. And Dr. Mann declares it to have been their unanimous opinion, that the attempt would prove unavailing. It was on this groundless supposition, and when there was so little prospect of success, according to their own avowal, that they undertook to put it to the test. What with their warm baths and smart cathartics, profuse bleeding, nauseating doses and preparatory drenches to relax the muscles, and then sheets and cords and bandages and pullies, with the whole accumulated force of the mechanical powers employed to wrench his limbs, according to Dessault's most approved method of reducing luxations, until the head of the bone was fairly lifted from the socket it was thought to have formed—the agonies endured

by Lowell under this operation could scarcely have been less than those of Damiens, for his attempt to assassinate Louis the 15th; for there is a point, beyond which human anguish cannot extend, and at which a merciful insensibility commences—An account of the execution of Damiens, found in the French Philosophical Dictionary, is as follows—He arrived at the Place de Greve at a quarter past three, regarding with a dry and steady eye the spot and instruments assigned for his execution. After some painful preliminaries, as well to be omitted, they proceeded to the business of dismemberment. Four powerful young horses, which had been provided, made incessant efforts for the space of fifty minutes to tear his limbs from his body, without being able to effect the object. At the end of this period, he being still alive, they were obliged to make use of their instruments to separate the joints, as had also been done in 1610 in the case of Ravallac. He breathed a few minutes after the thighs were removed; and it was not until his arms were amputated, that he gave up the ghost. This operation lasted, from the time he was placed upon the scaffold until he ceased to palpitate, nearly an hour and a half.

How long the present experiment was continued or how often it was repeated, or the patient fainted under the operation, does not appear from the depositions. His own courage, it seems, was unexhausted. Why then with all this prodigious power employed, why was not the dislocation reduced? For this plain reason; because no dislocation existed. Simply because the thing was impossible; there was nothing to reduce. The wonder is not that the operation was not successful; the only wonder is that the plaintiff survived it. If the plaintiff had suffered any real injury at the time he brought his action from ignorance or unskillfulness, to whose hands is it to be attributed? By their own statement these deponents persevered in performing the operation, which Dr. Hawks had declined to undertake, until it was proved to be perfectly impracticable. The presumption therefore is at least equal against any dislocation:—the burden would certainly be upon them to prove that one existed; and if the plaintiff had been advised to prosecute this formidable phalanx, for thus violently undertaking to set a limb, that did not prove to be out of its place,—upon this authority, upon this reason, and on this evidence, what could have been their defence—and what could have protected them against a verdict, excepting the charitable supposition, that they must have been under some strange planetary influence or infatuation?

There is one further circumstance, which in this point of view may deserve the attention of the jury. A record may be read, which exists under the hands of these deponents. A list has been published of surgical cases and operations performed in the Massachusetts Hospital by the Professor of Anatomy and Surgery, from the time of opening the building in September 1821 to June 1823. This is published in the form of a circular of the Medical School at Boston, under the patronage of the learned Medical Faculty of Harvard University and contained in the *New England Journal of Medicine and Surgery*, for July 1823. Among these operations, it records a dislocation of the hip into the ischiatic notch Dec. 9, 1821; the very case of the present plaintiff; it forbears to record the result. That result will stand recorded as a most inauspicious augury for the Massachusetts General Hospital. This *New England Medical Journal* is stated on the title page to be conducted by a number of physicians; and the first communication in the number containing this account of Lowell's case, is a communication from John C. Warren M.D. whom the Medical Faculty of Harvard College set forth as their Professor of Anatomy and Surgery. Another conspicuous article in this same number is a review of the last edition of Sir Astley Cooper's *Treatise on dislocation*, which has been exhibited to the jury. The reviewers preface their remarks with the apology, "that Sir Astley Cooper is likely to be quoted as an authority and followed as an example," and allude to his "eminent merits," as a particular reason for the carefulness of their analysis. They then proceed to remark, "it will be seen that we have closely analysed the whole of Sir Astley's valuable observations on the subject of dislocations of the hip; conceiving that by condensing the more important facts necessary to be borne in mind relative to these accidents, we shall have done an essential service to those who have not the means of immediate access to the work itself; so that in the event of sudden emergency, the practitioner might turn to our account, and not turn to it in vain. We know of no form of compliment, that can more substantially mark our estimation of the importance of the practical precepts it contains."

To confirm these doctrines of Sir Astley Cooper and confound the dogmas of the deponents, it may be only necessary to take the following further extracts from this publication, which certainly comes out under their patronage, if it is not entirely composed of their contributions.

“We come now to the consideration of particular dislocations; and first in order is dislocation of the hip-joint. This bone may be displaced in four different ways.” The enumeration of Sir Astley Cooper is exactly repeated and adopted by the reviewer. “The dislocation upwards is the most common of these accidents; in this case, the limb is *shorter*, the knee and foot are turned inwards.”

“*On the dislocation backwards, or into the ischiatic notch.* The anatomical description of the parts clearly shews that the direction of this dislocation is a *little upwards*, as well as backwards—This is the most difficult to detect or to reduce—The head of the bone can seldom be distinctly felt. The knee and the foot are turned a little inwards, and the toe rests against the ball of the other foot. Flexion and rotation are in a great degree prevented.”—Again :—

“We were surprised to find it asserted, upon the authority of Mr. CLINE, that SHARP did not believe, that a dislocation of the thigh bone ever occurs. Mr. Cline’s authority no one can doubt; and granting the fact to be so,—as it is observed, that Mr. Sharp does not treat of nor mention dislocations of any kind in his works on Surgery; we can only lament how much surgery must have retrograded from the days of honest WISEMAN, who short chapter on this very accident, which he says may happen in *four different ways.*”

It is lamentable also to see how much farther surgery must have retrograded since the days of honest Wiseman, from comparison of these passages with the depositions of the patrons and and conductors of the present work. It is now agreed by the editors of the New-England Medical Journal, that there are but four ways in which the hip may be dislocated; and that the dislocation backwards, or into the ischiatic notch, is a *little upwards* as well as backwards; and is clearly shown to be so by the anatomical description of the parts. “The limb,” it is true, “is seldom more than half an inch shorter than its fellow”—the head of the bone can seldom be distinctly felt—the knee and the foot are turned inwards.—Thus stands the testimony of the New-England Medical Journal against the practice of the Massachusetts General Hospital; and such are the opinions of these present deponents at this day upon their operation for a dislocation into the ischiatic notch, December 9, 1821. Is this testimony a fable, or this publication a libel—Harvard a faculty of infallibles—or the Massachusetts a hospital of incurables?

If then there be but four species of dislocation, and this was not the one into this notable notch, what sort of a dislocation was it? Can the gentle doctors tell us where? Or can they tell us anything about it? If it was not into the ischiatic notch, where was it? If their testimony is not true and their opinions are not to be relied on, where is the evidence of any dislocation whatever? If all the signs they can afford to give are of that dislocation only, and if all those signs are shewn to be false, and it is proved that that dislocation does not exist, upon what evidence are the jury to found their verdict against these defendants, for unskillfulness and mismanagement in not reducing it?

We are then brought to the testimony of Dr. Smith, a physician of eminence, at present in the meridian of his intellect, who has enjoyed a long career of extensive practice, particularly in the department of surgery; and become celebrated for the skill and success of his operations in all its various branches. He has been a professor of the science in the colleges at Hanover, Burlington and New Haven, successively. Among all the members of a most learned and philanthropic profession, the Good Samaritans of mankind, scattered throughout New England—he stands conspicuous for those virtues, which are written in the hearts of the poor, for whom he has practiced without fee or reward; and they have also been recorded in the animated and eloquent eulogy of the counsel, who will close for the plaintiff, in a recent case in Cumberland. Our learned brother (Orr) is himself a distinguished member of the honourable Faculty of the Medical School established at Brunswick in connection with Bowdoin College; in which Dr. Smith has been appointed professor of both branches of physic and surgery; and it is a fact, well known to the public, that it was the particular object of the legislature in forming this institution to engage the talents and services of Dr. Smith. This establishment remains a monument of the first administration of our state, which may be emblazoned by an emblem of charity, and is well entitled to the grateful acknowledgment of the present generation.—It will unquestionably prove the means of incalculable benefit to the whole community. 'The eye, that sees it, shall bless it; and a future age bear witness to its usefulness.

Dr. Smith not long since visited this part of the state; where the people of this county had the opportunity of witnessing his skill; and at the request of Mr. Lowell he made a long and critical examination of his case, which terminated in the most

complete satisfaction to himself, that no dislocation existed. The particular manner, in which this examination was conducted, is described by other witnesses, who were present. The reasons for the result are stated, and the appearances explained by him. It is to be recollected, that this took place the spring or summer after the abortive operation at Boston. It is hardly surprizing therefore, that Dr. Smith should have found the pelvis somewhat distorted. He examined the plaintiff in company with Dr. Frye, and put him in various positions particularized by the other witnesses, without pretending to be able to measure the time he was employed, until he became satisfied, that there was no operation to be performed. The opinion formed by Dr. Smith was, that if there were a derangement of the bones existing, it was a fracture and not a dislocation; in which case it would be out of the power of Dr. Hawks, or any other person, to have rendered Lowell any effectual assistance, or to do more than administer remedies to keep down inflammation; but that it was impossible to alter the situation of the bones. Such an affection of the bones he thought might exist without pain in the back, as after a period would probably be the case. Both the lengthening of the limb and the hollowing of the hip were sufficiently accounted for to his mind by the natural and necessary contraction of the muscles or the case of fracture or distortion of the pelvis.—Indeed it is a singular fact, that from the nature of the injury, as the accident was represented to him by Lowell himself, Dr. Smith was led to doubt, whether there ever was any dislocation whatever; and he gives his reason, that a fall on the hip, with the weight of a horse upon it, would be apt to break the socket, but would not be likely to dislocate the joint. He observes, it is very difficult to determine in cases of injury to the hip precisely what the injury of the bones is; but it has frequently happened within his knowledge, that by a fall directly on the hip joint, though it was evident from the natural position of the foot and limb generally, and from its being moved by the surgeon's hand in all directions, that the bone was not dislocated; yet that the patient has been lamed, so as never to recover the use of the leg, nor even in several instances been able to walk afterwards. That it was not a dislocation backward into the ischiatic notch however he had no doubt. In the dislocation on the back of the hip, the limb would generally be rather shortened; and whether that would be the case or not, when the head of the bone was in the ischiatic notch, of which against the strong opinion of the

Boston school, he did not undertake to be quite so confident, as they were, yet there was one infallible criterion in his judgment, founded on the plainest principles of anatomy, that in that case the foot would certainly be turned inward, so as to point toward the other foot, and could not be turned outward in the least. Whatever the real injury was therefore, he was perfectly satisfied it was not of the character attributed to it by the gentlemen in Boston, and that the appearances exhibited in Lowell's case were altogether irreconcilable with such a supposition. It deserves to be remarked, that while Dr. Smith does not undertake to deny, that a dislocation backward might possibly be a little downward, his experience had been exclusively of the dislocation upward, which is the only dislocation backward, that exists according to Sir Astley Cooper. To this opinion adopted by Dr. Smith upon the most complete examination, after the most thorough consideration he still adheres.

