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A Celebrated Malpractice Suit in Maine.

By James Alfred Spalding, M.D., Portland, Me.

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BULLETIN OF THE AMERICAN ACADEMY OF MEDICINE
LOWELL vs. FAXON AND HAWKES. A CELEBRATED MALPRACTICE SUIT IN MAINE.
By James Alfred Spalding, M.D., Portland, Maine.¹

Forty years ago the Maine Medical Association appointed a committee to investigate the legend, that ten years before, an important *post-mortem* examination had been performed on the body of a man, who had suffered many years from an alleged dislocation of the hip joint. The idea in trying to obtain a report of the examination was to discover information that might be of value to the profession in the diagnosis and treatment of such dislocation, in general, while additional interest attached to the case owing to the thirty-seven years that had elapsed since the original injury. The committee failed to report; they could find nothing of the alleged examination, and to every physician in Maine it remained a myth.

While studying the lives of deceased physicians with a view to publication, I came across much interesting material concerning Dr. Micajah Collins Hawkes, of Eastport, Maine, and discovered among other occurrences in his life that he became famous in 1821-'26, for an obstinate and successful defense against a suit brought by Charles Lowell, of Lubec, Maine. One clue led to another, and the three most important pamphlets bearing on the suit of Lowell vs. Faxon and Hawkes were unearthed. These contained all the evidence in the suit, but the necropsy remained a secret. Ultimately I discovered that Lowell moved to Ellsworth, Maine, but the oldest inhabitants had never heard of any *post-mortem* examination. Hoping for a clue from the descendants of Dr. John Collins Warren, who had taken part in the trial, application was made to them but without success. Finally an antiquarian at Ellsworth discovered for me the diary of Dr. Greeley and in it was found that the examination had been performed by Dr. Henry K. Oliver, of Boston, at the request of Dr. John Mason Warren. Fearing that Dr. Oliver was dead, application was again made to Dr. John Collins Warren of to-day, Dr. Oliver was discovered, and told us where his re-

¹ Read before the American Academy of Medicine at Atlantic City, June 7, 1909.
port could be found, with a wood cut.\textsuperscript{1} Since then I have had special photographs taken of the specimens in the Warren Museum, and they are appended herewith. All of these procedures sound easy when accomplished, but the time, correspondence and patience involved were enormous. Success having been obtained, I was glad in succeeding where others forty years nearer had failed, and also glad because the necropsy considerably vindicated the defendant physicians. Furthermore, the conditions varied so much from what were surmised, that it was pleasant to put the whole affair straight. The entire sequence of events being now clear, I ask your attention to a remarkable and probably unique suit for malpractice, for it is remarkable that a suit should continue so many years, and unique that an examination should follow thirty years after litigation had ceased.

On Friday, September 7, 1821, Charles Lowell, of Lubec, was trying a spirited horse, when he was thrown to the ground by the horse rearing and then falling back upon him and between his legs. He was carried into the house of a neighbor, complaining of pain in his left hip. Dr. John Faxon, his family physician, was called, but failing to do justice to an obscure injury, he asked for a consultation and Dr. Hawkes, of Eastport, was sent for, because he was called the most skilful physician in the community and had been at times before consulted by Lowell.

In order to bring this case more vividly before you, let me make you acquainted with these three men, with the hope that you will then take more personal interest in their dispute.

Charles Lowell's ancestors came from Bristol, England, and settled in Newbury, Massachusetts. Their descendants made their way to Thomaston, Maine, where Charles was born December 1, 1793. He was early known as a very smart, talkative and religious boy. At the age of twenty he went to Lubec, saving on the road the lives of two people, one from freezing and the other from drowning. He worked as a day laborer on the shipping in the port, saved money, and ultimately set up a country shop, in which he was assisted by his brother Joshua, who in after life studied law and was a member of Congress for two terms.

\textsuperscript{1} John Mason Warren's "Surgical Observations with Cases," pp. 372 – 8.
Charles at the time of the accident was married, and in his shop, which became the village focus for politics, religion and affairs in general, he developed the gift of a caustic tongue and an envenomed wit. His command of language was amazing in what is called an uneducated man.

Dr. John Faxon was just an ordinary country doctor, with moderate medical skill, without much confidence in what he knew and without any great practice to increase what confidence he had. He and a brother had enlisted as mere children in the Revolutionary War as drummer and fifer and had a pension from the government for this service. After this war he graduated from Brown University (1787), taught school, studied medicine, and practised for a while at Providence, Rhode Island. He moved to Machias in 1805, thence to Lubec, and was at this time about fifty-eight years old, an easy-going, pleasant country physician.

