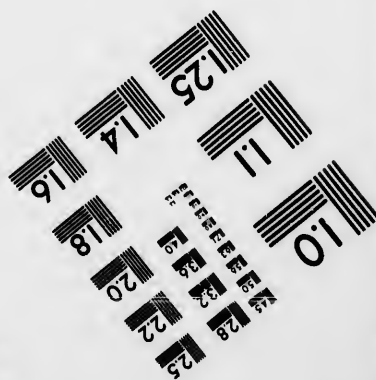
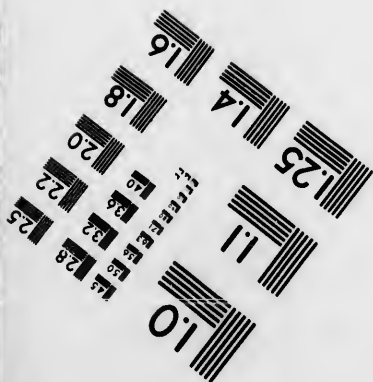
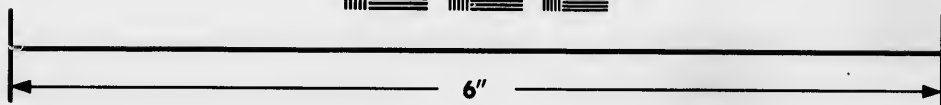
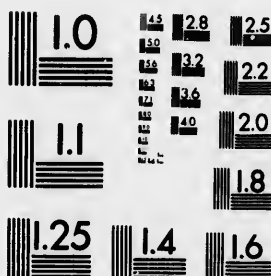


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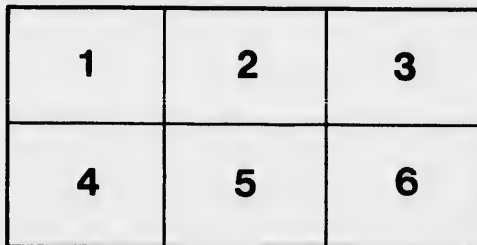
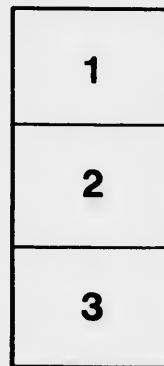
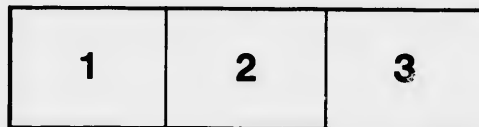
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1874MS

SUPERIOR COURT,
MONTREAL, CANADA.

No. 521.

JAMES JOHNSTON,
PLAINTIFF.

vs.

JAMES S. HUNTER,
DEFENDANT.

PLAINTIFF'S FACTUM.

MACMASTER & BAGG,
Plaintiff's Attorneys.

MONTREAL, *March*, 1874.

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SUPERIOR COURT, }
MONTREAL. }

JAMES JOHNSTON,

Plaintiff.

vs.

JOHN S. HUNTER,

Defendant.

Plaintiff sues Defendant for libel and slander.

The declaration alleges that on the evening of the 4th, November 1872, at a public meeting held in St. Andrew's Church, Montreal, the Defendant, in the presence and hearing of the whole congregation, maliciously and without provocation falsely uttered and published the following words of and concerning the Plaintiff.

"I am sorry that some of the Congregation did not witness the scene that the Session had witnessed yesterday, when the minister was called a liar, after our most solemn services. Mr. Johnston called his minister a liar."

The Declaration further alleges that immediately after the making of said charge by Defendant the meeting became greatly incensed and showed signs of disapprobation, against Plaintiff.

That Plaintiff denied the truth of the charge, and called upon the Rev. Gavin Lang who presided at said meeting, and upon another Elder then present to testify to its falsity without avail.

That the defendant neither withdrew nor explained said defamatory statement during the subsequent part of the meeting, and that Plaintiff became the victim of an erroneous impression resulting in the passing of a resolu-

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tion calling upon him to resign from the eldership; that the report that the Plaintiff had called his minister a liar had in consequence of Defendant's said statement acquired currency among the members of the congregation of St. Andrew's Church, Plaintiff's friends, the clergy of the Presbyterian Church of Canada in connection with the Church of Scotland, and the public generally, whereby Plaintiff suffered damage in his reputation, fame and standing as a gentleman and as an Elder of the church, and was greatly wounded in feeling. Plaintiff further alleges the receipt of the following document from the Secretary of the Trustees of St. Andrews' Church.

"Montreal, 7th Dec., 1872.

"Extracts from the minutes of meeting of the Trustees of St. Andrew's Church held in the vestry on Saturday the 7th of December instant.

"It was resolved :

"That in order to sustain the action of the congregation taken in regard to Mr. James Johnston (Plaintiff) at its meeting on the evening of the 4th of November last the Trustees do now decline to let a pew to Mr. James Johnston for the ensuing year.—Carried. Mr. A. Buntin dissenting."

That on the receipt of said letter, a correspondence ensued between Plaintiff and Defendant of which the following letters are copies :

Montreal, 19th December, 1872.

"DEAR SIR.—One of the young men of my family has informed me that Clements, caretaker of St. Andrew's Church is instructed not to let me the pew in Church which myself and family at present occupy.

"The statement made by you in St. Andrew's Church on the evening of the 4th, November last, that I had called Mr. Lang a liar in the Vestry on the previous day, seems to me to have something to do with this action of the Trustees, and it may help to put the matter right if you would give me a letter withdrawing that statement, making

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" ample apology and then I would use it to inform the Trustees and any one else who feel interested in me, that it was not a fact that I called the minister a liar.

" It is only just that the apology should be as extensive as the charge and I hope you will consent to my acquainting the Congregation of your withdrawal of the charge, and that your statement was untrue. I fully expected a letter on this matter from you, but if nothing comes to hand to-morrow before I leave my warehouse at 5 p.m. I will take it for granted that you give no reply."

I am respectfully yours,

(Signed) JAMES JOHNSTON.

JAMES HUNTER, Esq.,

DEFENDANT'S ANSWER.

Montreal, 20th December, 1872.

SIR,— The statement made by you on the evening of the 4th November last, in St. Andrew's Church in the face of the Congregation then and there assembled, " that the truth was not to be found in me and two other members of the Session whom you then named, demands both explanation and apology, and it may help to put the matter right if you would give me a letter withdrawing that statement and make ample apology, and then I could use it to inform the Congregation and any one else who feels interested in me, that you have withdrawn such statement. I think it only just that the apology should be as extensive as the charge, and hope you will consent to acquainting the Congregation on Christmas day of your withdrawal of the charge, and that your statement was untrue.

I fully expected a letter on this matter from you before this, but if nothing comes to hand to-day before I leave my office at 5 p.m. I will take it for granted that you give no reply.

Respectfully yours,

(Signed) J. S. HUNTER.

JAMES JOHNSTON, Esq.,

PLAINTIFF'S ANSWER

Montreal, 20th Dec., 1872.

DEAR SIR.—In answer to your note of the 20th instant relating to mine of yesterday I would say, if I made any statement at the meeting in St. Andrew's Church on the evening of the 4th November last, reflecting on your veracity it was in answer to your grave and unjust charge that I had called the minister a liar. Had I done you any injustice I would be willing to repair it and apologize, but I conceive I have done you no injustice, and regret that you should not have shown a better spirit in wishing to repair the injury and injustice you have done to me

I am respectfully yours,

JAMES JOHNSTON,

JAMES HUNTER, Esq.