Dr. Smith however was persuaded, that if there was ever any dislocation, of which he was not quite satisfied, there was at least none of the description supposed in Boston; and there was no cause existing at the time of his examination, and no appearance of any occasion for him to undertake the performance of any operation. If there were no dislocation existing at that period therefore, it comes to this; that if there ever was one, it must have been reduced by Dr. Hawks. If the bone were out, as the Boston gentlemen maintain, they do not pretend to have put it in. Dr. Smith saw no appearance to warrant the idea of any dislocation when he examined the hip, and all there was remaining to his observation was the fracture. How it was exactly at the precise time of the first operation, no man living can judge so well as Dr. Hawks. And even if there were any doubt resting upon the subject, whether he might not be deceived, from the great violence done to the parts affected, and the difficulty of determining the specific character of the injury suffered in such a state of swelling and inflammation as would be the necessary consequence, it would certainly be considered as at least excusable, if not even laudable in Dr. Hawks, to attempt the immediate reduction of a dislocation, which he had reason to believe existed, while it was recent and remediable. Whether he was not entirely right in his opinion, may be deemed more than probable from the present evidence.

There is one circumstance by which Dr. Smith undertakes to show there can be no dislocation; and that is when the limb is

capable of being moved in all directions. Such was the fact, upon which he formed his opinion in the present case. Such was the case immediately after performing the original operation by Dr. Hawks, as testified to by the witnesses. Before this operation the injured limb is testified to have stood out in an unnatural position from the other, and could not be carried in without giving extreme pain; but after it was performed, Dr. Hawks took hold of it and raised it up, and turned it in every direction with ease. Such was also the fact at the subsequent visits, which Dr. Hawks paid to Lowell. The testimony of Joshua A. Lowell is certainly not subject to any suspicion on this point, and he testifies that at the third visit of Dr. Hawks, being the second after the operation and the time when the hollow on the hip was noticed, Dr. Hawks took hold of the limb, and swung it several times and said it was all right. This was the last visit but one, which Joshua A. Lowell says that Dr. Hawks paid his brother, before he made his final call with Dr. Whipple; at which time the rotation of the limb continued to be as perfect, as it had been. Dr. Warren however says, that the patient had not the free and natural use of the limb; but insists that its motions were constrained precisely as happens exclusively in case of a dislocation into the ischiatic notch. But the champions of this doctrine it is probable, will hardly persist in tiring the echo any longer on that topic.

It is true, that the opinion of Dr. Smith stands opposed on this subject to the united testimony of four of the most respectable physicians and surgeons of the Boston faculty, pronounced with the utmost solemnity. A remarkable circumstance somewhat of this character occurred in the celebrated trial of Capt. Donellan in 1781, for poisoning Sir Theodosius Boughton. A number of days after his death, his body was dissected and inspected by four physicians. These physicians were called as witnesses on the trial. They stated their opinion to the jury and described the circumstances, on which that opinion was formed. The whole four unanimously declared their belief, that the deceased died of poison. The circumstances, on which they had given their opinion, were stated at the trial to Dr. John Hunter, justly pronounced the most eminent physician of the age. He declared he could not discover in any one of those circumstances, nor in all of them united, any sign whatever of the death being caused by poison; nor any appearances more than ordinary, in cases of sudden dissolution. The question was put to Dr. Hunter by Judge Buller, before whom the cause was tried; "Then in

your judgment upon the appearances the gentlemen have described no inference can be drawn from thence, that Sir Theodosius Boughton died of poison?" "Certainly not," was the answer of Dr. Hunter, "it does not afford the least suspicion!"—The learned commentator on this case observes, in his treatise on Presumptive Proof, that the gentlemen composing the jury did not perhaps know the eminence of Mr. Hunter's character; nor consequently the weight due to his opinion; but that the court could not have been ignorant of it, and that in balancing the evidence and summing it up to the jury, it was clearly the duty of the judge to have stated the great weight that was to be attached to Mr. Hunter's observations. Instead of which he took them numerically—and described them as four medical men to one!

Had the profession been to estimate his opinion, and not the jury, Mr. Phillips further observes, a very different verdict would have been given. Dr. John Hunter stood at that time at the very head of his profession. His opinion gave the law to that profession both in England, and in every country in Europe. The case referred peculiarly to Dr. Hunter's line of study, that of anatomy and the appearances incident to a body in sudden and convulsive death. He pronounced, that the dissection had been irregularly made, and in a way not to afford the true criterion to judge by. In questions of science, and above all in those of medical science, the faith to be reposed in any opinion, should be regulated by the professional eminence of the person giving it. One man's sight being generally as good as that of another, as to a mere matter of fact, the learned and the ignorant are there upon a par, and one witness to a fact is as good as another. But the case is very different, as to a matter of science; for one man's judgment will outweigh that of many. Upon a point of law or equity, who, asks Mr. Phillips, would put the opinion of a common attorney, or even four common attorneys, against that of a Chief Justice?

The jury, which pronounced a verdict of guilty in that case against the defendant for the poisoning of Sir Theodosius Boughton, now stands convicted by the universal sentiment of mankind, of judicial murder; and the record of the judgment will long read against those who rendered it, a melancholy memorial of the fallibility of human authority; and continue to stand a monumental example of the infatuation of yielding a blind and implicit deference to the mere dead weight of numbers.

To the testimony of the four Boston physicians against the defendants may be added that of Drs. Brown and Estabrook with the opinion of Dr. Spooner, equally opposed to that of Sir Astley Cooper.—Seven cardinals of the Holy Roman Inquisition condemned Galileo, the father of modern astronomy, for maintaining the monstrous heresy that the earth rolled round the sun;—and by their sentence he was deprived of his own power of motion until he consented that the world's should be suspended.—Against all this pomp of evidence on the part of the plaintiff, the defendant makes no parade of numbers. He has taken no pains to obtain recruits, and made no journies to muster up professional testimonials. He relies on the simple principles of anatomy and evidence. Dr. Smith's examination of the case was made by him, in the course of one of his benevolent circuits, at the request of the plaintiff himself, whom he very sensibly advised to get well, in the room of trying to get damages against the doctors. But this good advice did not recommend itself to the sanguine temperament of the plaintiff, who was now stimulated by other objects, and the higher ambition to carry on a law suit. Dr. Fryc testifies he was present with Dr. Smith at the examination of what he terms the disorder of the plaintiff's hip joint, and pronounces his opinion, that it did not arise from any existing dislocation, but either from affection of the muscles or some other cause,—he would not undertake to testify what.—Dr. Fry is a respectable physician belonging to the neighbouring province of New Brunswick.—It is a remarkable circumstance, that with this examination of Dr. Smith ends all the direct evidence, that we have of the plaintiff's situation. Since that period he has uniformly refused to undergo any further examination. Dr. Sargent testifies to the request, that was made the plaintiff by Col. Chadburne to permit Dr. Ayer and himself to examine his hip—but without success. What motive the plaintiff could have had for secreting his case from all professional scrutiny, and concealing the state of his limb from that time to the present and thus wrapping himself up in a close and impenetrable disguise, it is for intelligent men to consider. The opinions of Dr. Chandler and Dr. Weatherbee, expressed upon the stand, confirm the conclusion of Dr. Smith, so far as to show that no dislocation now exists:—if any doubt could remain in regard to the truth of the dislocation of the kind maintained by the Boston physicians after the explanation of Sir Astley Cooper.

What then was the duty of the defendant? It stands, first on the declaration of Dr. Smith, that it was not in the power of Dr. Hawks, or any other medical man in the world, to have rendered the plaintiff any effectual assistance—further than to have administered medicines.—It was not within the power of the art to remedy the injury of the bones. Now the duty of an attending physician was certainly never undertaken by Dr. Hawks, and so far as it was required, there is evidence of the most satisfactory character, of its having been performed in the most faultless manner by Dr. Faxon. Dr. Sargent certainly does not affect to underrate the qualifications of Dr. Hawks; yet he says he does not think, that either Dr. Hawks himself, or any physician of equal skill, could have been of the least service to Mr. Lowell, by constant daily attendance upon him after the operation, and while he was under the care of Dr. Faxon. Moreover, supposing the thigh bone to be in its natural place, Dr. Sargent says, that an unavailing attempt to operate upon it, under the idea of its being out, would not only be materially injurious to the plaintiff, by the violence on the muscles, and its tendency to raise inflammation; but the consequences would extend still further to retard the cure of the hip, and prevent its ever getting entirely well. Indeed it must be obvious, that an operation like that performed in Boston, for a dislocation, which it now seems does not exist in nature, must have been extremely injurious to the plaintiff, and might be attended with consequences, from which it would not be very wonderful, if he never entirely recovered.

Now if a verdict is to be rendered against these defendants, it must be upon the ground, that he ought to have done what was undertaken by the surgeons at Boston; and if they had been provided with an apparatus sufficiently powerful to have raised the head of the bone out of its real socket, they might have been justified. But as they were fortunately unacquainted with Desault's tremendous method of reducing dislocations, and not being addicted moreover to any empty theory, about an imaginary dislocation into the ischiatic notch, they may at least be spared the mortification of having wrenched the limbs of Lowell, to no purpose, even if they cannot escape the condemnation of their caution.—Granting that the defendants, not seeing what there was that they could do to advantage, declined to torment the plaintiff with any wanton and unavailing experiments, and reserved themselves for a more suitable occasion, was it not wiser than to make a leap in the dark, and be left to rue the result in silence?