Dr. Micajah Collins Hawkes was a man of different calibre, able as a surgeon and practitioner. Born in the sect of Quakers, he had been kept back in his education, entering Exeter Academy only when twenty-one, and making friends there with Edward Everett, Gen. John A. Dix, John G. Palfrey, Jared Sparks and William Willis, men of eminence afterward. Hawkes then studied medicine with Dr. William Ingalls, of Boston, and was surgeon on the "Hornet" in the great fight against the "Peacock," in the war of 1812. He was on his return invited by his former Commander, Captain James Lawrence, to sail in the "Chesapeake," but declined and so escaped that ill-fated battle with and capture by the "Shannon." He soon resumed his studies, graduated from Brown (1814), and settled in Boston. Dr. Barstow, of Eastport, retiring from practice, in 1817, Dr. Hawkes was invited to take his practice which he did with great success, so that by 1821 he was the leading physician.

As we have seen, Lowell being injured sent for Dr. Faxon, who labored for an hour trying to reduce a dislocation of the left hip joint. He made no progress with the means at his command, and despite extension, and manipulation, the hip joint continued dislocated. Turning to a spectator who had assisted
at other dislocations, Dr. Faxon asked him what he thought of it, and the man replied that the leg was still out of place and that they had better send for Hawkes. This was done and coming part by land and part by water, Dr. Hawkes was soon on hand. The two physicians examined the hip, discussed it in the next room, Hawkes offered it once more to Faxon, and on his refusing to act except as an assistant, Dr. Hawkes began to reduce the dislocation, and succeeded, apparently, in about half an hour, for the bone was felt grating into place, the plaintiff said he felt it slip home, the man who had before complained of Faxon's lack of success was satisfied, the rotation and motion of the left leg seemed as perfect as that of the right, and the patient was put to bed with the knees bandaged together. The legs were also observed to be of the same length. During all this time most of the persons present took part in pulling and hauling, feeling of the joint and manipulating the leg. When Dr. Faxon remarked to Lowell that he would have to be quiet for three or four days, Dr. Hawkes remarked with some brusqueness: "Three or four weeks, you mean, don't you, Doctor?" Hawkes then left, but Faxon remained, bled the patient and gave him a sedative.

Before leaving, Dr. Hawkes said that he thought the case was one of dislocation complicated with fracture of the socket; that there was no need for him to call again, and that Dr. Faxon was competent to attend to what was needed. Being close at hand a few days later, Dr. Hawkes called, found the patient complaining of soreness, and suggested that Dr. Faxon should rub liniment over the tender region.

From this point, the evidence becomes obscure, owing to the fact that it is all one-sided, for when the plaintiff brought the suit he included both physicians in the writ, with the idea that Dr. Faxon could not testify in favor of Dr. Hawkes. This proved to be a mistake, for it created feeling in favor of Dr. Hawkes, who could not then testify in his own behalf, as the law now permits. Furthermore, if Dr. Faxon had been allowed to testify, cross examination might have brought out facts that were favor-
able to Lowell. However this may be, we continue the story with the best light available.

About four weeks later, Dr. Hawkes was sent for, and arriving this time at Lowell's own house (he having left the house to which he was taken after the accident) was shown the left leg, no longer in proper position as when he had left it, but standing off from the body with the foot turned out. Over the hip joint also, was a hollow, so big as one witness said, that you could see it right through the plaintiff's trousers. Dr. Hawkes made a careful examination, said he would come again but did not at once, claiming that he was detained by important cases. Returning in two weeks in company with Dr. Whipple, concerning whom I find no biographical data except that he was looking for a place to practice, the two physicians made a long examination and said that nothing could be done. The moment that they left the house, Mr. Lowell burst out in anger, swore vengeance on the men who had ruined him, and started for Eastport to catch a vessel for Boston. While here, Dr. Hawkes made him a call, tried to smooth matters over, and collected his bill, the munificent sum of fifteen dollars. Arriving in Boston on crutches, Lowell put up at a tavern and sent for Dr. John Collins Warren.

At that time, Dr. Warren was one of the greatest surgeons of the day. Having graduated at Harvard (1797) he studied in London with Sir Astley Cooper, obtained a degree at Aberdeen (1802) and returning, took charge of part of his father's practice, which was then very extensive. Although naturally of a sluggish temperament, he bared his shoulders to the work and devoted his life to medicine. As a surgeon he was cautious yet free from timidity, bold, yet painstaking, methodical and skilful. He worked steadily into the days of ether. He brought the Harvard Medical School from Cambridge to Boston despite the opposition of Dr. Benjamin Waterhouse, did his share in founding the Massachusetts General Hospital, and in establishing the New England Medical and Surgical Journal, the predecessor of the Boston Medical and Surgical Journal of to-day.