Plaintiff further alleges that being unable to obtain an amicable settlement of the difficulty pending between him and Defendant, and after exhausting all ordinary means to obtain the same he instituted an action in the Superior Court for \$10,000 damages.

Defendant pleaded firstly, in mitigation of damage, but without admitting the alleged charge against him that he was greatly incensed and provoked by Plaintiff's conduct at said meeting, that he made said statement from motives of duty, and only after an attack had been previously made upon his truthfulness, and on the correctness of the minutes of St. Andrew's Church, kept by him in his capacity of clerk. Defendant pleads secondly, compensation, alleging counter charges made by Plaintiff against him at the said meeting of the 4th November, and lastly the general issue.

Plaintiff answers specially reciting the occurrences of the meeting of the 4th November in detail, to which answer a general replication is filed by Defendant.

In order to make the issues in this cause intelligible, a brief retrospect of events preceding the 4th November is

necessary and justified by the evidence and the exhibits filed in the case.

For some years preceding the 4th November, 1872, both Plaintiff and Defendant were elders of St. Andrew's Church and consequently members of its Kirk session, that is of a body composed of elders having cognizance of the spiritual welfare of the church, whose meetings are presided over by the minister acting as moderator or chairman. A meeting of the kirk session was held on the 30th October, 1872, at which a "statement or proposal" (Plaintiff's exhibit No. 4), was made by the Rev. Gavin Lang for the acquisition of St. John's church as a mission church in connection with St. Andrew's Church. The session ordered the "Statement and Proposal" to be printed and laid before the congregation at a meeting to be held at the close of Thanksgiving Service on Monday the 4th November, with a strong recommendation for its adoption, Mr. Johnston (the Plaintiff) dissenting.

The Sacrament of the Holy Communion was administered in St. Andrew's Church on Sunday 3rd November, 1872, and on the following evening in accordance with the ordinary custom, the Thanksgiving service was held, after which a public meeting was constituted for the purpose of taking into consideration said Proposal or Statement for the acquisition of St. John's Church. St. John's Church had previously been and was then an independent church used for the purpose of the French Missionary Society in connection with the Church of Scotland. It had a *status* equal to that of any other Presbyterian Church, and was represented by its clergymen in the Presbytery and Synod.

The "Statement and Proposal (Plaintiff's Exhibit 4) declares that "St. John's Church is now vacant and closed" and the Rev. Gavin Lang, the Incumbent of St. Andrew's Church in submitting and recommending said "Proposal" to the congregation, remarked "that practically the French Mission Scheme in connection with our church is now wound up," and invited discussion for or against the "Proposal." The Plaintiff thereupon remarked that the Proposal

would not be accepted by the Presbytery, that the French Mission Scheme was not wound up, that he had good reason to believe that it would be continued, and thereupon in support of his argument read an editorial article from page 260 of the November number for 1872, of the "Presbyterian" a religious magazine and the official organ of the said Presbyterian Church, commencing :

" We beg to notify our readers that the French Mission Scheme of our church is to be continued, &c."

Plaintiff further remarked : " It was strange said number of the "Presbyterian" had not been distributed in the pews on the Sunday previous in accordance with the usual custom. Mr. Lang said that the "Presbyterian" had not been received in time for distribution on the Sabbath preceding. Mr. Johnston asked Mr. Lang, if he was perfectly sure that he was not misinformed. Mr. Lang, was positive that the Presbyterian had not come in time for distribution ; besides it was Communion Sabbath and Mr. Lang did not think that a fit time to distribute them. Mr. Johnston (the Plaintiff) said he thought if the minister would take the trouble to inquire particularly, he would find that he had been misinformed. Mr. Lang complained of his statement being called in question and objected to be interrogated in this way ; he was perfectly sure he was not misinformed." Mr. Lang then proceeded to discuss the article referred to by Mr. Johnston in the Presbyterian, and complained of Mr. Johnston's general misconduct. Mr. Johnston persisted in saying that the French Mission Committee was still in existence, proceeded to give some statistics with regard to the church, and declared that he had everything in black and white. Thereupon Mr. Lang complained of Mr. Johnston's conduct.

The Defendant (Hunter) then stood up and made the statement complained of by the present action [page 3].

Mr. Johnston said it was a "downright fabrication" and appealed to Mr. Lang to state then publicly if this statement was true or false, but Mr. Lang made no answer. Mr. Johnston then referred to one of the elders and asked

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him to say whether Mr. Hunter's statement was true or not but no answer was given. Mr. Morris, the Defendant's attorney then proceeded to discuss the question of acquisition of St. John's church and was followed by Dr. Campbell, Walter Macfarlan and Mr. Kinloch, the discussion resulting in the passing of a resolution favorable to the acquisition of St. John's church as a mission church, which was disallowed the next day by the Presbytery, as the Plaintiff anticipated. Mr. Lang towards the close of the meeting congratulated the congregation on the passing of the resolution. "He (Mr. Lang) thought that the congregation should not go away with the idea that the church officer was to blame or that what he had stated to him was not substantially correct, he was bound to be protected in his duty. Mr. Clements (the caretaker) now states distinctly that he did not receive the Presbyterian till this Monday, (4th Nov.) forenoon. Mr. Johnston the Plaintiff said that to satisfy himself he had that morning gone to the Publisher Mr. Lovell, and he told him that he had sent the Presbyterian to the Express office on Saturday, and on going to the Express office they told him that they had forwarded the paper to the church and had given it into the care of Mr. Clements. Mr. Clements said the Presbyterian had not been received till that forenoon." The Rev. Mr. Lang next incited the congregation against the Plaintiff in these words: "He was very sorry to bring this matter up, but he did think the time had come for the congregation to give some expression of opinion in regard to the position they occupied in regard to the conduct of their brother Mr. Johnston," and concluded by saying that he, Mr. Lang, would ask them *in view of what they had heard and seen that night* if this state of things was to continue."

Mr. Johnston again pressed Mr. Lang to state publicly if the statements referred to by Mr. Hunter were true or not. Mr. Lang evaded the question; Mr. Johnston insisted upon having an answer yes or no. Mr. Lang again evaded the

question, saying that "he had been often virtually called that" [a liar].

"Mr. Johnston said that Mr. Hunter had distinctly "charged him with calling the minister a liar, the minister "will not say that I did; I challenge the proof." Mr. Johnston's conduct then became matter of discussion, Messrs. Walter McFarlan, Kinloch, Professor Murray and others taking part therein, the whole resulting in the passing of a resolution in the following words :

"That in view of the fact that Mr. Johnston cannot work "harmoniously with the minister and his brother Elders, he "be requested to resign his office as Elder."

After which the meeting adjourned.

The foregoing recital of the matters pertinent to the issues in this case, which took place at the meeting of the 4th November, is taken from the short-hand notes of Mr. Matthew Hutchinson, B.C.L.