Sir Astley Cooper remarks in relation to a case, that proved rather unfortunate for the reputation of the professional attendant, and it is a remark referred to with very decisive proof of approbation in the *New-England Journal*—that there is no short road to knowledge ; and Sir Astley further says, that he does not believe, that from the first dawn of medical science, to the present moment, a single correct idea ever emanated from conjecture. In that profession he says nothing is to be known by guess. But fools rush in, while angels fear to tread. Young medical men, he observes, find it a task so much easier to speculate than to observe, that they are too apt to be taken by some sweeping conjecture, which saves them the trouble of observing the processes of nature ; and they have afterwards not only everything still to learn, but also to abandon those false impressions, which hypothesis is ever sure to create.*

It is rather a curious coincidence, that perhaps the only modern case to be found reported in the English law books, in which an action was sustained for misconduct in this professional department, was one against a surgeon and an apothecary for undertaking to perform an experiment upon the leg, in a case of fracture, after an operation had been performed in the first place, with sufficient skill and success. This was the case of Slater against Baker and Stapleton.† A callus had become formed subsequent to the original operation ; but the limb not exhibiting a perfect regularity in its shape, Baker, the surgeon, having procured a new instrument, of which he was desirous to try the virtue, set to work a second time, and making a signal to Stapleton, the apothecary, who took the patient's leg upon his knee—between them both they contrived to undo and destroy the work they had already once done well, by breaking the leg again ; and were brought in to pay £500 damages. The court said in that case, when they considered the good character of the surgeon, they could not well conceive why he acted in the manner he did—but many men, very skilful in their professions, they observed, frequently acted out of the common way for the sake of trying experiments.

Dr. Hawks does not pretend to any preternatural insight into the mysteries of the human system, nor the power of Prince Hohenlohe in performing miracles upon it. His opportunities are limited in many respects, compared with those who enjoy the ad-

* Cooper on Dislocations, p. 126. N. F. Journal, Vol. XII. p. 284.

† 2 Wilson's Reports, 359.

vantages of the metropolis ; and while persons of loftier standing in the profession may afford to be a little more adventurous, it behoves such humble individuals as himself to be cautious and circumspect in their conduct—to avoid all romancing in their practice, and not to draw their bows at a venture, nor to perform their experiments at random.—What is there to be imputed to him, that shews either unskilfulness or empiricism—and could he have escaped the penalty of presumption, if he had undertaking to reduce this fabulous dislocation ? Is there any sin of that kind to be laid at his door ? Was there anything to be done which he has neglected to do ? If there were nothing to be done, is any negligence to be attributed to him ? What cause has the plaintiff to complain ? Have any injurious consequences resulted to him from any act, or from any omission, of the defendant ? Was there any operation fit and proper to be performed ? Can the jury determine the present position of the bone better than the defendants' witnesses ? Have they on the whole any ground to doubt, that it is lodged where it belongs ? The charges of unskilfulness and negligence are so closely combined in this question, that if there is no foundation for the first, there can be no pretence for supporting the last.—If Smith and Frye and Sargent and Chandler and Weatherbee are to be credited, they could have done nothing ; and would have done nothing. Of what use could even Sir Astley Cooper himself have been on this occasion ?—And of what importance at that rate is the testimony of Joshua Lowell, supposing it were true, that Dr. Hawks did not come quite so often as they wanted ? What good could he have done by coming the day that Joshua was over at Moose Island, or every day in the week ? It would be too severe a rule, thus to bind a practicing physician to obey the caprices of every unreasonable patient, and hold him to the hardest duty that can be demanded of a doctor—that of ministering to a mind diseased. Some little discretion must be indulged to a physician engaged in extensive practice in regard to the manner of discharging the various delicate duties he has to perform, without obliging him to attend upon all the humours of a hypocondriac, or exposing him to the persecution of a querulous patient, because he cannot engross all those cares, that are or ought to be appropriated to the benevolent and important objects of the profession. Dr Hawks has subjected the plaintiff to no expenses on his account since the performance of the first operation ; his advice was not asked respecting the voyage to Boston ; and he submits to the

jury to determine what damages have accrued to the plaintiff in consequence of any conduct of his. If they cannot say, that the bone continued in a state of dislocation, it is impossible for them to conclude, that the plaintiff has suffered any possible damage from the defendant. Otherwise, Dr. Hawks maintains, nothing but a prejudice of the blindest and grossest character, got up out of doors, and totally deafened to the remonstrance of reason, can find him guilty of any culpable negligence ; and a verdict of conviction in this case could only be paralleled in those annals of delusion and witchcraft, that exhibit the tragical consequences of superstition and bigotry.—The truth is, on the other side, that all the benefit the plaintiff has ever received, among all the physicians that have been consulted, and all the varieties of advice and assistance he has enjoyed, has been from the hands of Dr. Hawks. None of them have been able to do anything further for his relief. It will not probably be supposed that he was much benefitted at Boston ; and it is very probable, that the advantage he experienced from the operation of the defendants, would have been much more perfect and complete, if he had been more disposed to rely on the course of nature, and been less afflicted with an ill-advised fondness for trying strange experiments under the sanction of great authorities. It must be granted, after all this, that the plaintiff possesses an excellent constitution. Yet notwithstanding all the shocks it has experienced, it is evident he has long been mending ; and were it not for his invariable refusal to have his hip examined by medical men, there would be ample evidence of its essential improvement, if not of its entire recovery. It is apparent, that there is but little deformity of the limb remaining, and there is very little peculiarity of his gait, more than any man may make by crooking his knee and twisting his pelvis at his pleasure. He is able to walk, at least with a cane ; and very probably, when this case is finished, he will be without one. Its determination will probably relieve him from the unpleasant constraint which he is induced to practice, and put a period to his painful decrepitude ; although it is possible perhaps, that the imposture may never be completely detected, nor the problem resolved by any process, to which he will ever be sensible.

There can certainly be no cause to charge the learned and respectable members of the Boston faculty with any design towards this defendant. In his humble station in life, he was certainly no object for any ambition of theirs to be distinguished at his expense. Nevertheless the injury to him could not have been

aggravated by intention. Compare his situation with that of those who have thus been induced to lend the whole weight of their influence and authority against him. Cradled in the love and honour of society, nursed in the lap of ease, enjoying the patronage of power and opulence, having walked perhaps one after another the hospitals of Europe, inspiring the community with an extensive reverence for their talents and impregnating the very atmosphere which surrounds them with their virtues, what would be their situation standing in the predicament of these defendants, before a Boston jury, which would hardly permit the winds of Heaven to visit them too roughly—contrasted with that of Dr. Hawks—insulated, as he is from the world—living on the scanty fruits of his practice, unknown to fame, cut off from the sympathy of his patients—respecting whom the single circumstance of belonging to Eastport is a sufficient challenge to a juror? If it is these gentlemen after all, who have been in error, is there no excuse for Dr. Hawks,—and may there not be some apology for exposing that error with all the determination necessary to his defence?

Dr. Hawks accuses none of the witnesses of any motive towards him, excepting it may be the brother of the plaintiff whom he identifies in all the circumstances of the present prosecution—with this difference however, that he was under no such obligations to him, as his brother was.—At the call of the plaintiff, in the hour of his distress, and when he was undergoing all the agony of an unreduced luxation, without any other help in which he could confide, the defendant abandoned his business at Eastport with the prompt impulse of professional sympathy, and flew to his succour in the eager desire to administer relief. He came without delay, and succeeded almost immediately in performing, with the utmost adroitness, a most difficult and delicate operation, to the perfect satisfaction of all persons present, attended with instantaneous ease to the patient, and not without some expression of momentary gratitude. The defendant even congratulated himself on the operation he had effected. He was perfectly conscious he had done every thing in his power. If any part of the injury still remained, he was sensible it was buried deep in the recesses of the system, and was to be left to repose with the utmost resignation on the maternal principle of nature. The paltry acknowledgment of fifteen or twenty dollars, the merest decent acknowledgment of his mechanical services, was nothing to compare with this. There was a joy in his art, a pride

of skill, the pure self-reward of genius, the glorious sensation of professional success, the consoling assurance of social duty, and above all, the animating gratification of humanity, all conspiring to afford him a satisfaction, which money could not measure—and of which nothing, but the injustice and ingratitude he has since experienced, could ever have deprived him. He engaged no further; and for any further service that he did perform, as it was entirely gratuitous then, he advances no claim for consideration now. For any alleged fault he stands ready to answer without skinking upon the present evidence. Yet while of all the numerous benevolent individuals of the profession, whom the plaintiff has consulted, no one has ever done him any good except this defendant, he alone has been singled out with a spirit of animosity, quite beyond what is directed towards his co-defendant Dr. Faxon, for the object to exhaust all the vials of his vengeance and the source to slake his unhallowed thirst for damages.