Dr. Warren made a long call on Mr. Lowell, said that he was
puzzled, asked for more time, went home and sat up half the night studying his former cases of this nature, and the pages of Sir Astley Cooper's "System of Surgery." On the next day he called again, diagnosticated a dislocation of the femur downward and backward into the ischiatic "notch" (as it was called at all of the trials) said that he could do nothing and that Lowell might as well go home. Asking if he had no chances at all, Lowell was advised to have a consultation with the staff of the hospital lately opened. Personally, he (Warren) was willing to try, but the chances were small, although no chances of life were involved.

The consultation was soon held, Doctors Mann, Spooner, Townsend and Welsh being present. Of these men a word may be said, in passing, to recall their names and services to medicine.

James Mann had seen service throughout the whole Revolutionary War and the war of 1812, was a member of the Massachusetts Medical Society (M.M.S.) and especially well known for his works on "Cholera Infantum" and "Medical Sketches of the Campaigns of 1812-‘14."

William Spooner had an excellent medical reputation in Boston, for he not only had a degree from Harvard (1778) but a second from Edinburgh (1783), two things counting toward a first-rate practice in those times. He was a M.M.S. in good standing. He died in 1836, aet. 76.

David Townsend graduating in Harvard (1770) had studied medicine and then served through the entire Revolutionary War, and that of 1812, and later on in the Marine Hospital Service. He survived until 1829, dying at the age of 74.

Thomas Walsh graduated also at Harvard (1772), was a M.M.S. in high standing, being vice-president and orator at one time and another. He was at this time about 70, had seen much practice in his long career and had done great service in Boston as health officer. He lived ten years after this consultation, dying in his eightieth year in 1831.

From this consultation Dr. Warren purposely absented himself, not wishing to suggest to the other members the possibility
of a dislocation into the ischiatic notch. Yet, after a two hours' session, they agreed that the leg must have been dislocated downward and backward into this notch. They did not believe that anything could be done. Lowell persisting in trying something, he was bled, hot-bathed, and an attempt at reduction was made December 4, 1821, in the presence of a hundred and twenty-five physicians and students. After trying two hours with pulleys and whatever else could be suggested, they "gave over;" the patient was put to bed and discharged soon after.

He next consulted Dr. William Ingalls, of Boston, the head of another medical school. This physician had a fine reputation in his days (Harvard, 1770; M.M.S.), and lived until 1851, reaching the age of 82. With the assistance of Dr. Christopher Columbus Yates (M.M.S.), practising then in Boston and dying in 1840 in Parrsborough, Nova Scotia, and twelve medical students, Dr. Ingalls also tried reduction but failed. Finally Lowell consulted a natural bone-setter called "Doctor" Robert Hewes, who also tried his best, but in vain.

As Dr. Warren was one day on his rounds, he was not a little surprised to meet Mr. Lowell again, more astonished when he learned of his adventures with Dr. Ingalls and the "bone-setter," and greatly disconcerted when he now, for the first time, learned that the dislocation had been attended to on the day of the accident, and that Lowell was on his way home to see the men who had "ruined him." Warren argued with him at much length, mentioned the rarity of such cases, the extreme difficulty of their diagnosis, the obstacles to reduction, and the impossibility of country doctors ever seeing enough injuries of this sort to be able to diagnosticate or to treat them at all. So long, so patiently, and with so much apparent conviction did Warren talk, that when they parted he went home hopefully, for if there was anything that Dr. Warren despised it was a suit for malpractice. Yet he had his misgivings, for now he feared that owing to his ignorance of the facts that had been cunningly concealed from him, he might be dragged in to testify against a fellow practitioner.

Arriving home, Lowell brought suit against each physician
for ten thousand dollars; against Dr. Faxon for trying to do anything with a dislocation of which he knew nothing, and against Dr. Hawkes for not reducing the dislocation originally, and for neglecting it afterward.

Emphasizing once more that the testimony now becomes involved because Dr. Faxon could not testify in favor of Dr. Hawkes, nor Dr. Hawkes say a word in his own defense under the then existing laws, let me continue the story of this stubborn contest.

At the first trial in the Superior Court for Washington County before Mr. Justice David Perham in June, 1822, a verdict was obtained for Lowell in the sum of $1962, but an appeal was at once taken to the Supreme Court by both defendants.