Mr. Johnston thinking that he had frequently been the victim of misrepresentation and in order to have a correct account of what actually took place procured the attendance of an experienced Stenographer who took down and wrote out at length the proceedings of the meeting in what he calls a fair and substantial report, which is fyled in the cause as Plaintiff's Exhibit X, to which the attention of the Court is specially directed. This report is invaluable in determining what actually did occur at said meeting; it is the only reliable evidence in the case as to the order and phraseology of the different speakers. From this it appears that the Defendant Hunter was the third speaker in order at said meeting, and that he spoke near the beginning thereof. Furthermore that the first insinuation made against his veracity or truthfulness, was the answer of the Plaintiff to his charge; that it was a "downright fabrication." This order is also testified to by other witnesses. It further appears from this report, and it is supported by the testimony of Mr. McFarlane for Defendant, and other witnesses, that "the discussion about the Presbyterian came up twice at said meeting," at the beginning and

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towards the close," and that it was towards the close and during the second discussion, long after Defendant had made the charge complained of, that Clements announced that the Presbyterian had not been received till Monday morning. The charge as laid is literally and substantially proved.

The chief questions for consideration under the issues raised are:

- I. The nature of the charge and its truth or falsity.
- II. The question of malice on the part of Defendant depending,
 1. Upon the nature of the charge,
 2. The circumstances under which it was made
 3. And the opportunity to withdraw it.
- III. Its effects.
- IV. provocation to Defendant and compensation for counter charges.

The main question for enquiry is as to the truth or falsity of the charge made by Defendant. The accusation being made by one elder of the church against the other, is one of a most serious character, and whether true or false is calculated not only to injure the Plaintiff, but to bring much scandal and contempt upon church organizations.

The Rev. Robt. Campbell examined as a witness for the Plaintiff was asked the following question :

"Do you think a charge of that kind made by an elder of the church against another in the presence of a large assembly is calculated in any way to affect the religious or social standing of the person so charged ?

Answer.—"I do. The very position that the accuser occupies would give weight to his utterances with regard to the character and position of the person charged. Considering the position of the accuser the presumption would be that the charge is true. Considering the character of the eldership whether said charge was true or false, it was a serious charge to make."

Mr. John McDonald examined for Defendant was asked :

QUESTION.—Was not the statement made by the De-

Defendant concerning the Plaintiff one calculated to arouse indignation against Plaintiff.

ANSWER.—There is no doubt it was.

The Rev. Dr Murray, professor of mental and moral philosophy in the McGill College, was present at the meeting of the 4th Nov. and says "I had no reason to disbelieve "Defendant's statement."

QUESTION.—At the time said charge was made did it strike you as being one of a serious character made by one elder of the church against another?

ANSWER.—Certainly.

QUESTION.—Was said charge of a character to cause those present to become, indignant with the person against whom it was made?

ANSWER.—I should think so.

The high regard which a clergyman is held in the Church of Scotland is proved by several prominent members of the church, and Mr. Darling expresses the opinion of all examined in the case when he says: "It is a "serious charge to make if it be true or false."

When however it turns out that the charge was utterly false, completely foundationless, the gravity of the offence is increased ten fold and the malice of Defendant becomes more obvious.

The uttering of this charge even though true would be a libel, or defamation, if not done with a good motive; but the uttering and publishing of that which is not true debars the defamer from pleading duty as provocation. The falsity of the charge itself dissipates the semblance of good intention, and constitutes malice in law. No man is compelled by duty to lie away another's reputation, to steal his neighbour's good name to enrich himself. It is not necessary to cite any authorities to prove such elementary principles of law.

The statement made by Defendant at the meeting of 4th of November concerning Plaintiff is proved to be *completely false*.

It will be observed that the Plaintiff is charged with having called his minister a liar immediately after a solemn service of the communion. And as if it were not sufficient that the word liar should be once used, it is twice repeated.

After said communion service a meeting of the elders took place in the vestry room. Mr. Brodie one of the said elders examined as a witness for Plaintiff, did not hear the Plaintiff make any charge against the Rev. Mr. Lang's truthfulness. We have also the advantage of the Defendant's own testimony. He has to admit that he never heard Plaintiff call Defendant a liar in words, but persists in stating that Plaintiff called in question the truthfulness of the Rev. Gavin Lang at the meeting of the elders. It is in evidence that the only subject of difference that came up at that meeting was with regard to the counting of the tokens or small metallic pieces which had been handed in to the elders on duty, and which were used to prevent imposture, and are an indication of the number who communicate at the Holy Table. It would appear from Mr. Lang's own testimony as well as from that of Mr. Mungo Ramsay, an elder present at said meeting after the communion service, that he and Mr. Johnston, commenced counting the tokens in the vestry room. Mr. Lang, to use his own words, "in the mildest possible way" tried to prevent them from accomplishing this end. Mr. Mungo Ramsay became indignant at the clergyman's interference, left the room and never returned, considering Mr. Lang's conduct an insult. A dispute arose between the Plaintiff and the Incumbent regarding the number of tokens actually given in, on that day, and it is in connection with this dispute that Mr. Hunter contends

that the Plaintiff called in question the truthfulness of the Rev. Mr. Laing.

The Plaintiff submits for consideration the following extracts from the evidence of the Defendant [Hunter], the Rev. Mr. Lang, and of James Mitchell, Defendant's principal witness. The trio are hostile to Plaintiff, but the truth peers out of their united testimony to Plaintiff's complete vindication.

James Mitchell, for Defendant.

"The question as to the number of tokens was the *only* subject of difference at that meeting of the elders, between Plaintiff and the Rev. Mr. Lang, and the members, as far as I can remember."

Mr. Lang's Evidence :

Mr. Lang says: "*Not having counted the number of tokens then, I made no calculation of the number, and of course Mr. Johnston could not have made any insinuation against the correctness of my calculation.*"

QUESTION—Is it true that you counted a part of the tokens on the occasion in question, and that when you announced the number you counted, Mr. Johnston contradicted you and said that your statement and number so counted by you was not correct?

ANSWER—*I did not count the tokens, I simply put a few bunches of tens or twelves together, I think tens; I never announced any number, and consequently could not have been contradicted on this point by Mr. Johnston*

Mr. Hunter's evidence :

QUESTION—Did the Plaintiff at the meeting of the Vestry on Sunday the 3rd November, say that Mr. Lang's statement was untrue, or what did he say?

ANSWER—It was in reference to the number of tokens. Mr. Johnston, the Plaintiff, had counted a part of them, and Mr. Lang another part. *Mr. Lang said there were a certain number that he had counted when Mr. Johnston contradicted him, stating that what he had said was not true, and that there was no better man in the Session than he, Mr. Johnston, and addressed Mr. Lang in insulting language.*

QUESTION—Was it the correctness of the statement made by Mr. Lang that Mr. Johnston's remarks put in issue?

ANSWER—*It was respecting the number of tokens counted by Mr. Lang which he stated was so many and which Mr. Johnston denied and contradicted him to the best of my recollection.*

What charming consistency—what a wonderful concurrence in recollection of events—truly the Plaintiff is a terrible man. He is accused by Defendant of that of which his clergyman exonerates him. But must the Defendant and his Reverend adviser so effectually contribute to his vindication. Alas how the Doctors differ! What a discrepancy is here!

But truth shines out from under the debris of contradiction—truth :

“ On whose coach wheels hypocrisy lies racked
 “ And squint eyed slander with vain glory baked
 “ Her bright eyes burn to dust :”—

Here we have a direct contradiction between the Defendant and the Rev. Gavin Lang, being a witness well disposed towards him, as to the cause and manner of Mr. Lang's truthfulness being called in question.