Let not a judgment against the defendant be thought light. The end of this action is to annihilate the character and usefulness of the defendant; and such, undoubtedly Dr. Hawks feels the attack with a sensibility proportionate to the injury aimed. His standing and reputation therefore form a trust, which he feels it a duty to defend for the benefit of the rising and thriving community, which comprises his present sphere of practice—and also as the principal means he has in connection with the little prospect of fortune it affords, under providence, of executing the humble scheme of happiness and improvement he has in contemplation for himself, for his family and society. Of all this the verdict outrageously sought by the plaintiff would simply rob him forever. The consequences extend therefore to the community, which is hardly less interested in the result; and what is the consequence of a limb like Lowell's, supposing he should never perfectly recover it, compared with the usefulness of such a physician as Dr. Hawks, entirely lost to the present scene of his practice? Is there a member of the profession in this section of the country, that any individual who has witnessed the full exposition of this case, in case of any accident happening to himself upon this spot, requiring the aid of a surgeon, would select in preference to this defendant? And is there any portion of the state, that would not rejoice to receive the benefit of his skill, if it should be expelled from the county of Washington? Rise then above the influence of prejudice, and restore him to a society, which is capable of appreciating his expertness and fidelity; and inspire him

with a due confidence in the justice of his fellow citizens to protect him against such an unprovoked and unfounded assault upon his rights, his feelings and his practice.—Sustain him against this fiery trial of his patience, and bring him out of the furnace without allowing a hair of his head to be harmed. A verdict against him would be his ruin. Call a soldier a coward, a clergyman a hypocrite—and judge what it is for a physician to be branded as a quack. Compared with his character, a treasure so deservedly endeared to him by the unrighteous manner in which it has been assailed, he values not his property a feather.—If the jury arrive at the question of damages, he does not request them to trouble themselves about fractions. He does not entreat your mercy; he makes no claim for commiseration; and will not thank you for forbearance. By his express instructions his counsel are not only warranted, but required, to urge upon you not to compromise his character by a verdict for mere nominal damages. If you are obliged by your oaths to find a verdict for the plaintiff, he does not ask of you to stint them. Give him the whole length of the lash—Give to the plaintiff in that case his just measure, heaping full and running over.—Take from the defendant, if you please, the pittance of his humane and patient industry; and take with it all further incentive to emulation and exertion;—blast that reputation, which is the fair growth of a brief and honourable practice—steep him in poverty to the very lips—let him exhaust the cup you shall mingle for him to the very dregs—bring down upon him the whole weight of the Harvard Medical Faculty piled upon the Massachusetts General Hospital—let the Chaldæans come upon him, and the Sabæans make three bands—and the wind from the wilderness smite upon the four corners of his house, until he shall be reduced to sit down among the ashes and scrape himself with a potsherd—nothing can deprive him of the consciousness of integrity, derived from the consolation of having performed his duty.

Mr. ORR closed the case to the jury, for the plaintiff.—When a professional man offers his services to the public, he becomes bound by law to the performance of his engagements with skill and attention; and if he fail in either of these particulars, he is answerable for the consequences. This plain and undeniable principle is particularly applicable to the two learned professions of law and medicine; in which skill is with propriety claimed at their hands, and fidelity in the exercise of it.

It will not be contended for the plaintiff in the present case, that perfection in the art of surgery, or the greatest degree of attention to the patient, were necessary to protect the defendants from a recovery of damages against them. A common portion of the professional learning of the age, applied with that degree of diligence and attention, which would be exerted by a prudent and judicious man in similar cases, is all that the law could require of them. And if the defendants, in the instance under consideration, have failed to bring themselves to this standard, they must be answerable in damages for the consequences.

The whole of the conduct of Dr. Faxon in his first attempt to reduce the dislocation, seems to evince a great deficiency of knowledge in the surgical branch of his profession. The means he employed were feeble, his belief that the head of the bone had returned to its socket by the grating he occasioned, the appearance he fancied to exist of a uniformity of the limbs, his appeal to the by-standers for their opinion on the subject, his belief of the facility with which the injured limb moved in its natural directions; all these are striking proofs that he neither understood the injury nor the remedy. This was very soon discovered by *Josiah Coffin* a spectator, from the awkward condition in which he had left the injured limb, and he was easily convinced by the suggestions of this witness, that the bone was still out of place. Under these circumstances he was induced to admit the expediency of sending for Dr. Hawks; not from his own knowledge that he had been unsuccessful in his attempt, but from the information of a man who pretended to no skill in the profession. His deficiency therefore in this branch of his profession is most apparent; and indeed it is not now pretended that he had skill in it, and his counsel, (Mr. Crosby) has ingeniously admitted, that his pretensions as a surgeon are but humble, contenting himself with the suggestion, that in the other branches his claims to superior merit ought not to be called in question. In this case they are not on trial; his surgical skill in the individual case is the only subject under consideration. But again, it has been argued for him, that his attempt to reduce the dislocation was not the effect of presumption, but of a benevolent design to relieve the patient. This is altogether gratuitous on the part of his counsel, for it is no where to be found in the evidence that he spoke of his want of skill on the occasion; and it is not to be forgotten that it was an unwarrantable experiment undertaken without competent knowledge, and pursued to a disastrous result.

In three hours afterwards we find him in consultation on the case with Dr. Hawks, on his arrival at the house of the plaintiff: the result was, that the operation should again be attempted; again Dr. Faxon officiated, and again believed, as before, that the operation had been attended with success. In neither of these attempts were the services of Dr. Faxon the gratuitous offices of a man known to be incompetent to the task for want of the necessary attainments; but they were the services of a man, apparently confident of known skill. It is therefore too late to suggest, through his counsel, the after-thought, that his humble pretensions in this branch of his profession ought to be received as an excuse for the injury, which the plaintiff has suffered at his hands. He is not thus to sever himself from the destiny of his associate; for the work at the second trial, of skill, was a joint one; and it was the same blind confidence, nourished by the hope of sustaining a reputation, which had never been earned, that led him to unite his counsel and his ineffectual efforts with those of his equally unfortunate, though more skilful, associate.

It ought also to be taken into consideration, that the first attempt must necessarily have been injurious, and not merely useless; the plaintiff was exhausted to no beneficial purpose—delay was occasioned and bleeding neglected, and when afterwards attempted was ineffectual to the purposes of a successful operation.

It appears by all the evidence in the case, that the second operation was as unsuccessful as the first, and that the officiating surgeons did not know that they had failed in their attempt; but on the contrary both declared that they had succeeded. This circumstance is especially remarkable, since some of the professional testimony in the case would lead to the conclusion, that Dr. Hawks sustains a respectable rank, in the estimation of the Faculty, in this branch of his profession.—It is not our purpose to deny his general merits, but to confine ourselves to the particular case on trial. Genius endowed with knowledge may be over confident and precipitate;—may lack care and proper diligence in a particular case, contrary to the general habit and economy of the person enjoying these advantages; and such, it is believed, will appear from the evidence to have been the case in the present instance.

It appears by the testimony of all the witnesses present, that the surgeons confidently asserted that the bone was out; and such was the influence they had over the mind of the patient, such was his implicit belief in their joint skill, that he readily acquiesced

in the assurances which they gave him, and even gave his own reasons for his belief in their success. Now it is evident, that this was all a delusion. And on what principle, consistent with the exercise of skill could the surgeons have thus deceived themselves? It would have been a less fault in them not to have succeeded, had they frankly avowed that their skill had proved unequal to the task, for in that case the plaintiff would have been furnished with a reason for calling in additional aid, and might thus have been restored to the use of his limb. The apology for this oversight now is, that the case was so complicated and perplexing, that it could not be understood, or might at least be mistaken, by the most scientific of the profession; and hence it is inferred, that it was incurable. But the evidence, it is believed, does not warrant such a conclusion. The presumption in this, as in all other cases of luxation is, in the first instance, that it was reduceable by the application of proper means; and the burthen of proof rests on the defendants to show the contrary. Now if we take the account of the case given by Dr. Hawks himself, when it was recent, it will be found, that there was no intrinsic difficulty in the nature of it. He declared at the time, as testified by Joshua Lowell, and others present, that it was a dislocation of the thigh bone with a small fracture of the socket. And is that such a case as to baffle skill? If it be, there is no proof of it in the medical evidence adduced, unless indeed it be proved by the sweeping opinion of Dr. Smith, that nine out of ten of the medical men in the community are incapable of reducing a dislocation of the head of the thigh bone.

If such be the true state of the Faculty, it is to be regretted that so large a portion of the community are in such dangerous hands; but in charity to that respectable body of professional men, we are constrained to believe, that the learned Doctor's judgment in this particular is quite overstrained. Indeed it seems hardly credible, that the four kinds of dislocation defined in the evidence of Dr. Warren and the other surgeons of the Boston hospital, agreeing with all the best modern authors on this subject, except Sir Astley Cooper, should not be familiar to every practitioner of common attainments. And if so, they cannot be ignorant of the remedies to be applied in such cases.

On what facts Dr. Smith has passed this extraordinary sentence against the Medical Faculty at large, he has not condescended to inform us; he has not even stated a single case of failure in a surgeon to reduce a dislocation of the thigh bone, to which he

has been called to officiate recently after the event. If therefore his opinion is formed without facts and against probability, especially as it is merely speculative on the general character of his profession, and not on any particular incidents, it seems to be entitled to very little consideration. If however but few attain a knowledge sufficient to enable them to perform such an operation, it only proves that but few ought to engage in it: and no surgeon is excusable for feigning a knowledge in any branch which he does not possess; neither can the unskillfulness of others furnish an excuse for any one who has done an irreparable injury to his patient.

It has been sufficiently proved by the surgeons of the hospital, that if the bone had been set, it would not have been afterwards displaced by the patient without violence, and no violence has been proved; therefore the bone remained, as it was left after the operation. It further appears by the evidence of Joshua Lowell, that eighteen days after the operation the cavity on the hip was so visible, that the plaintiff enquired of Dr. Hawks what could be the occasion of it; to which he answered, that it was natural, and it would fill up when he should be able to bear his weight on that limb, adding that the patient was doing well; thus soothing the injured man, notwithstanding his fears, into a blind confidence in the skill with which his case had been treated, and leaving him in a condition from which no future assistance could relieve him. Even at this period had professional pride and blind confidence given way to duty, and a faithful examination taken place, it might not even then have been too late to restore the bone to its socket by the application of proper means.

And can it be imagined, that at the sight of the deformed hip the mind of the Doctor did not vibrate between hope and fear? Yet he expressed confidence, and the assurance he gave of a recovery was unqualified. If he really believed what he said, he seems to have erred not only against the plainest maxims of professional science, but against the evidence of common sense. The patient himself was alarmed at the unnatural appearance, while the Doctor pronounced it to be natural, and the patient was deceived into a belief that it might be so. But if on the other hand the appearance led the Doctor to disbelieve or even doubt, that the operation had been successful, his concealment of the fact admits of no apology. Whether, therefore, he was ignorant of the state of the limb, or knew and concealed it, he is equally answerable for the ruinous consequences.