Just before this Dr. Hawkes had written to Dr. Warren asking him if he thought pulleys indispensable; and if the dislocation might not really have been reduced but "upset" by unknown causes. Warren gave him cold comfort by replying that pulleys were the proper thing to use, and that he could not conceive of any upsetting of a reduced dislocation without the exercise of some enormous force. Of one thing he was sure, that the leg was dislocated at the time of the visit to Boston.

After the appeal great activity ensued on both sides, the plaintiff sending for his brother Joshua here and there to get affidavits from various physicians, while Dr. Nathan Smith was called to Eastport to make an examination of the plaintiff in person. Dr. Smith was at that time lecturing at Brunswick, before the Medical School of Maine which he had lately established. Lowell's attorneys went to Boston to obtain affidavits from the hospital staff and issued summons for them to appear and to testify concerning his condition at the time of the consultation. The Boston doctors did their best to avoid testifying against the two physicians, and especially against them as belonging to Maine, for they knew the excited state of feeling in Maine against the high-handed and long-continued opposition of the Bay State to their independence, an issue only settled a year or so before. They disliked also to testify against physicians whom they knew, for Faxon had lived in Boston and
Hawkes had practised there, while his services in the last war were not to be overlooked. Besides all this, Dr. Hawkes had studied with Dr. Ingalls and people would say that the hospital staff had sworn away his practice because he was a graduate of "the other medical school." In this dilemma they asked legal advice and were informed that they must state what they had found, for Lowell had consulted and paid them, and if they lost his suit through their failure to testify to facts, they would be liable for damages.

That settled the question and four of the surgeons, as well as the bone-setter, signed their respective affidavits and were cross-questioned by counsel for the defendants. One surgeon did not testify, probably having moved away.

Armed with this testimony but lacking that of Dr. Nathan Smith who after the examination had cast in his lot with the defendants, Lowell came to the second trial: this time before the Supreme Court at Machias, Chief Justice Prentiss Mellen\(^1\) presiding, in September, 1822. By this time, however, a feud between the two towns had arisen. If up to this day a person living outside of Washington County sues one of its inhabitants he is pretty sure to lose, while if he tries to defend a suit brought against him his luck is similar. Clannish against outsiders, they exhibit the same obstinacy when the inhabitants of one town sue those of another town in that county. In this second trial, then, it was not only Massachusetts against Maine, but Lubec against Eastport. The jury disagreed as was to be expected when one talesman swore that he had never heard of the case.

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\(^1\)Prentiss Mellen, Chief Justice of Maine, was born in Sterling, Massachusetts, October 11, 1764, graduated at Harvard, 1784, and was admitted to the Massachusetts Bar in 1788. He moved to Biddeford, Maine, in 1792, into an office furnished with three beds, half a table and one chair. The Law Term for Maine was then held in Boston and the records kept there. From 1804 until 1820 when he was appointed Chief Justice of Maine, he practised all over the State, having meanwhile moved to Portland in 1806. It was said at the time before Maine was separated from Massachusetts that the Bar of Cumberland County was the best in Commonwealth of Massachusetts. As a lawyer he was very successful, fervid and impassioned. To a judge remarking that there were authorities on the other side of a case in which he was engaged he replied: "Yes, yes, Your Honor, but they are all in my favor." Resigning as Senator from Massachusetts when Maine was separated from that Commonwealth, Senator Mellen was chosen Chief Justice, resigning only after fourteen years of service at the age of seventy, an industrious and very capable magistrate. He died December 31, 1840, aged seventy-six, a famous man in his day.
and was accepted, although the chief justice said that he had heard of it as far as Portland. Another living in Eastport had been heard to say that he wouldn't give four pence for Lowell's chances if he got on the jury. One jurymen held out for a verdict of $100 for Lowell, each party to pay costs. Here the jury hung, and were discharged, although the chief justice had leaned perceptibly toward Mr. Lowell.

For two years after this, the case was a chief topic for conversation and newspaper letters throughout the two states. Lowell went to Boston, consulted his previous physicians, and came home overland to consult Dr. Benjamin Brown and Dr. John Hubbard Estabrook, of whom more anon. Finally, Wednesday, June 30, 1824, was set for the third trial, Justice Nathan Weston, presiding. In order to obtain an impartial jury, no inhabitant of either town, or relation of the litigants or patient of the two physicians was allowed to go unchallenged.