The Defendant states that Plaintiff called Mr. Lang's truthfulness in question by contradicting the announcement, that Mr. Lang made of the number of tokens counted by him. Mr. Lang states that he did not count the tokens, that he made no announcement of the number, and that consequently he could not have been contradicted by Mr. Johnston. Mr. Mitchell Defendants principal witness, says that this was the only subject of difference. The inference is plain the Defendant and the Rev. Mr. Lang in their anxiety to make out some foundation for the wanton charge made against Plaintiff, have given contradictory testimonies which telescope and annihilate each other.

The fact is, and it appears from the testimony of the Rev. Gavin Lang himself, that instead of the Plaintiff calling in question Mr. Lang's truthfulness, the latter rather called in question the truthfulness of the Plaintiff as may be seen from his answers to the following questions.

QUESTION.—Did you yourself call in question the correctness of Mr. Johnston's calculation of the number of tokens.

ANSWER.—I remember making a remark to the

effect that as a large number of the tokens had not been counted, Mr. Johnston or any other man could not say how many there were who communicated. It was to Mr. Johnston that I made the remark. . . . "He [plaintiff] insisted *against all my remonstrances* that his calculation was the correct one and rudely called in question my word and the words of the elders who remonstrated with him."

QUESTION.—Was it by insisting that 290 was the correct number of communicants, that Johnston called your truthfulness in question on the gathering of the elders.

ANSWER.—Partly.

QUESTION.—In what other respect did he call your truthfulness in question *on the said occasion*.

ANSWER.—Chiefly in connection with his persistence in giving incorrect and purposely damaging statements during the course of certain *previous proceedings which took place at times before the 3rd. November last past regarding the number of communicants in St. Andrew's Church.*

It will be seen that this answer does not refer to the occasion in question, namely the 3rd November, and even this statement is contradicted by a subsequent part of the Rev. gentleman's own testimony, viz :

QUESTION.—Did these statements (the statements referred to in last answer) call your truthfulness in question.

ANSWER.—*They could not* inasmuch as to the best of my recollection I never condescended in any cases or occasions such as those specified upon any definite number of communicants in connection with St. Andrew's Church.

So that the Rev. Gentleman actually admits that his truthfulness was not called in question by these statements with regard to the number of communicants, and it turns out that these Statements were made long previously and not at the meeting of the 3rd November; which reduces the question of how his truthfulness was doubted to the single issue presented in the question to which he had answered, "partly."

Seeing too that though asked he cannot give any other matter in connection with the 3rd of November in which his truthfulness was called in question he might have answered to question "wholly," instead of, "partly."

Now to any sane mind it is plain that instead of Mr. Johnston calling in question Mr. Lang's statement, Mr. Lang was actually calling in question Mr. Johnston's statement. Mr. Lang himself tells us, Mr. Johnston had counted the tokens—consequently he should know what the number was—and Mr. Lang tells us "he the Plaintiff insisted *against all my remonstrances* that his calculation was the correct one." Who is here calling in question the statement of the other? will any one hesitate to say that it was Mr. Lang who was questioning (reflecting on the truthfulness) of Mr. Johnston's statement? But some men are particularly sensitive in point of truthfulness, and addicted to fancying] that either contradiction or difference of opinion is a reflection upon their veracity. Indeed the conduct of the Rev. Gentleman with regard to what occurred at the meeting of the third of November affords us a good index of the grounds of his complaint against Mr. Johnston's conduct at

the meeting of the 4th November, where the Plaintiff's language was simply of an interrogatory character with regard to the delivery of the "Presbyterian" but which was construed by the Rev. gentleman into a contradiction of his word and a reflection on his truthfulness!! Fortunately we have an additional index in the Rev. Mr. Lang's own deposition of this peculiar sensitiveness.

After having narrated in his own words and in general language the circumstances that occurred at the meeting of the elders on the 3rd November he is asked the following question.

QUESTION.—Do your previous answers give a correct idea of the conversation between yourself and the Plaintiff, and do you give the Plaintiff's part of that conversation in his own words, as far as you can remember?

ANSWER.—Yes; so far as recollection can serve any man, and I gave the Plaintiff's part of the conversation as nearly as I can remember in substance.

QUESTION.—Did you not say immediately after the last preceding question had been read to you, "that question reflects on my truthfulness" or other words to that effect?

ANSWER.—Certainly not.

In any ordinary case further interrogation would have been desisted from particularly where the witness was a clergyman, and an appearance of frankness would have thwarted the attempt to elucidate what becomes an important index of the value of testimony.

The witness was then asked the following.

QUESTION.—What then did you say immediately after said question was read to you.

ANSWER.—I asked in passing and before answering the question for my own information “does that question not reflect on my truthfulness.”

The bluff game would not do, and the witness was compelled to disgorge, though an attempt is made to cover up the obvious discomfiture in a gloss of words. We see too throughout the whole of the Rev. Mr. Lang's deposition the most extraordinary and illiberal construction placed upon Plaintiff's words and actions. Adjectives are prolific and cheap with the Rev. Gentleman. Towards the close of his deposition he is compelled to answer that he does not remember the words in which his truthfulness was called in question—a conviction to which his previous examination had doubtless led him, but in the earlier part of his examination he remembers “violent gesticulation of the hand and contortions of the body on the part of the Plaintiff while contradicting him.” Indeed so keen was his penetration that he discerned the Plaintiff asking him for a plate of tokens “by unmistakable signs” before any actual request was made, upon which “unmistakable signs” we are kindly vouchsafed further explanation by the following extraordinarily figurative speech—“My object in taking the plate of tokens [from the Plaintiff] was not necessarily to count them, and I have already explained Mr. Johnston's action in *trying to reach the plate of tokens if not with the hand at least with the eye*:” Munchausenism revived and improved. Ye nineteenth Century, beware!

We have the same illiberality of construction further illustrated in Mr. Lang's statement of Mr. Johnston's conduct in counting the tokens. He thinks that “it was an extraordinary action on Mr. Johnston's

part, to presume to count the tokens without reference to himself or any one else." And when asked, "wherein consisted the impropriety in Plaintiff's conduct as to the time of the dispute about the number of tokens, he answers," in presuming to count the tokens without reference to the session or myself," and yet he is compelled to admit "there are no rules on the subject of counting the tokens at all, only custom." He is pressed with the following :

QUESTION—Do the Elders ever count the tokens at the close of Communion service?

ANSWER—I have already answered that question in substance.

Plaintiff here makes application to the Court for an order to compel the witness to answer the question.

Witness ordered to answer by the Court, previous answer being insufficient.

(Signed) J. U. B. (EADRY).

ANSWER—I have never seen them counted at the close of the Communion service except on this occasion, when Mr. Johnston counted them.

The reluctance to answer this question may readily be imagined from the following statement of Mr. Mungo Ramsay, Elder, witness for Plaintiff.

"I generally used to assist in counting the tokens after the Communion Service was over as soon as we went down to the Session Room. . . .

As far as I can recollect the Elders always counted the token after Communion Service, and before going home; I don't recollect of any occasion when I was absent. They were always counted in the middle of the day, and that since the Rev. Gavin Lang came to the Church. . . . Mr. Johnston assisted me in counting them on previous occasions."

And Mr. Mitchell, a witness for Defendant, declares "The tokens are generally counted in the forenoon, the final count is made in the evening; this has been the practice for the last fifteen or twenty years, and has never been departed from to my knowledge."