But we are under no necessity to admit, that Dr. Hawks' representation of the luxation was correct, in relation to a small fracture of the socket, which he supposed to have accompanied it; especially as he has endeavoured to disprove it by the testimony of Dr. Smith and two or three others of less skill and experience. Now if these witnesses are correct in their views of the case, then they have proved that Hawks and Faxon did not know the difference between a wrench of the hip from the back bone and a dislocation of the thigh bone from its socket. This disagreement between the officiating surgeons and their witnesses proves in a striking degree a great deficiency in their knowledge of the case on the one side or the other. Either the surgeons or their witnesses must be in the wrong, but it does not thence follow that either is in the right; it is therefore unsafe to put confidence in either.

Dr. Smith and the few followers attached to him in this case, on examination have discovered that the head of the bone is in its socket—that the strange appearance of the limb arises from a twisting of the pelvis occasioned by muscular affections—he also supposes it possible there may have been a fracture of the hip bone—a forcing downward of the thigh bone; but these supposed possibilities have nothing of the character of evidence in them, not even the weight of professional opinion. The idea he suggests of the affections of the muscles distorting the large bone of the hip, without any disease in it, to such a degree as is now seen in the injured limb, ought to have some experimental fact for its support, before it can be presumed to be founded in reality. Indeed his introduction of the case of a white swelling as an illustration of one so different as the present, seems to indicate that his theory in this particular refers rather to disease, than to fracture or dislocation in their common acceptation.

If this view of Dr. Smith's testimony be correct, then the defendants have failed to prove themselves so ignorant of the case on their examination when it was recent, as to mistake a sore hip for a dislocation, so wonderfully complicated in its nature that no body could understand it. If then these speculations of Dr. Smith are inapplicable to this particular case, and they must be if the defendants' own account of the case is to be received as evidence against them, then a dislocation took place which they failed to reduce, and still insisted that they had done it. And from the seventh of September to the twenty-third of October the plaintiff remained deceived; when Dr. Hawks

summoned resolution to inform him, that the bone was still out of place.

In December following, the plaintiff, in hopes still to be restored to the use of his limb, applied to a distinguished member of the Medical Faculty, Dr. Warren, who called to his aid the consulting physicians of the hospital in Boston, who were unanimously of opinion that the injury was of too long a standing to be repaired; still at the pressing solicitations of the plaintiff they attempted his cure. Laxatives were administered and the pulls applied; and here was a full and fair opportunity to observe the movements of the thigh bone, and upon that examination five surgeons of respectability in their profession give a decided opinion that the injury was a *simple luxation of the head of the thigh bone downwards and backwards*, into what four of them denominate the *ischiatric notch*; and the fifth, Dr. Warren, says he felt the head of the bone in or about that notch. Dr. Warren, who stands at the head of his profession, has been very particular in assigning his reasons for the opinion given; among others he says that "the *trochanter major* was not to be felt in its proper place," and "that the head of the dislocated bone could be felt in an unnatural position in or about the ischiatic notch." These are not mere professional opinions, but plain facts, stated by a successful practitioner in the like kind of dislocations; and in addition to this is the testimony of Dr. Brown, a surgeon of long experience and acknowledged skill in the reduction of disjointed bones, who fully accords in his testimony with the surgeons of the hospital.

In opposition to this testimony a recent work of Sir Astley Cooper has been adduced in evidence; to this we have objected as inadmissible in law, but the objection has been overuled, and the question may hereafter be settled by the full court. If this book be competent evidence, it is nevertheless liable to objections against its credibility; especially when the author acknowledges, that he has advanced a position in opposition to all other writers on this subject; and that is, that no dislocation of the head of the thigh bone downwards and backwards ever took place. It would seem from the tenor of his accompanying remarks that he deduces this opinion principally from two causes; the one is his long experience in the populous city of London, and in the hospital particularly, without meeting with such a case; the other is that writers on this subject have fallen into an anatomical error in stating, that a dislocation into the ischiatic notch occasions an elongation of the limb. This error he undertakes to refute by

showing, that in a dislocation into that notch the limb would be a little shortened. If indeed this would be the case, it does not seem to be a fair inference, that no dislocation downward and backward ever happened, into the adjacent regions of the notch as he has defined it; and it is not for us to say, that his definition is not the most strictly anatomical. If however it be so, there is some jarring of words in relation to the affinities of the subjects which they are intended to represent; for he does not, by this definition, permit the bone from which it would seem to have derived its name, to form any part of the notch, or even to touch it, as you have seen by this part of the skeleton exhibited and explained by the witness Dr. Chandler, who adopts the same definition. The whole notch in the hip as you have seen is very large; that part of it which, by this author, is called *ischiatric*, is the small part of the indentation at the top, and all that can with certainty be deduced from the work, is, that when a lodgement of the bone is there made, the limb will be a little shortened with the toe inclining inwards.

But has this author given any satisfactory reason why a lodgement could not be made downwards on the back of the bone? He has never seen such a case—has had great experience; therefore it never existed. These are the facts and this the conclusion, in opposition to great learning and experience. But there is certainly no reason in mechanics why the bone should not be thrust backwards through the lower edge of the socket, where a force is applied singly in that direction, and he has pointed out no cause in nature why such an effect would not be thus produced. Indeed the contrary is to be inferred from every case he adduces of a dislocation upwards into the notch. For the force applied in all those cases was double, driving the bone outward and upwards at the same instant, and lodging the bone higher than a simple force on the part of the thigh would naturally send it, when the body lay horizontally with the legs extended. In the one case the muscles and ligaments must yield to the head of the thigh bone; in the other from their strength and compactness as testified to by Dr. Smith, they would naturally resist it and keep the bone down; and hence the elongation of the limb in the present case, arising from a kind of dislocation denied to exist by Dr. Cooper; though maintained, as he admits, by others of his profession; it would have been well, had he further admitted that it is ably maintained by men of the first professional rank, as well on the continent as in Great Britain.

This author ought to be regarded with many degrees of allowance for another reason, and that is, that in the first place he only doubts of the existence of such cases, and thinks that if ever they happen, it is rarely; yet in the progress of half a dozen pages of his book, these doubts are turned into doctrine, in which he states without hesitancy that "it is to be remembered that there is no such accident as a dislocation of the hip downwards and backwards."

But what is the theory founded in mere negatives, and that too against positive experience? Our countryman, John C. Symmes has discovered the earth to be a hollow globe against the philosophy of all ages. But theories ought to have fact for their basis—it is on this the plaintiff relies; now it is a fact that Dr. Warren felt the head of the bone in the region of the ischiatic notch; this is of more worth in the cause than a volume of theories.—Then as to the turning in of the toe, in the book so much relied upon to refute the evidence of the hospital surgeons, the learned author has given us no light on the diversities of nature in different subjects, but all are gauged by the same standard, from the man with his toes out who sweeps the streets with the broad side of his foot, to him who plods his way with one set of toes over the other. Whatever may be the causes of these diversities, or what their effects would be on the appearances of dislocated hips, or whether on investigation they would affect the theory of the author he has given us no information from which to judge.

The counsel for Dr. Hawks (Mr. Daveis) has with much address introduced a book entitled "The New-England Journal of Medicine and Surgery," in support of the other, containing a review, which speaks of it in high terms of commendation. This, our Brother intimates, is the production of some one of the Hospital Surgeons, with the approbation of the rest, who are the plaintiff's witnesses, and therefore he concludes that in this they have retracted an error into which they had fallen when they gave their testimony, yielding to the weight of Sir Astley Cooper's authority. Nothing could better illustrate the objectionable character of professional book-evidence than this specimen; for in the first place, there is not a shadow of evidence in the case, that any of the witnesses either wrote or approved of the sentiments advanced in the review; but if they did, it only proves of how much more value a statement under the solemnity of an oath is, than the charitable and friendly speculations of a reviewer. Again, a partial reviewer may not feel himself bound to give his

own opinion on a new doctrine advanced by an author, when the general tenor of the work is consistent with well founded and acknowledged theories, and finally the author of the review might himself have fallen into the error of the new adopted doctrine, without giving himself the trouble to investigate the ground of it, and thus put the finishing varnish on a subject, which had never been properly dissected. So that in whatever light this additional specimen of book-evidence may be viewed, it is far from conducive to the ends of legal certainty, and therefore ought not to receive the faith of a jury.

It has before been intimated, that it is far from our design to deny to Dr. Hawks his general merits in his profession. Let genius and attainments receive their just tribute and reward. But in the present instance, the evidence, it is believed, will justify the inference that he trusted too much and examined too little; and self confidence overstrained may be as injurious in its consequences, as a general want of skill.

A second cause of complaint against the defendants, is their negligence. This is a branch of the subject peculiarly within the province of common sense.—The evidence in this particular briefly is, that after the operation the plaintiff requested Dr. Hawks to afford him every necessary attention—that he grudged no expense—that he repeatedly sent for him, stating his painful condition—that the Doctor as repeatedly promised to visit him, and neglected it—that when he came, at long intervals, his visits were short and his manner hasty, that at these visits he gave assurance that the patient was doing well, till at length the limb became so distorted that the Doctor, blind as he had been to the condition of his patient, was constrained to acknowledge that the hip was still out of joint.

His apology for all this neglect was, that he had other engagements on hand; but the proof of it by no means fills up the measure of his neglect. Besides, other and less laudable motives may fairly be inferred from another part of the evidence, by which it appears that his feelings towards Dr. Faxon were very contemptuous; his expressions in this respect clearly indicate his indifference, in case the unskilful practice of his associate in the operation should render an unfortunate patient a monument of his quackery. This is his very language in substance, and to the hands of this very man he consigned the charge of the Plaintiff. Unless you should, in charity to Dr. Hawks, consider this a mere effusion of passion or professional jealousy, which he might be

hardly disposed to acknowledge ; it would not be unreasonable to infer an intentional negligence on the part of Dr. Hawks, or at least an unjustifiable apathy to the recovery of the plaintiff. But whatever motive might have induced it, there was an unwarrantable negligence in his treatment of the plaintiff.