If the physicians called in this case were of the highest rank in New England, so were the attorneys employed on both sides. Appearing for the plaintiff, Lowell, were Benjamin Orr, Simon Greenleaf and John Wilson. The defense was conducted by

1 Nathan Weston was a judge from early years, hardly ever practising much at the Bar. He was born at Augusta, Maine, July 27, 1782, graduated from Dartmouth, 1803, studied law in Boston and was made Chief Justice of the District of Maine under the "Gerrymander" affair in Massachusetts and continued in that office until the separation in 1820. It is not often that a lawyer is "Judged" at 29 as was Judge Weston. After the separation he was appointed Associate Justice of the Supreme Court and on the retirement for age of Chief Justice Mellen, Judge Weston was appointed to fill the vacancy. Dignified, impartial, industrious, but not a profound lawyer, is the verdict upon his deeds. He died June 4, 1872, at Augusta, Maine, aged 90 years.

2 Benjamin Orr, graduating from Dartmouth (1798), settled for practice of the law in Topsham, Maine, near Brunswick, the seat of Bowdoin, and soon was known as an excellent chancery lawyer. He was M.C. in 1817-9, and later moved to Brunswick where he became, in turn, Overseer, Trustee and Treasurer of the college. He had previously employed Nathan Smith as an expert in a similar trial and had eulogized him then, so highly, that in the present suit he was obliged to pass over his testimony lightly when appearing for the defendants. He was exact as a lawyer, became one of the leaders of the Bar in Maine, and died in 1828 at the height of his fame.

3 Simon Greenleaf was born in Newburyport, December 5, 1783, and after practising in Gray, Maine, moved to Portland about 1818. He was appointed Reporter of Decisions, and remains known world-wide for that famous work. He was finally chosen Professor at the Harvard Law School, and worked with ever-increasing legal fame to the end of his life, October 6, 1853. He wrote many books on the law and eulogies on Mellen and Story, while his great work on "Evidence" is a classic.

4 John Wilson came from Londonderry, New Hampshire, graduated at Harvard (1799) and ultimately settled in Belfast in 1803. He was fearless, sanguine of success,
Jacob McGaw,\textsuperscript{1} William Crosby\textsuperscript{2} and Charles Stewart Daveis.\textsuperscript{3} It may well be remembered also that the employment of these eminent members of the Bar must have been obtained only at a large expense, but the two chief actors were fighting to the death, in this final trial. The story of the case as has been related to you having for the third time been repeated to a jury, the affidavits of the Boston physicians and of the bone-setter Hewes were handed in as evidence, with their replies on cross examination. The aim of these questions, some twenty in number, and drawn up by Lowell, was to prove that a dislocation existed, that it was positively downward and backward into the ischiatic notch, that every physician knowing his profession ought to be able to diagnosticate and to treat it successfully, that pulleys were indispensable and in every possible way, gross negligence was claimed against the two defendants in their management of the case from the start. As so often happens, however, the cross examination showed that Dr. Warren had never seen but nine cases of hip joint dislocation in his life, two of the consultants had never seen any, and the other two but four cases in all.

courageous in his fortunes. It was said of him that for nearly twenty years no trial occurred in Washington County in which he did not appear for one side or the other. Struck down in a trial with symptoms of overwork which ultimately culminated in mental incapacity he retired from the practice of the law, yet lived until August 9, 1848. He served two terms very successfully in Congress where he made his mark in politics.

\textsuperscript{1} McGaw was born in Merrimac, New Hampshire, in 1778, graduated from Dartmouth in 1797, and settled in Fryeburg, Maine, practising for a while in both Maine and New Hampshire. He removed finally to Bangor, Maine, where he soon became highly considered as an advocate. His successes with the jury were due to his pleasant way, his fund of anecdotes and his art of applying familiar incidents to illustrate his arguments. Unlike most men, he knew when to retire and to enjoy serene old age.

\textsuperscript{2} William Crosby was born in Billerica, Massachusetts, June 3, 1770, and early injuring his right hand went into the law. Graduating at Harvard (1802) he ultimately settled in Belfast, Maine, was county attorney and Judge of Common Pleas, but politics requiring a change, he was retired and resumed practice once more. He was a sound, clear-headed, logical man, and very exact to discover the absolute right of his client before accepting a case at all. He retired at sixty and enjoyed life to the end not rusting out but working steadily and patiently always. His cross-examinations in the present case contributed largely to his standing in the community.

\textsuperscript{3} Charles Stewart Daveis was a celebrated man even outside of Maine, being often employed by the Government in Boundary cases in caring for which he went to Europe. Graduating from Bowdoin with high honors (1807), a profound Grecian and Latinist, with great eloquence he soon became famous. His speech on this occasion is most amusing, attractive, and entertaining even to this day as one studies him watching the jury at every point that can favor his special client, Dr. Hawkes. By casting doubts here and there, he won his case, virtually producing a disagreement in their opinions.
When asked how they could diagnosticate such a rare condition, they replied “from symptoms;” and when asked how they knew the symptoms if some of them had seen but nine cases and some none, and some but four, they replied “from the books.” Asked what books mentioned such an ischiatic dislocation, they referred to a French authority.