Could this fact have escaped the Rev. Gentleman's knowledge, or was he animated by a sudden desire to prevent the carrying out of a custom when the effect of it would have been to show the diminution in attendance on the ordinances to which he was ministering. We may here perhaps without drawing very strongly on the imagination discern the germ of Plaintiff's offending and the consequent displeasure of

the Incumbent and his lieutenant. It would appear then, that the "extraordinary" offence of which Mr. Johnston in this connection was guilty, was merely a following of what is proved to be a well established custom in the Church.

Mr. Lang acknowledges that he never had heard the Plaintiff apply the word "liar" to himself, or anyone else; the Defendant himself is forced to make the same admission.

We are thus from the depositions of two witnesses hostile to the Plaintiff prepared to appreciate the value of the statement made by the Defendant, concerning the Plaintiff at the meeting of the 4th November, and must come to the conclusion, that neither literally nor substantially did the Plaintiff reflect on the truthfulness of his Minister. The Defendant himself acknowledges that he "would have modified the words" used if he had, had opportunity, which he says he had not at that meeting, and considers that such would have been the "gentlemanly" thing to do, as his following answers will show.

QUESTION—Why did you not make the explanation you intended to make before said meeting adjourned?

ANSWER—Because I was not asked, nor had I an opportunity.

QUESTION—Would you have explained said statement if you had an opportunity?

ANSWER—I think I would. . . .

Mr. Hunter's own principal witness Mr. Mitchell, is of contrary opinion, as the following extract from his evidence shows:

QUESTION—Was there any opportunity for any person to address the meeting of the 4th November after Mr. Hunter spoke, before the close thereof?

ANSWER—Yes; several persons addressed the meeting after Mr. Hunter's remarks, and before the close.

So that had there been a disposition on the part of Mr. Hunter to correct, amend or withdraw the slanderous remark made by him, ample opportunity

existed for so doing at said meeting. Moreover Plaintiff's letter calling for an apology from Defendant for said remark when he Plaintiff found that it was operating to his injury, afforded Defendant a fresh opportunity to make amends, which however instead of availing himself of he attempts to thwart by an evasive and sarcastic letter calling for counter apologies. Defendant's admission that his statement required modification, the impregnable mass of evidence that Defendant's statement was literally and in effect a libellous falsehood, the proof of ample opportunity at said meeting, and subsequently, being afforded him for making an apology, afford the strongest evidence of malice in the case.

As to the question of provocation it may be fairly doubted whether any amount of provocation would fully justify the Defendant in stating a falsehood, and persisting in the statement by his not withdrawing it well convinced as he must have been of its utter falsity. Yet notwithstanding this he publishes a calumny against his brother Elder, before those with whom it was Plaintiff's interest to retain a high standing and at a time when that statement was most likely to operate most injuriously to the Plaintiff. To the shame of the clergyman, and the other members of session, who must have been aware of the falsity of the charge, none of them exculpated the Plaintiff, giving to the whole scene the appearance of a conspiracy to crush a man who though perhaps blunt in his manner, was earnest and honest in his intentions, and for these reasons had become obnoxious to the Defendant, the clergyman and some other of the elders. The enormity of the defendant's offence is further increased when

we consider that the defendant was not excited, that he made the charge deliberately which accords ill with the Defendant's pretension of provocation. Here is his own sworn testimony referring to the time he made the statement against the Plaintiff

"I was perfectly cool at the time. * * Plaintiff was excited, I mean at this time and throughout the meeting. *I was not excited, I was perfectly cool all the time including the time when I made the statement.*

We are here strongly reminded of the old story of Solomon, and the two women claiming the child. The Plaintiff was excited, he felt that a gross accusation had been made against his good name, but the Defendant was "perfectly cool," an evidence that he had not been attacked. But even if the Defendant were excited he would not be justified in resorting to calumny: he must contend with the weapons of truth and not of falsehood in parrying his opponent. Mr. Russell and other witnesses believed Defendant's statement and say they were influenced by it in voting for the resolution, calling upon the Plaintiff to resign from the Eldership. Mr. Russell did not believe Defendant was justified in making the statement.

It is conclusively proved by several witnesses that the meeting was orderly up to the time when said statement was made. True, an altercation had ensued between the clergyman and the Plaintiff regarding the receipt of the "Presbyterian" which was of an interrogatory character on the part of the Plaintiff, which probably did arouse the attention of the meeting, as one of the witnesses tells us the people did not know whether the Plaintiff or the minister was right. This tended to throw doubt, not upon Mr.

Lang's word or truthfulness, but on the source of his information. So says Dr. Murray. The Rev. Chairman, however, with that illiberality which had characterized his interpretation of the Plaintiff's words and actions at the meeting of the elders of the Sunday previous was on this occasion also pleased to construe the Plaintiff's interrogatories into reflections on his truthfulness about which sufficient has previously been said, to show that he was extremely sensitive on this point. It is also conclusively proved that when the Defendant made his said statement the meeting at once became most indignant, and shewed their indignation in an audible manner against Plaintiff, Mr. James Leggatt says at this time, "There was a sensation in the meeting" and that the congregation called out shame! shame! put him out. The witness Russell gives the true key to the excitement and indignation and the passing of the resolution calling on Plaintiff to resign, in his cross-examination for Plaintiff. "If Mr. Hunter had not used these words it might have altered the tone of the meeting."

Mr. Hutchison was asked

QUESTION.--Explain at what stage of said meeting the audience indulged in hisses and cries of "shame, shame?"

ANSWER.—The first and chief time was immediately after Mr. Hunter the Defendant first spoke.

The Defendant was exceedingly loath to acknowledge this fact, and it was only after the severest examination and an order from the Court invoked, that he was compelled after a deal of circumlocution and evasion to make the acknowledgment. The attempt to screen the real facts did not succeed.

EXTRACTS FROM DEFENDANTS EVIDENCE.

QUESTION.—Do you remember that there was a great deal of hissing when you made said statement.

ANSWER.—There were expressions of disapprobation on the part of the Congregation both after and before said statement.

QUESTION.—Please confine your answer to the question asked, and answer as concisely as possible.

ANSWER.—No, there was no more hissing or signs of disapprobation after my statement than before it

QUESTION.—Was there any hissing immediately after you made said statement?

ANSWER.—There was hissing and cries of “sit down,” and “put him out,” uttered frequently during that meeting when Mr. Johnston was speaking, and more particularly after he so rudely and discourteously questioned Mr. Lang’s statement concerning the presbyterian.

QUESTION.—Please confine yourself to the question asked and answer it as precisely as possible.

ANSWER.—I have already stated that there was hissing and disapprobation during the whole meeting, not so much at what I said as at Mr. Johnston’s statement.

QUESTION.—Do you admit then that there was hissing at what you said.

As the learned Counsel for the Plaintiff has declared that if I were not a professional man, he would take me before the Judge and compel me to answer, I decline answering this question until compelled to do so by the Judge rather than have it taken out of me as he has threatened to do. (Mr. MacMaster, counsel for

Plaintiff here applied to the presiding Judge for an order to compel the witness to answer.)

Ordered by the Court that the witness answer yes or no

[Signed,] J. U. B(EAUDRY).

ANSWER.—No, the hissing was not at what I said but at Mr. Johnston's conduct.

QUESTION.—What conduct?

ANSWER.—His unruly conduct throughout the meeting.

QUESTION.—Was there any hissing by said Congregation when you stood up to speak.

ANSWER.—No.

QUESTION.—Was there hissing immediasely after you sat down.