The question of damages now remains for consideration. And if either unskilfulness or negligence has been proved to your satisfaction, a sum is to be assessed, which in your estimation shall compensate the plaintiff for the injury he has sustained. Much has been urged for one of the defendants, Dr. Hawks, by his counsel, in tenderness for his professional reputation ; but it is in no danger of injury from the verdict you may give on the present occasion ; for a solitary exceptionable instance of practice in the course of a professional life is of but small consideration in the aggregate. On the other hand the impaired condition of the person, property, and means of the plaintiff, in all its relative bearings, is to be duly considered in estimating the damages. He has gone through the hands of the surgeons without cure and is left by them without hope. His humble means have been much reduced if not entirely exhausted by his personal inability for a long time to pursue his accustomed avocations, and by his sacrifices of time and money in fruitless attempts to be relieved from his hopeless condition.—His infant family have been doomed to share the privations—to sympathize in the sufferings, which have fallen to his inauspicious lot in the noon day of life.—Deprived of the exercise of the robust and active powers with which nature endowed him, he is painfully thrown on the world to measure the path of his destinies in decrepitude.

Let the damages then, be adequate to this condition ; adequate to the loss of the plaintiff they cannot be, whatever amount, in the exercise of your discretion, may be found by your verdict.

His honor Judge WESTON charged the jury, and stated the nature of the action. He recited the allegations in the declaration concerning the original dislocation of the plaintiff's limb, the employment of Faxon and Hawks as surgeons to reduce it, their undertaking to do it ; and the subsequent averment that they conducted, either with so little skill, or so much negligence as to be followed with injurious consequences to the plaintiff, for which he demanded damages against them.

The defendants had severally pleaded not guilty ; and on this point he instructed the jury that their verdict might be either joint or several. They might find either of the defendants guilty ; or both, or neither, as the evidence exhibited on both sides might warrant.

The learned judge premised, that the charge of want of skill, and the charge of negligence, though they were distinct and separate averments ; yet that the determination of the first would necessarily have an important bearing on the decision of the second ; and that by a careful examination of the evidence, by which their want of skill was attempted to be proved, they would at the same time be the better enabled to determine how far the charge of negligence was supported.

The Judge then proceeded to recapitulate the testimony, and to state the law of the case, as follows—Reynolds was present when the accident happened to Lowell, from the fall of his horse, and helped him into the house. This witness described the manner in which the weight of the animal was thrown transversely across the upper part of the plaintiff's thighs, which were separated in the act of riding, and more widely spread by the shock. Dr. Faxon, being near the spot at Lubec, was immediately called. It may be here proper to explain the legal obligation, which physicians and surgeons are under, when called to render professional assistance.

Whoever undertakes to practice physic or surgery, holds out to the public, that he possesses a competent degree of medical skill. The measure of skill required is ordinary skill ; according to the general state of medical science in the section of country, in which he lives. The degree of professional talent, which may be expected, will depend much upon the patronage and encouragement, by which it may be fostered and elicited. In large and opulent towns and cities, where physicians and surgeons find extensive employment and ample compensation, competition is invited ; and the candidates for public favor in those arts, are stimulated by the most powerful motives in their endeavours to attain professional eminence, and are at the same time aided by many facilities, not to be found in more secluded and less favored situations. The highest degree of skill therefore is not to be expected in small towns where there is little competition, and fewer motives for exertion. From the comparative want of patronage, and the limited opportunities afforded for professional improvement. Circumstances of this kind are well entitled to engage the consideration of the jury ; and the main question for you to decide will be, whether ordinary skill was exercised on this occasion, by these defendants, according to the scale of practice prevailing in the part of the country where they reside.

Many members of the faculty are reputable as physicians, who neither are nor profess to be distinguished as surgeons. It is apparent, that Dr. Faxon did not pretend to any great degree of skill in the department of surgery, in comparison with neighboring practitioners. It seems, that he practiced in the family of Lowell ; and was naturally called in on this occasion. There was no positive proof of any want of ordinary skill in his attempt to effect the reduction of the limb. It does not appear, that the mode of operating resorted to by him, in this instance, was variant from that which the principles of his art required. It is evident that he thought for his own part, that he had succeeded. But Dr. Faxon

does not appear to have possessed great confidence in his own conclusion upon this subject; and made an appeal to the by-standers for their opinion; which a professional man, conscious of his own superiority, would hardly have condescended to do. Some thought the bone was set. Coffin however, who professed to have some little acquaintance with such cases, expressed his doubt, and proposed to send for Dr. Hawks. Dr. Faxon manifested his willingness; and on Coffin's suggestion, with the plaintiff's consent, a messenger was dispatched for Dr. Hawks, who arrived there in two or three hours.

Respecting Dr. Faxon's conduct therefore in the first operation, as no actual injury is proved to have ensued from the experiment, and inasmuch as Dr. Hawks was sent for in his stead, there appears to be no ground for maintaining the action against him for any thing done by him, prior to the arrival of Dr. Hawks.

The next inquiry is, whether any injury arose from anything done by Dr. Faxon in conjunction with Dr. Hawks? The evidence which we have of the original opinion of Dr. Hawks upon this case, is, that this was not a case of simple luxation; but a dislocation, accompanied with a fracture of the socket. In this opinion, expressed by him on his arrival, Dr. Faxon concurred. They retired to consult; and Dr. Faxon, on their return into the patient's room, signified his assent to the further operation proposed by Dr. Hawks, who complimented him with the question, what part he would prefer to take in performing it. Dr. Faxon answered "a second hand's birth," evidently declining any competition with Dr. Hawks, to whose hands he relinquished, and to whom was assigned, by common consent, the post of honor and responsibility in the operation.

In respect to the method of reduction, employed on this occasion, there is nothing to shew that it was improper. There is no difference of testimony on this subject. The patient was placed across a bed. A sheet was passed round the thigh of the well limb, and a towel taken round the knee of the lame one. Several persons took hold of the sheet and some of the towel; and they extended the limb in contrary directions. Dr. Faxon had hold of the end of the ankle, and assisted to carry it in, while Dr. Hawks was employed in superintending the whole, and occasionally assisting in the extension, and feeling for the head of the thigh bone. No pulleys were made use of; and it does not appear there were any provided. Indeed a difference of opinion exists in evidence, in respect to their necessity or utility. Dr. Warren does not consider them to be indispensable in the first instance; though he is, on the whole, in favour of the use of them. Dr. Smith declares that most of the cases he has ever known have been reduced without them; and he considers them to be as often injurious as otherwise. The latest and highest surgical authorities however appear to recommend their employment; but as it does not appear that they were easy, if at all, to be had at the place in the present instance, and as eminent

men are not agreed as to their utility, no imputation fixes on the defendants for the omission.

To proceed with their performance of the operation ; Dr. Hawks pronounced the bone to be reduced ; Coffin expressed the same opinion ; and testifies that the plaintiff said it felt easy and natural ; whereas before this they all agreed it stood out in an awkward and unnatural position, and could not be moved in, without severe pain. J. A. Lowell testifies, substantially the same as Coffin. A grating was heard by the witnesses, such as to lead them to suppose from the sound, that the bone was passing over the fracture, and returning into the socket.

The knees were then bound together with a bandage ; and no difference was discerned in the length of the limbs, at that time. The patient's situation was explained to him by Dr. Hawks, who stated to him the danger, to which he was exposed, if he did not lie as he was directed ; and nature was left to do its office. The patient remained in the confined situation, in which he was placed, for the space of fifteen days. J. A. Lowell says his brother asked Dr. Hawks if he should send a boat every day, and declared he did not value the expense. Hawks however said it would not be necessary ; Dr. Faxon would remain in attendance ; and he engaged to furnish such medicines as might be needed, himself. He further remarks, that the pain would be likely to go on increasing for some time ; as much as five or six days. Josiah Coffin testifies that Dr. Hawks declared he could not attend upon Lowell, and absolutely declined to make any engagement. The correctness of Coffin's testimony is called in question by the plaintiff's counsel, by whom it is argued that there is a difference between his two depositions ; the first taken by the plaintiff, and the second afterwards by the defendants, and produced by them on the trial ; and several discrepancies are supposed to exist between his different statements upon oath, which, it is contended, detract from the regard due to his testimony. On the other hand it is suggested, by the defendant's counsel, that the first deposition was actually taken by the plaintiff *ex-parte*, in the absence of the defendants, who were deprived thereby of the opportunity of extracting the whole truth, and that it exhibits his answers only so far as they were limited by the inquiries of the plaintiff ; and they further urge, that the second deposition introduced by them, was in the nature of a cross examination, by means of which some of his former statements were explained, and further facts elicited. You will judge of the importance to be attached to these suggestions, and will determine for yourselves what credit is due to the testimony of Coffin.

In five or six days after the operation, J. A. Lowell says his brother sent for Dr. Hawks by Brooks ; and he did not come. On the fifteenth day he came, when J. A. Lowell was not present. But Coffin was present at this time, and says, that Dr. Hawks examined the plaintiff ; and explained the reason of his not having come when he was sent for before ; that he was busy among the sick, and at that time especially, engaged in midwifery. In his second deposition, Coffin says Lowell ex-

pressed his fear at this visit, that he had got his limb out in a fit ; in the first deposition, he spoke of it as a struggle of pain. As to this circumstance you will consider whether there is any material difference. On this visit Lowell inquired the cause of the hollow upon the hip, which Dr. Hawks said was owing to the fracture ; and that it was as well as the nature of the case would admit. Lowell kept his bed three days after this ; and Dr. Hawks sent him over medicines once or twice, after his return.

About ten days after this Dr. Hawks came again and examined the limb very particularly. The hollow of the hip was observed, and Dr. Hawks said it would diminish as Mr. Lowell gained strength. No difference in the length of the limb was noticed at this visit. Dr. Hawks took hold of it, and moved and extended it and swung it ; and said it was all right, and doing well ; as is deposed by J. A. Lowell, who testifies that he was present at this time.

On the 23d of October, Dr. Hawks came over the fourth time. The occurrences at this visit are described by J. A. Lowell. The plaintiff inquired of the doctor the reason of the lengthening of the limb. The doctor paused according to the witness, and observed that it looked as if it was not perfectly in its place ; said he was in a hurry, and promised to come again. This is J. A. Lowell's testimony. Eight or ten days afterwards this witness says he asked Dr. Hawks to come over ; that Dr. Hawks said he had been much driven ; but would go. He did not come over however at that time.