Following these affidavits came one from Dr. Benjamin Brown, of Waldoboro, Maine, who loomed largely in this trial. Although Brown is a common name, yet this Brown was not a common man at all, even if living in the small town of Waldoboro. To most of you unknown, let me say a word to introduce him. He was descended on one side from Roger Williams, on the other from Chad Brown, of Providence Plantation, and was born in Swansea, Massachusetts, in 1751. His Revolutionary record was excellent, as surgeon on board the frigate “Boston,” Captain Tucker, when she carried John Adams as commissioner to France in 1777, and on the privateer “Thorn” with the same commander. He also served as surgeon in an army hospital in the war. He made a fine marriage with a niece of the wife of Samuel Adams, the noted Patriot, who brought him thirteen children from the births of which in Boston, Providence, Bristol, Maine, and Waldoboro, we find where he practised. He was a member of Congress from Maine in 1817–19, but made no speeches that have come down to us, and was not re-elected. He was a social man, his old Commander, Captain Tucker, often riding over from Bristol, and passing an evening with a little grog, and much singing of sea songs. Once also, John Adams sent word that he was coming, whereupon the three shipmates met and passed a famous night recalling old times abroad. Benjamin Brown lived until 1840 and left a son who practised medicine also.

Dr. Brown’s affidavit followed the lead developed by the Boston surgeons, testifying that he had seen Lowell personally in January, 1823, on one of his overland journeys from Boston; that he had been in practice forty-six years in the service of his country both on sea and on land; that he had practised in many places since; that he knew Lowell’s hip to be dislocated; that he had
seen many similar cases and that they were so plain that every doctor should be able to diagnosticate and treat them properly; that pulleys were indispensable and that it was a gross negligence not to employ them; that if a doctor could not treat such cases he ought not to try but should hand them to somebody who could; and that it was impossible for a hip joint dislocation once reduced to recur without enormous force applied.

It would seem from the general tone of this affidavit that Dr. Brown was not on the best of terms with Dr. Nathan Smith, who was here mentioned disparagingly. Smith was in those days undoubtedly regarded with extreme jealousy by many physicians to whom he did not appear so great a light in medicine as he does to us when so many lesser lights have long since been extinguished by time. Beyond these reasons, Dr. Brown having declined to operate upon a patient at Camden, Dr. Smith was called and operated. This same operation may also explain the affidavit of Dr. Estabrook to be mentioned next. However these things may be, we cannot help wondering how Dr. Brown could possibly have seen “A very large number of hip joint dislocations and treated them all successfully,” as he here testified.

Following came the affidavit of Dr. John Hubbard Estabrook, of Camden, of whom it may be said that he was born in Athol, Massachusetts, in 1797, and was so delicate as a child that he was not expected to live. Graduating at Williams (1818), he studied medicine with a cousin, Dr. Ezekiel Dodge Cushing, Jr. (M.M.S.), who had about that time returned from ten years’ study in European hospitals. He had a degree of M.D. from Harvard (1820), and settled in Camden, where he practised successfully more than fifty years. He was skilful to a degree uncommon among country practitioners, bold and self-reliant, very courageous, and lived into my own remembrance. Would that in my early days I had known of this suit, for from him much at first hand could have been obtained. Being young in medicine, his opinion based on a single examination of the plaintiff could not have been of actual value, though highly praised by Dr. Warren. His testimony, based on the same questions
asked of the Massachusetts physicians, resembles what they said to such an extent that it needs no repetition here. Both of these physicians failing to appear at the final trial, no cross examination followed.

All of the evidence that could influence the jury against the defendants having been presented, together with various bills receipted by Dr. Hawkes, Mr. Lowell was stripped and exhibited to the jury, his left leg being longer than the right, turned out a little from the body, and the foot turned outward also.

The defense was opened by a running argument for Dr. Faxon, claiming that he had used ordinary skill as much as was to be expected on the part of a country practitioner; in fact he had shown as much skill as the Boston doctors, for just as with all their skill combined, and with the best appliances they had totally failed to reduce what they called a simple dislocation, so had Dr. Faxon; simply that and nothing more. Moreover, the defense intended to prove by Dr. Nathan Smith that there was no dislocation now, and by the great authority of Sir Astley Cooper, that there never was any such thing as a dislocation into the ischiatic notch. It was impossible anatomically, and had never been seen by any surgeon, living or dead. No complaint had ever been lodged against Dr. Faxon, who had only been included in the writ to prevent his testifying in favor of Dr. Hawkes who, in the attorney’s opinion, had actually reduced the original dislocation.