ANSWER.—As I have already stated in my examination, I had not sat down before Mr. Johnston got up and interrupted me when finishing my sentence. When he got up there were hisses, and other signs of disapprobation which were pointed at him and his conduct.

QUESTION.—To what other signs of disapprobation shown on this particular occasion when Plaintiff stood up, do you refer.

ANSWER.—To cries of "sit down, and put him out."

Here we have an attempt to make it appear, that the hissing was at what the Plaintiff was about to say and not at the indignation created against the Plaintiff in the statement of the Defendant, but the effort is too laboured—the guise is too thin.

With the exception of the dispute between the Reverend Mr. Lang and the Plaintiff about the receipt

of the Presbyterian, the meeting is proved to have been perfectly orderly. Defendant threw in the brand that created all the trouble. His statement too was believed by many present, and by others who afterwards heard it. It had a currency in the city and was matter of gossip among business men and others. Fortunately with the few who knew Plaintiff to be an upright and honourable man, the statement had little weight. Mr. Alexander Buntin, could fearlessly say. "In my experience of Mr. Johnston, I have always found him a straight-forward, upright and honest man" and Messrs Wm. Darling and John Grant and others, like Mr. Buntin leading merchants of the highest personal standing endorse the same opinion. But with the many there is not the same means of preventing wrong impression and to a man who has made a name and a character for himself it is humiliating to have these invaluable possessions frittered away by the tongue of slander.

Defendant has attempted to show that he had received provocation to make the statements complained of, Plaintiff he pleads having previous to making said statement reflected on his truthfulness and on the correctness of minutes of session, and relies on this circumstance to sustain his plea for compensation.

The chief question here is, who commenced the attack?

Mr. Stanton, a witness examined for Defendant thinks that Mr. Johnston commenced the attack by reflecting on Defendant's truthfulness; but it is to be observed that the Defendant's remark concerning Plaintiff was in vindication neither of the correctness of his minutes nor of his own truthfulness. He makes

a general accusation against the Plaintiff seeming to have reference to the discussion then about closing between the Plaintiff and the Rev. Gavin Lang, concerning the delivery of "Presbyterian."

Mr. Hutchison's short hand notes show that Defendant's charge was made just at the termination of the first discussion between the Plaintiff and the Defendant concerning the delivery of the "Presbyterian," and Mr. Hunter himself gave the following material testimony on this point.

QUESTION.—Up to the time of the conclusion of the dispute between Mr. Lang and Mr. Johnston about said Presbyterian, did the Plaintiff make any personal reference to the Defendant?

ANSWER.—I think it was shortly after the dispute, if I recollect rightly, between Mr. Lang and Mr. Johnston about the Presbyterian, that Mr. Johnston made the remark that the truth was not to be found in us, but I do not speak with any degree of certainty as to the order of this meeting.

The probability is altogether in favor of the presumption that Mr. Johnston's reflection on Defendant's truthfulness was made after Defendant's attack, and indeed it is obvious from the considerations hereinbefore referred to, that such reflection would have been perfectly justified in view of the fact that there was not the slightest foundation for the charge made by the Defendant against the Plaintiff.

Mr. Macfarlane another witness examined for Defendant, gives the following testimony:

QUESTION.—May it not have been after Plaintiff interrupted the Defendant that Plaintiff made this charge,

(that the truth was not to be found in Mr. Hunter) against Defendant ?

ANSWER.—I swear that it was not made immediately after. I will not swear positively whether it was before or not.

This witness however states. " I have not a distinct recollection of the order in which the different speakers spoke."

Mr. Dennistoun a witness for Defendant who is extremely severe on the Plaintiff, and whose evidence is a mere extravaganza of personal opinion gives the following testimony on this point.

QUESTION.—Up to the time that Mr. Hunter spoke, did you hear the Plaintiff make any reference to the Defendant ?

ANSWER.—I heard him make no reference to the Defendant individually.

Mr. MacDonald another witness for Defendant gives the following testimony.

QUESTION.—Would you swear that the Plaintiff imputed untruthfulness to the Defendant up to the time at which the Defendant spoke at that meeting ?

ANSWER.—No.

QUESTION.—Do you remember Mr. Johnston saying to Mr. Lang in words, altogether apart from impressions, you are not telling the truth, or you are not stating the truth ?

ANSWER.—No I do not remember it. Being asked, I say I think that if he had made a direct charge like that, I would have remembered it.

Such is a fair summary of Defendant's evidence on this point.

The witness Fraser, subpoenaed for Plaintiff showed in

his cross-examination a decided determination to give testimony favourable to Defendant. He is very severe on Plaintiff—yet in re-examination he says it is very likely Plaintiff's accusations concerning Defendants truthfulness were made while Plaintiff was protesting against the falsity of Mr. Hunter's accusation, but he is not certain.

Mr. Roach witness for Plaintiff on cross-examination for Defendant gives the following testimony.

QUESTION.—Did you hear at said meeting the Plaintiff in the course of his remarks say that the truth could not be got out of the Defendant, or words to that effect?

ANSWER.—Yes he made use of words of that effect, but to the best of my belief and memory they were made after Mr. Hunter's remarks or statements.

QUESTION.—Is your memory so good that you can undertake to swear positively that the remarks in question of Mr. Johnston were made after Mr. Hunter's said statements?

ANSWER.—I believe from memory that said statement was made, but not before Mr. Hunter's remarks.

Mr. James Leggatt a witness for the Plaintiff also gives the following testimony.

QUESTION.—Did the Plaintiff before the Defendant made the statement you have referred to, make any statement reflecting on Defendant's veracity?

ANSWER.—He did not up to the time the Defendant made the said charge against Plaintiff, I did not hear Plaintiff make any charge against the truthfulness or integrity of the Defendant, and if such charge had been made I think I would have heard it.

QUESTION.—Are you aware of anything that took

place at said meeting, or at the time that Defendant made said statement concerning Plaintiff, that Defendant had any just cause, or excuse, or provocation for making such statement ?

ANSWER.—He had not at that meeting.

Mr. Hutchison witness for Plaintiff gives the following testimony.

QUESTION.—Can you state whether or no the Plaintiff made any reference to Defendant's truthfulness as aforesaid before the Defendant used the words complained of concerning Plaintiff at said meeting ?

ANSWER.—No, he did not at said meeting before these words were used.

Here we have a contradiction as to who commenced the attack. Under such circumstances is there any evidence of a circumstantial or collateral character that should weigh with the Court in determining the question of who gave the provocation or commenced the attack ?

Plaintiff apart from the direct evidence adduced submits the following considerations in favour of his pretension that Defendant was the aggressor.

1. Hutchison's notes show that Mr. Hunter made his statement *just at the close* of the first dispute between Plaintiff and the Rev. Mr. Lang about the receipts of the Presbyterian. This act is unquestioned, and is indisputably established—whereas.

2. The Defendant states that, "It was *shortly after the dispute*" that Plaintiff made the remark that the truth was not to be found in us [Mr. Hunter and others] as may be seen from the following question and answer.

QUESTION.—Up to the time of the conclusion of the

dispute between Mr. Lang, and Mr. Johnston about said Presbyterian, did the Plaintiff make any personal reference to the Defendant.

ANSWER:—I think it was shortly after the dispute if I recollect rightly between Mr. Lang and Mr. Johnston about the Presbyterian, that Mr. Johnston made the remark that the truth was not to be found in us, but I do not speak with any degree of certainty as to the order of this meeting.