The next and last visit, which Dr. Hawks made, was in company with Dr. Whipple, as mentioned by J. A. Lowell, who says however that he himself was not present. The deposition of Dr. Whipple has been offered by the defendants ; but being objected to by the plaintiff in consequence of an alleged irregularity in the mode of caption, (the deponent not having been sworn previous to his examination, agreeably to the new regulation of the statute,) is excluded ; and it will be your duty therefore to pay no regard to the contents. This being taken out of the case, there is no evidence before the jury whatever of any thing that took place at this interview.

Soon after this period, some dissatisfaction appears to have arisen in the plaintiff's mind, and on some suggestion or advice he was induced to repair to Boston, for the benefit of surgical assistance ; and had the resolution to submit to have the experiment of reduction tried upon his limb, at the Massachusetts General Hospital.

An examination of his case was there made by Doctors J. C. Warren, Townsend, Spooner, Welsh and Mann, with other physicians and surgeons ; and it appears to have been the unanimous opinion of these gentlemen that there was then a dislocation downward and backward ; and four of the gentlemen say, into the ischiatic notch ; the head of the bone perceptibly resting in it. But it had existed so long, that they would not undertake to reduce it without his consent. He had the courage to venture ; and the experiment was accordingly made. Several

of the gentlemen have given their depositions on this subject; and the method pursued by them, is minutely described by Dr. Warren. After previous preparatory measures to relax the muscular powers, the patient was placed on his right side, and secured upon a table and again to the wall, by a sheet passed between the thighs, and a force was applied by means of a bandage immediately above the knee of the injured limb, in a direction to draw it forward and inward. Pulleys were at the same time employed and applied, at about the middle of the thigh, at right angles with the limb, in such a direction as to draw the head of the bone toward the socket. Several persons had hold of the bandages and cords, which were used beside the pulleys, and exerted all their strength in aid of the mechanical apparatus employed, until it was ascertained that the experiment must be unsuccessful, and the attempt was finally abandoned.

Notwithstanding the failure of this experiment, however, those gentlemen persist in their original opinion, and depose to that effect in this case. They further declare that it was quite improbable, if not utterly impossible, that the bone should have been restored to its place, and have got out again, after due reduction, consistently with any of the circumstances suggested by the defendants. They even go farther, and maintain that it was from the first a dislocation of so unequivocal a description that medical men of eminence in their profession could not entertain a difference of opinion respecting it.

In this state of the evidence, introduced on behalf of the plaintiff, connected with the other evidence exhibited on the part of the defendants, it becomes exceedingly desirable for you, gentlemen of the jury, to apprehend distinctly the principles, upon which a correct verdict may be rendered.

It is without doubt difficult for those, who are not professionally versed in subjects of this kind, perfectly to comprehend the matter in controversy. You will naturally endeavour therefore to gather the best information from the most satisfactory sources, within your reach. This is to be sought especially in the publications of the ablest writers, in the science of surgery. Dislocations of the hip, it appears, are of rare occurrence. Few opportunities for direct and personal observation are of course presented, within the compass of ordinary practice. Professional men themselves are generally under the necessity therefore of resorting to works of this character for the various descriptions of those cases, which are there recorded for the benefit of the community. Such lights are surely not to be neglected, in an investigation of this kind, before a tribunal constituted like yourselves, obliged in a great degree to form your own judgment on the opinions which you obtain from those on whom you may justly place the most reliance.

Among all the persons of professional eminence, whose authority is entitled to respect on this subject, no one stands more conspicuous in public estimation than Sir Astley Cooper, a surgeon of the highest character in the city of London; surgeon for several years at St. Thomas's

and Guy's Hospitals; and also surgeon to the king. His skill is unrivalled and his preeminence undisputed in a country, where beyond most others the subject is best understood, Great Britain; and his residence in the metropolis, enables him not only to enjoy the most ample means of observation, but also affords him opportunity for obtaining scientific information upon these subjects from all quarters of the empire. Cases it seems are frequently reported to him from scientific men at a distance; which he again is in the habit of communicating to the public for the good of mankind, connected with the most valuable results of his own diversified practice and experience.

This distinguished gentleman has not only had a most extensive practice in surgery, but he has actually dissected persons whose death had been occasioned by dislocations, as well as others who had died long after such accidents had happened; thus discovering the various aspects which they are found to exhibit.

The authority of Sir Astley Cooper's work is recognized by the editors of the Massachusetts Medical Journal; a publication of a highly respectable character, issued if not avowedly under the sanction, yet supported by the patronage of the physicians attached to the Massachusetts General Hospital. These gentlemen may be understood as some of the prominent contributors to the work. The first article of the same number which has a review of Sir Astley Cooper's Treatise, is furnished by Dr. John C. Warren; and it is followed afterwards by an account of an operation, probably that to which the plaintiff submitted, for a dislocation into the ischiatic notch. This review strongly recommends Sir Astley Cooper's work to the attention and study of the profession.

In this treatise on Dislocations, and Fractures of the Joints, of which Sir Astley Cooper professes to give a perfect enumeration, he describes four species only of dislocations of the hip; and he says that there are no other. He further says that there is no such thing as a dislocation downwards and backwards.—He declares that dislocations of the hip are the most difficult to ascertain, as well as to reduce, for reasons which he particularly mentions. The signs therefore that are laid down in scientific works are the more important to be regarded and attended to; as they afford the criteria upon which those surgeons must of necessity rely, who have not enjoyed extensive opportunities for practice. In the analysis of this work, in the Massachusetts Medical Journal, for the benefit of those of the profession who may not have the opportunity of access to the original, the publishers particularly extract the results of Sir Astley Cooper's observations, in regard to dislocations of the hip.

He denies that there is any dislocation backward and downward. It is true, he says that the dislocation into the ischiatic notch, which is backwards, had been supposed to be of this character. But he observes, that he had long been led to suspect some anatomical error on this subject. He had noticed that in accounts of such dislocations, the leg was said to be longer, whereas it was perfectly obvious, on a careful inspection, that in the case of a dislocation into the ischiatic notch (which

some practitioners had represented as a dislocation downward and backward) the limb must be manifestly shortened. The origin of the error on this point was, he remarks, at once explained to his mind by noticing the different position of the human pelvis in an anatomical preparation which is commonly more horizontal than happens in its natural situation, in the living subject; so that a horizontal line, drawn from the centre of the acetabulum, would pass rather above the centre of the ischiatic notch. Shortening of the limb, though perhaps slight, would therefore be the consequence of a dislocation into the ischiatic notch. The plaintiff's limb you will recollect, was lengthened.

In page 79 he gives an example of a genuine dislocation into the ischiatic notch; in the case of a young man admitted into Guy's Hospital, under the care of Mr. Lucas. On examination, the thigh was found to be dislocated backwards; but though the difference in the length of the limb was scarcely perceptible, it was found to be actually shorter than the other. The groin was in some degree depressed; the trochanter resting a little behind the acetabulum, but inclined upon it. The knee and foot were turned inward.—Lowell's are represented as turning outward.

Another peculiarity, attending the dislocation into the ischiatic notch is, that the head of the thigh bone is described as being buried so deep that it cannot be distinctly felt, except in very thin persons. The plaintiff has been before you, and you will judge whether he is to be considered a very thin person; and whether his is one of those cases therefore, in which it would be quite easy to discover the head of the bone. Dr. Warren and the other physicians in Boston, however, declare that the head of the bone was distinctly felt.

In the earlier editions of his work Sir Astley Cooper suggests his disbelief in the existence of a dislocation downwards and backwards, with some degree of doubt and hesitation. In a subsequent edition however in an enlarged form in 1822, after longer experience, and the most mature reflection, he undertakes to state positively that no such dislocation can happen.

None of the professional gentlemen, who have declared that a dislocation existed in this case, have suggested that it might have been a dislocation into the foramen ovale; and yet it would seem that there are many reasons to support the position that it might have been a dislocation of this kind. In the first place, the thighs were widely separated when the original injury was received: and it is from this cause, as Sir Astley Cooper states, that this species of dislocation arises. He adds that in this kind of dislocation the limb is elongated two or three inches; that the head of the bone can be felt by the pressure of the hand upon the inner and upper part of the thigh; that the trochanter major is less prominent on the opposite side; the body bent forward and the knee of the injured limb widely separated from the other. These signs corresponded with the appearances in the plaintiff's case, in almost every particular. This is a point however to which I would be understood to

speak with less confidence, as the supposition is without the direct support of professional testimony. If it was a dislocation of this kind, the mode of reduction is very different from that which is required in cases of dislocation into the ischiatic notch. The surgeons in Boston assume that the injury sustained by the plaintiff was a dislocation of this latter description; and it is from this testimony that the charge of want of skill is attempted to be supported against the defendants.

If Sir Astley Cooper is right, it follows that the Boston gentlemen must be wrong; and learned as they are, they would not consider it any disrespect or disparagement to them to say that Sir Astley Cooper is still more learned. His opinion is therefore entitled to great consideration; and you will estimate the degree of weight to be attributed to it from his diversified and extensive practice and extraordinary opportunities for acquiring knowledge in his profession.

I will here observe to you, that before the plaintiff can entitle himself to your verdict against the defendants, for want of skill on their part, it is necessary for him to prove to you what they ought to have done, and that they neglected to do it. His case in this respect rests principally upon the opinions of the gentlemen in Boston. If they have erred in judgment as to the nature of the dislocation, if there was any, the claim of the plaintiff, to say the least of it, is very much weakened and impaired.

The next evidence which demands your attention, is the testimony of Dr. Smith, who is justly distinguished for his skill in surgery; as well as for his standing as a physician; and especially for the success with which he has performed some of the most delicate and difficult operations. No surgeon or physician has probably had a wider range of practice in New England. He has, for a considerable period, been employed as a professor of medicine and surgery at different colleges; and on the establishment of the medical school at Bowdoin College, he was invited from New Haven to fill the same place, he then occupied at Yale College.