The deposition with cross examination of Dr. Nathan Smith was now handed in.

The life of this celebrated man has been written about, so many times, that it is to be hoped with the wealth of fresh material now on hand, some one will ere long give to the world a more complete account of his great personality. History has repeatedly told us that he established three medical schools, Dartmouth, Yale and Bowdoin, and that he practised the entire length of the Connecticut River Valley. Here additionally in this trial we discover that in the practice of his profession he journeyed to the easternmost town in America to examine this plaintiff. We can now say of Nathan Smith that he was the
only physician of those days who ever personally visited patients in every New England state, seeing them all from horseback. At this time, he was lecturing at the Medical School of Maine, at Brunswick, and rode to Eastport, expecting to testify in Lowell’s favor, but became at once after the examination of the plaintiff an important witness for the defense.

He testified that he was in Eastport, Sunday, June 23, 1822, and examined Lowell, personally, in the presence of Dr. Frye, of St. Andrews’ and of an army surgeon and a student. He could not positively swear that there was any dislocation at all, but probably an old fracture, and twist of the pelvis, producing the apparent elongation of the leg. He had advised the plaintiff to drop the complaint, as hopeless. He had also seen Dr. Hawkes and urged him to oppose the suit to the bitter end. He thought that a new formation of bone had so disguised the parts that an exact diagnosis was impossible.

On cross examination, he had no recollection of saying that the staff of the Massachusetts hospital were “A pack of old grannies following the lead of Dr. Warren,” nor of promising to help Hawkes because Hawkes had helped him in a similar case. He had never seen but one case of hip-joint dislocation, in his life, but had reduced that one in a few minutes with one assistant, and without any pulleys, simply by bending the knee toward the face. All these dislocations were difficult to diagnosticate, and not one physician in ten was competent to reduce such an injury. If the dislocation were in the ischiatic notch, the leg would be shorter and the foot turned in. No case of dislocation into this notch had ever been published. He had not said before examining the plaintiff, that he didn’t believe in his case, and had no prejudice in favor of Dr. Hawkes until his examination had proved the injustice of the suit. Pulleys were of no advantage so far as his experience went, and a first-rate anatomist could dispense with their aid.¹

Dr. James H. Sargent, U. S. Army, thought that much of the present appearance of the parts was due to the enormous

¹ Those who recall Dr. Horatio J. Bigelow’s clever reductions of hip joint dislocations by simple manipulation will here applaud Dr. Nathan Smith’s foresight.
force employed in Boston. If all of those men could not reduce this location, it would have been folly for Dr. Hawkes to try. He knew Dr. Hawkes as a skilful operator, and since the previous trial had seen him reduce without pulleys a hip joint dislocation inside of fifteen minutes. Nothing could have been better or more quickly done. It was perfection.

Drs. Chandler, Weatherbee and Whipple, strangers to me still, testified generally, that Dr. Hawkes was an able man in medicine and above reproach.

Here were handed in a copy of Sir Astley Cooper's "System of Surgery" and a recent issue of the New England Medical and Surgical Journal, with a Review of this very "System." The idea in presenting the Journal was to prove that Dr. Warren, as one of the editors, in admitting this Review of a book denying ischiatic dislocations, did not really believe in them himself, so that his evidence was of no value.

Testimony of other witnesses proved that Lowell had been satisfied with what had been done until he went to Boston; that he had no idea of suing Faxon, but that when Dr. Faxon had declined to hand in his bill he had been included in the writ. Cross examination tried to bring out, though with ill success, disparaging remarks by Dr. Hawkes concerning Dr. Faxon. If what Dr. Hawkes is reported to have said, were true, Dr. Faxon had no right to touch the patient at all.

Defense against the claim that although Dr. Hawkes had promised to call yet had failed, was proved by witness to his promise to stay on the island on which Eastport was built, in order to be at hand in two confinement cases in one of which the patient had previously suffered from convulsions and in the other nearly bled to death. Remaining as he had promised, Dr. Hawkes had brought both patients through safely, so that their respective husbands were glad to testify to his promise to "tend out" on these patients and to his excellent results.

Witnesses to Dr. Smith's examination of the plaintiff deposed that it was made at the plaintiff's request, was done thoroughly and deliberately.