II. 1. Up to the time Defendant made his statement, only Mr. Lang and the Plaintiff had spoken, and the dispute that arose between them was confined to the question of the non-delivery of the Presbyterian. Is it probable that during his remarks on this subject, Plaintiff would go out of his way to consider matters so remote and entirely foreign to it, as the correctness of Defendant's minutes—or Defendant's truthfulness?

2. Whereas from the form of Defendant's statement it would seem to refer those present to a comparison of the dispute then about closing between Plaintiff and the clergyman to a former dispute between the same parties—and contains no reference to any attack made on Defendant's minutes or his truthfulness.

3. Moreover, in view of the fact that Defendant's statement is a falsehood, it is quite probable that Plaintiff failing to secure a withdrawal of it, or exculpation from his brother elders—should remark, and be justified in the remark—that the truth could not be got out of the Defendant—a rejoinder which under the circumstances would be exceedingly *à propos*.

III. 1. Mr. Mitchell as may be seen from the portions of his evidence subjoined—is tolerably clear as to the order in which the speakers spoke *up to the*

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time Mr. Hunter spoke—because he was not agitated during the first part of the meeting; he does not remember the order after Mr. Hunter spoke—because he was agitated during the last part on account of Mr. Johnston's conduct &c.

2. Mr. Johnston's remarks about the truth not being found in him [the identical remark applied to Mr. Mitchell, Mr. Morris and Mr. Hunter] *did excite* Mr. Mitchell and *did make him feel indignant*. Query. Must this remark not have been made after Mr. Hunter's—as Mr. Mitchell was not agitated during the first part of the meeting—i.e. up to the time that Defendant spoke.

“I am not positive of the order in which any of these persons spoke after Mr. Hunter. Up to that point I think I am now tolerably clear as to the order in which persons spoke.

QUESTION.—“How does it happen that you are so clear, as to the order of the speakers of the first part of the meeting and so vague with regard to the proceeding after Mr. Hunter spoke?”

ANSWER.—“Because I was not agitated at the first part of the meeting, but I was at the last part, on account of the conduct of Mr. Johnston in attempting to make Mr. Lang out an untruthful man before his congregation. * * * * *

QUESTION.—“Did Mr. Johnston's remark, about the truth not being found, in you, excite you at the time, and, you feel indignant?”

ANSWER.—“It did excite me at the time and I did feel indignant as I felt that the remark, was unwarranted and uncalled for.

IV. If the statement of Plaintiff, that the truth

could not be found in the Defendant Mr. Mitchell and Mr. Morris *did excite*, Mr. Mitchell *and did make him feel indignant*, it is probable it did excite and did make Defendant feel indignant—but Defendant tells us that when he made his statement against Plaintiff he Defendant “was not excited”—“he was perfectly cool.” It is not probable that at this time he had not been attacked by Plaintiff—or he also would have been excited indignant, or agitated.

The foregoing considerations are more valuable than direct testimony—of a dozen of witnesses speaking of the *order of events* twelve or eighteen months after the meeting. In fact for any witness to speak *positively* of the *order* or priority of said events, is only to show an amount of foolhardiness sufficient to discredit his testimony.

If the Plaintiff had made said charge before Defendant spoke up to which time the meeting was orderly the Mr. Hutchison would have heard it, whereas it is quite probable that the charge of want of truthfulness on the part of the Defendant was made during the remarks of the Plaintiff which followed Defendant's statements. During these remarks the Plaintiff's witness, Mr. Hutchison states that Plaintiff styled defendant's charge a “downright fabrication” an accusation very near akin to that of want of truthfulness. Mr. Hutchison also remembers the Plaintiff making what he terms a mere incidental reference to the manner in which Defendant kept his minutes and says that such reference does not appear in his short hand notes because it was incidentally made, but would have appeared therein had a direct charge been made. However, it is common in ordinary and even in parlia-

Mr. Mitchell and elementary language to state that mere minutes or records may not be correct or correctly kept, and such *could make him feel* statements do not imply or insinuate malice, but that and did make De the party keeping such records has kept them incorrect- tells us that whe y. In any case even supposing Plaintiff had made the ff he Defendant charge before Defendant's statement, which is improb- ectly cool." I e had not been able, and disproved by the mass of evidence in the record, ould have been would seem that it was not without considerable truth and that in point of fact the circumstances justified the making of such charge.

more valuable The charge of Defendant on the other hand, was nesses speaking of a most serious nature, deeply affecting the stand- en months after ng of the Plaintiff and which owing to the un- speak *positively* willingness of those who should have acted a better is only to show illingness of those who should have acted a better to discredit his part went uncontradicted to a meeting exaspe- ated against him. The very words of the accusation e before Defen how a premeditation on part of Defendant,

ng was orderly "I am sorry that some of the Congregation did not t, whereas it is witness the scene that the Session had witnessed of truthfulness yesterday, when the minister was called a liar, after ade during the our most solemn services. Mr. Johnston called his ed Defendant's minister a liar."

Plaintiffs wit The Defendant uses the word "liar" twice in his ff styled defen accusation. His sentences are finished and complete. on" an accusa f he meant as he says he did to charge the Plaintiff f truthfulness ith calling the minister a liar "in effect," why laintiff making id he not supplement the *first* word "liar" as he de- ference to the red. The true intention is shown by the repetition f the word "liar." The alleged offence is magnified nutes and says f adding the words "after our most solemn service" his short hand y adding the words "after our most solemn service" de, but would eaning the Communion Service the chief sacrament ge been made the Presbyterian Church. The resolution too even in parlia assed by the meeting "That in view of the fact that Mr.

Johnston cannot work harmoniously with the minister and his brother elders, he be requested to resign his office as Elder," shows that the charge is the motive of the resolution. In connection with the whole circumstances of this case, it is quite obvious that there was a disposition on the part of the Defendant, the Rev. Mr. Lang and some others to completely crush out the Plaintiff. The worst construction was put upon his conduct in enquiring why the 'Presbyterian' had not been delivered. But it is to be remembered that there was a proposition that night submitted to the congregation against which the Plaintiff had previously dissented when it came up in session, that he had the greatest interest in maintaining his views against the acquisition of said St. John's Church, and that it was natural that he should look upon the absence of the the "Presbyterian" in the pews as a suspicious circumstance. He maintained the position he took with warmth and in plain language, being a man of business and unacquainted with the rhetorical refinement in controversy that we would expect from a professional man like Defendant. We must not therefore judge Plaintiff's language by too severe a standard. There is no doubt that Plaintiff became excited after Defendant's charge and after he could get no retraction of it or exculpation from his brothers. He would not have been human if he had not become excited and indignant at their ignoble silence, when the feeling of the meeting was running high against him. He had taken precautions to ascertain whether or no the 'Presbyterian' had been sent to the Church, Mr. Lang's reason that he did not consider communion Sunday a proper day to distribute the Presby-

terian—would seem an unnecessary one if they had not actually been received. During the last part of the meeting 4th November, the caretaker of the Church came forward and explained that the said 'Presbyterian' had not been received until Monday. Whereupon the Plaintiff explained to the meeting that he had gone to the Publisher who informed him that it had been sent to the Express Office on Saturday and that he subsequently went to the Express Office, and was there informed that it had been sent with a carter to the Church on Saturday.

It is somewhat worthy of note that the Defendant at the trial resisted proof that the "Presbyterian" had actually been sent to the Church on Saturday. It is further noticeable that the Presbytery of Montreal, which met on the following day, refused to accede to the terms of the resolution passed at the meeting of 4th November favorable to the acquisition of St. John's Church, and sustained the views which the Plaintiff had advocated.