In the month of June 1822, Dr. Smith made a critical examination of the plaintiff's case. The mode of examination, and care with which it was made, are stated by Mr. Lincoln, whose testimony is confirmed by that of Dr. Frye and Mr. Greene. The plaintiff was stripped and placed upon his face; and lines were drawn and proportions measured to ascertain as exactly as possible the situation of the injured parts. The result of Dr. Smith's inspection was, that in his opinion there was no dislocation. According to his judgment, it was originally an injury done to the socket of the thigh bone, accompanied with a derangement of the bones of the pelvis. In that case, it was his opinion, that no effectual aid could be afforded to the patient, except to keep down inflammation. The apparent elongation of the limb is explained by him, as capable of existing entirely independent of any such cause as some of the Boston faculty suppose. It is observable that several of these gentlemen consider this elongation as decisive proof of the kind of dis-

location which they state it to be. Dr. Warren however, it may be remarked, says that such a dislocation may be one cause, and mentions that there may be two others. It might be owing to a fracture of the neck of the thigh bone, accompanied with a relaxation of the muscles, or it might proceed from the relaxation of the muscles alone. Dr. Smith ascribes it either to a preternatural and extraordinary or a voluntary contraction and relaxation of the muscles about the hips; such as may even be produced by mere volition, and which often takes place, without violence, in case of disease.

After such a variety of contradictory and conflicting opinions, will you, gentlemen, undertake to decide what this injury is? Several of the learned gentlemen of the faculty in Boston depose, that this was a case concerning which eminent men would not be likely to differ. But you have no doubt been surprized to find from the testimony adduced, that eminent men, have differed and do differ, both as to the original injury and the present condition of the plaintiff. Seeing then that the opinions of eminent and distinguished men are thus opposed to each other; you may well, gentlemen of the jury, feel yourselves justified in adopting that of the most eminent. And I am free to say, that if I were obliged to decide in a case of this kind of my own, where my own life was in question, I would not hesitate to abide by the judgment of Sir Astley Cooper against that of all the learned gentlemen who have united in expressing a different opinion on the present occasion. But the opinion of Sir Astley Cooper is virtually adopted and sanctioned by the gentlemen alluded to in the scientific publication to which some of them are understood to contribute, and which unquestionably enjoys their patronage.

The testimony of Dr. Brown and Dr. Estabrook goes to support the unfavourable conclusions drawn by the surgeons in Boston, respecting the course of practice pursued by the defendants, in this case. On the other hand the testimony of Dr. Chandler, Dr. Weatherbee and Dr. Frye is sustained by the principles of Sir Astley Cooper, and the opinion of Dr. Smith. Dr. Sargent also agrees with Dr. Smith, that the defendants could have done the plaintiff no farther service.

After Dr. Hawks had succeeded according to his own judgment in reducing the dislocation, and also to the satisfaction of his colleague and patient and all present, what further was it incumbent on him to have done? Did he leave any thing undone, which might have been performed with advantage? It is urged by the plaintiff that an attempt was afterwards made in Boston, and it is insisted that Dr. Hawks ought to have done at an earlier period what was there attempted. Let it be supposed then that the gentlemen of the Boston faculty had actually undertaken to perform this operation, within five days after the accident happened to Lowell; and that Sir Astley Cooper had been present and had insisted that there was no such dislocation as they supposed; that Dr. Smith was also standing by and declared to them that there was no dislocation whatever—would it have been prudent to have attempted the

experiment? In the midst of such conflicting opinions would it not be most difficult to determine what ought to be done? Can you now decide what should have been done? And when you know not what to do, is it not the wisest course to do nothing?

If under these circumstances, you should feel yourselves at a loss how to proceed; still more if you should incline to adopt the opinions of Sir Astley Cooper and Dr. Smith, ought a surgeon who is responsible only for the exercise of ordinary skill, to be holden to perform the experiment at his peril? But it is not incumbent upon the defendants to prove to you, beyond a reasonable doubt, that their practice was skilful, and the opinion of the Boston faculty a mistaken one. The burthen of proof is upon the plaintiff to satisfy you, that there was a want of skill in the defendants. If a reasonable doubt remains upon this point, they are entitled to your verdict upon this part of the charge against them. Gentlemen, after what you have heard, is it possible for you not to doubt?

It is not enough for the plaintiff to render it merely probable that an experiment might have been useful; it is incumbent upon him to *prove* that it would have been so. It is not sufficient to shew that by possibility there might have been a more perfect remedy applied; he must reduce it to a reasonable certainty, that he has sustained a positive injury, from the malpractice of the parties, whom he has undertaken to charge. Money is not to be taken from their pockets in the shape of damages, unless the plaintiff has clearly entitled himself to it. The defendants have their rights, which equally with those of the plaintiff, are to be secured and protected. A verdict against them would be ruinous to their professional reputation and usefulness; which are not to be lightly sacrificed on doubtful evidence. The reputation of one of the defendants may not stand so high as that of the other; and whatever inferences may be drawn from any expressions that may have dropped from Dr. Hawks derogatory in any degree to the professional character of his codefendant, whether arising from professional rivalry, or from whatever cause, it does not by any means follow that he is liable to answer in damages to the plaintiff, unless he is clearly proved to have suffered from his misconduct.

As to the charge of negligence, which is imputed to one or both of the defendants, it appears to me that this part of the plaintiff's allegation will depend much upon the determination of that, by which a want of skill is imputed. Is the charge of negligence supported against Dr. Hawks? It appears that he was under the general obligations of a physician to attend upon numerous patients about this period at Eastport, the place where he resided and the scene of his constant practice; and there is proof that he was under very particular engagements in regard to the two ladies, Mrs. Webster and Mrs. Hobbs, who were expecting to be, as they actually were, confined about the season the plaintiff complains of Dr. Hawks for not visiting him so often as he wished at Lubec. After considering the circumstances respecting these engagements which are distinctly proved by several witnesses, and par-

ticularly by the husbands of these ladies, and other relatives and friends, whose anxiety appears to have been much excited on those occasions; and after comparing the time when these duties were required of Dr. Hawks with the times at which his attendance was expected by the plaintiff, and also taking into view the number of actual visits which he made to him at Lubec, you will judge whether there is satisfactory proof of any careless and wanton disregard of the claims of the plaintiff upon his professional services.

But independent of the testimony adduced by Dr. Hawks to shew the necessity of his attendance elsewhere, it may be proper to inquire what benefit it would have been to the plaintiff, if he had visited him more frequently? If the opinion of the Boston faculty is shaken, what proof is there that any physician other than Dr. Faxon could have been of essential service after both the defendants had operated? If reliance is to be placed on the testimony of Dr. Smith, nothing could have been done that could have been of any material advantage. As to such care and aid as the plaintiff's situation might require, was not Dr. Faxon altogether adequate? Was Dr. Hawks under the responsibility of a family physician to Mr. Lowell? Was not that more truly the relation of Dr. Faxon? And did not Dr. Faxon continue his attendance upon the plaintiff? Can Dr. Hawks be deemed to have abandoned Mr. Lowell without suitable care under these circumstances? If it appears to you that Dr. Hawks did every thing on his part which could have been attempted with prudence; if it is doubtful whether any thing else could have been done to advantage; where is the proof of any injury he has occasioned to the plaintiff, and what ground of complaint can he fairly have against this defendant?

In determining this point, you will notice the testimony of Phelps; that the plaintiff made no complaint of Dr. Hawks' conduct in respect to the manner of performing the operation, nor of any want of attention in Dr. Faxon towards him afterwards; and that the latter was made a defendant merely to prevent his being a witness. If then you find the charge of want of skill not sustained; if further it should appear to you by the plaintiff's own acknowledgement that there had been no delinquency in Dr. Faxon, but that he had done every thing that he could in his attendance on him subsequently; and if you are satisfied that there is no sufficient proof to support the charge of negligence against Dr. Hawks, you will be warranted in considering that the plaintiff has no ground of action against the defendants.

I have thus endeavoured to exhibit to you, gentlemen of the jury, the leading principles of this case, and the prominent features of the evidence, in regard to which I am aware that I have expressed myself somewhat strongly; but not more so than I have deemed it my duty to do. On the whole, gentlemen, you will draw your own conclusion as to the weight of the evidence; and if you consider the defendants or either of them guilty, it will be your duty to give the plaintiff in damages full indemnity for the injury he has sustained; but he will be entitled to none, unless in your estimation the case has been made out in his favour beyond a reasonable doubt.

The jury not being able to agree, except in acquitting Dr. Faxon ; and one of the jurors being so unwell as not to admit of his remaining on the panel, the court ordered them to be discharged without taking any further verdict. The Chief Justice on the next day recommended the parties to agree to enter neither party ; and Mr. Justice Weston suggested, that however the plaintiff might have been justified in commencing his action on the authority of the opinions expressed in the testimony of the Boston physicians, he might perhaps be led to doubt, after the disclosure upon this trial, whether it was not founded on some mistake. The plaintiff thereupon suffered a nonsuit, and the defendants agreed to take no cost.

NOTE.

The following is the letter of Dr. Warren, which was originally annexed to his deposition, and which is added here as due to both parties :—

BOSTON, APRIL 12, 1822.

Dear Sir,

In reply to your letter requesting my opinion on the question, whether Mr. Lowell's dislocated thigh had been reduced, I beg leave to say :

FIRST—That every person will understand it to be impossible for me to say positively, that the limb was not reduced, provided especially there is any positive testimony that it was so.

SECOND—That my opinion certainly was, that the limb had not been reduced, for the following reasons.

1st—That if it had been reduced, it would not have been again luxated without great violence, on account of the depth of the socket—and I did not understand that any such violence was inflicted after the efforts to reduce it.

2d—That this dislocation is so difficult to reduce, that I presumed it would remain unreduced often in the hands of the best surgeons, and with the best means. If such a case were to come to me, I should have many doubts of being able to reduce it in a muscular man, even in its most recent state, especially without dislocation pullies.

For these reasons my opinion was, that the dislocation which was thought to be reduced, was not so in fact.—I would not however oppose an *opinion* to any positive testimony.

In any case, I presume that no blame is to be attached to you, as the case is a very difficult one, the worst of four kinds of dislocations of the hip, and I presume also, that you did everything that circumstances admitted.

I am, Sir, your very
Obed. Servt.

J. C. WARREN.

It may be a question whether the acetabulum had been fractured ; but as time enough for it to unite had elapsed when I saw him, I can give no opinion on this point.





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