Regarding the damage sustained by Plaintiff, there can be no doubt; several of his friends testified to the currency of the rumor originated by Defendant's remark, and that Plaintiff was deeply wounded in feeling thereat, as any man of ordinary sensitiveness would have been.

Dr. Murray tells us that the remark was calculated to cause indignation against the Plaintiff. As to the amount of actual damage sustained, it is for the Court to determine.

The claim for compensation cannot be sustained; the injury, if indeed there was any injury sustained

by the Defendant, is not comparable to that sustained by Plaintiff.

There is nothing to disprove the accusation made by Plaintiff against Defendant's truthfulness in fact the proof of record goes to show that Defendant was perfectly justified in the statement. There is no proof that any one believed it. It acquired no currency and could do Defendant no injury, whereas the remark made by Defendant against Plaintiff was a matter of "gossip" in social circles, on the street, among business men, and members of other churches.

There is no proof that it was believed by any one or that it caused or was calculated to cause the slightest pang of pain to Defendant's feelings. Defendant did not even notice the remark of Plaintiff. He sat quiet and appropriated it as a well-merited rebuke for his slanderous statement, never deeming it of any value until his solicitors in their modesty estimated his injury at the mere trifle of \$20,000.

The witness, James Mitchell, for Defendant, states that the Plaintiff made the general remark that the truth was not to be found in him [witness], nor in the Defendant, nor in Mr. Morris, Attorney for Defendant. If Mr. Mitchell's feelings can be regarded as any index of the amount of suffering that would be endured by such a remark, his deposition affords some index of the amount of those sufferings. Mr. Mitchell says: "I have not suffered anything in wounded feelings since the meeting of the 4th November by reason of the expressions made by the Plaintiff towards me at that meeting." The same witness also gives the following testimony:

QUESTION.—Did any remarks made at said meeting

of 4th November by Plaintiff concerning the Defendant lessen your respect for or good opinion of Defendant.

ANSWER.—If I believed the remark was true it would lessen my good opinion and respect for the Defendant.

QUESTION.—Did you believe that Plaintiff's remarks concerning Defendant were true.

ANSWER.—I did not.

QUESTION.—Seeing then you believe these remarks were not true do they lessen your good opinion or respect for Defendant

ANSWER.—I cannot say whether they do or not.

Here then we have a witness declaring in the first instance that his own feelings have not been wounded by a remark which he alleges was made to him exactly the same in terms as that applied to Defendant, and further stating that he cannot say that the remarks applied to the Defendant lessened his good opinion of the latter. At the same time while holding these views the said witness (Mitchell) gives the following extraordinary testimony when examined in chief for Defendant.

QUESTION.—Would you consider \$10,000 too much to be given to Defendant in consideration of such charge made against him by Plaintiff

ANSWER.—I would not consider that double that sum would compensate him for the charge. In fact if I was on a jury I would not hesitate to award the sum of \$20,000 to Defendant as damages.

We have here a witness who declares he cannot say whether or no his good opinion of the Defendant is lessened by the charge made against Defendant, and at the same time he declares that if he were on a jury he would award him \$20,000 damages. No remark is

necessary to characterize such evidence as it deserves. But Mr. Mitchell's extreme liberality is somewhat striking. However \$20,000 may be a small sum to Mr. Mitchell. He is a man of peculiar opinions, one of which is "that a rich man can get along without a character," a somewhat extraordinary doctrine for an elder in the Church to promulgate. Perhaps the best solution of this extraordinary answer may be found in another portion of Mr. Mitchell's evidence, couched in these modest terms.

"I am a man who am pretty positive in my opinions," to which the Court will have no difficulty in assenting, gauging them at the same time by another measure. It is very important to learn that from such a witness notwithstanding that he was present at the meetings, of the 3rd and 4th November, he never heard Mr. Johnston use the word 'liar,' and that he never heard the Plaintiff apply such a term to any person or to any collection of persons though he has 'a friend' who was aware that Mr. Johnston did apply such term to some parties unknown. He objects however to declare the friend's name, notwithstanding that his testimony might be important to Defendant in the suit. 'The friend' was not called as a witness; probably he had an engagement. Mr Mitchell being a man of very positive opinions, was asked the following question.

QUESTION—What was the most outrageous thing you ever saw the Plaintiff do at any meeting of Session?

ANSWER—The most outrageous thing I ever saw the Plaintiff do was trying to take the minute book out of the Defendants' hands and attempting to drag it out of his hands.

Here too, perhaps, Mr. Mitchell invokes the aid of the figure which his clergyman did when he discovered Mr. Johnston "reaching" for the plate of tokens "with the eye" "if not with the hand."

Further, Mr. Mitchell is asked what was the most outrageous piece of conduct on the part of the Plaintiff at the meeting of the 4th November, 1872.

Answer—In standing up and asking Mr. Lang why the 'Presbyterian' was not delivered in the pews the day previous, and on Mr. Lang saying that they had not been received. Mr. Johnston pointing his finger at him and asking him Mr. Lang if he was sure that he was stating what was correct as regards the delivery of the paper as he knew for a fact that the paper had been delivered on the previous Saturday and that the non-delivery in the pews was for a purpose, that he had it in proof in his pocket in black and white that the paper had been delivered on Saturday." This is a considerably modified statement of the occurrences as narrated by Defendant and Mr. Dennistoun. It shews that the discussion was of an interrogatory character and when discounted to make allowances for the disposition of the witness to magnify the Plaintiff's offending is a strong confirmation of the short hand notes of Mr. Hutchison which after all must be the great guide to the court in this matter.

Most of the Defendants witnesses if not all have admitted that they had forgotten the order of events at the meeting of the 4th November. Mr. Hutchison wrote out his notes immediately after that meeting. He is an experienced Stenographer, has been an officer of this Court, and one of the official Stenographers on Royal Commission which recently sat at Ottawa. His

notes and his own testimony go conclusively to show, and they are supported by a mass of other testimony; that the attack in this case was commenced by the Defendant.

Plaintiff has not had the advantage that he gave Defendant of telling his own story as a witness in the case. The Defendant did not call Plaintiff as a witness.

In conclusion then Plaintiff submits that he has established.

1. The uttering and publishing of the charge as laid—and its circulation.
2. That the said charge was one of serious and most damaging character, whether true or false, utterly destructive of his social standing if true.
3. That said charge was utterly false as shown by the Testimony of Defendant himself and his own friends.
4. That Defendant never withdrew, explained, or apologised for said statement, though ample opportunity was afforded.
5. That any counter charges made by Plaintiff against Defendant were in answer to said charge and were justified by the circumstances.
6. That Defendant has suffered no damage by reason of said counter charges—whereas the Plaintiff has been brought into much scandal, with his friends and the clergymen and members of the Presbyterian church and the public generally and has been deeply wounded in feeling.
7. That Plaintiff has established all the material allegations of his declaration.

The Plaintiff submits his case with confidence in the

hope that wanton libel and wilful, and malicious misrepresentations may receive a check from the highest authority, which may teach the chief offender and his coadjutors that a conspiracy to rob any man of his character, and a bold persistence in acknowledged error, cannot be indulged in with impunity.

MACMASTER & BAGG,

Attys for Plaintiff.

Montreal, 26th March, 1874.