Up to this point it would seem from the testimony that Dr.
Illustrating Lowell vs. Fayton and Hawkes.
Hawkes actually reduced the dislocation, for every person present
not only heard the grating sound as the bone seemed to slip
into place, but they felt the joint, and believed it to be natural, and
even the plaintiff and his brother admitted that they heard it
and felt it go home. At Dr. Hawkes' second (friendly) visit,
the leg was apparently all right. Between this and the next
visit something had happened, for upon his arrival he found a
fresh dislocation or distortion which he made no attempt to
treat. Concerning the occurrences of these weeks there had so
far been a complete blank in the testimony, until after much legal
sparring, the affidavit of an eye-witness was here admitted. This
man swore that on the fourteenth day after the accident the
plaintiff left his bed in the house of a neighbor where he had
been taken directly after the accident, and walked a long dis­
tance home. Whether he walked alone or with the aid of friends
or crutches remained unknown. Of this, Dr. Hawkes seems
never to have been informed, supposing that Lowell had been
carried on his bed. All that Lowell ever admitted was that
he said to Dr. Hawkes "I had a sort of a fit and I am afraid
that I got the bone out of joint again." Whether such a pedes­
trian feat so soon after a dislocation could cause such a relapse is
beyond my experience, so I leave it to you, and you can imagine what
a good lawyer would make out of this "Contributory negligence."

Then again the absence of Lowell's housekeeper from this
trial (his wife remained away from home many weeks at the time
of the injury) has its mysterious aspects. This woman was on
hand at the time of the accident, remained with Lowell daily,
heard everything that was said and saw everything that was
done, yet she was not in Court. Able to speak in favor of the
plaintiff, she ought to have been on hand. Capable of bitter­
ness against the physicians, she equally should have been brought
forward.

It would seem, therefore, from my long study of the case,
that cross examination would have caused the plaintiff to regret
her appearance in Court. In this way "Mysterious Mrs. Quig­
ley" who knew everything passes across our view and out of
sight forever.
An attempt was made in rebuttal to prove that a physician in Eastport would have been willing to take care of Dr. Hawkes' patients to enable him to visit Lowell, but it was shown that he was not on friendly terms with Dr. Hawkes, and that when patients wanted their own doctor, they wanted him, and no other doctor, in an emergency in which he had before shown his skill.

The closing speech for the defense was made first by William Crosby for Dr. Faxon. It followed the general idea that he was a country doctor who had tried his best to relieve the plaintiff, and had done the right thing in calling upon the best man, when he felt that he could be of no further use. He could not be held responsible for anything that had happened after he had withdrawn from the care of the case. He had sent in no bill because he had rendered no services. If all these learned doctors whose affidavits and testimony they heard were unable to agree and not one of those who had made the attempt were able to reduce this curious dislocation (or whatever it might be) how could plain John Faxon be expected to know what to do? When they all disagreed, how could he be the one to set them straight on their feet? "He cannot be held responsible at all, and I confidently ask his acquittal at your generous hands."

Mr. Daveis' closing speech for the defense, especially of Dr. Hawkes, was a jury masterpiece of forensic eloquence, of great length, but of astonishing interest even to this day in its special pleading: eloquent masterly, and successful.

He began by showing up Lowell studying law and anatomy, and leaving no stone unturned to ruin Dr. Hawkes, while brother Joshua traveled to and fro, asking leading and misleading questions and getting depositions from the doctors. Gross imposure and malignancy of disposition showed themselves in every step of this venomous plaintiff, a man of such vileness of character as he had never yet seen in his wide experience of mankind. No physician ever gives anything but the best that he has, and it is cruelty to say that Dr. Hawkes failed to give of his very best to Mr. Lowell. All medicine is tentative and experimental. The operation, as done by Dr. Hawkes, lasted at least twenty
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minutes, the grating sound was heard as the head of the bone went in, and perfect motion ensued. Lowell, who had sneered at Dr. Faxon's want of success and insisted on having Dr. Hawkes to do the job, was satisfied now. He went on to dilate on the enormous difficulties in reducing dislocation of the large joints, and cited the tremendous resistance of the hip joints as shown in the case of Damiens, the French Regicide, who could not be pulled apart even by the strength of many horses. Pulleys were good enough, but even two of the Boston surgeons saw no need of them, and had never seen them employed, and, after all, the whole bunch of them had made the fullest possible use of pulleys on this very plaintiff, yet wholly in vain. Daveis next argued on the very few hip joint dislocations (thirteen in all) which in all their lives had ever been seen by all these outside doctors, yet how terribly sure they were of their "ischiatric notch" dislocation from the "symptoms," yet how could they know ischiatric dislocations by any symptoms, if none of them had ever seen such a case. If, after all, the symptoms were as had been alleged, then Dr. Hawkes had done the right thing except to use the pulleys, but how could he look for proper surgical pulleys in a little place like Lubec? He next showed how the legs were measured, rotated side by side for comparison, found of the same length and mobility, and the knees then tied together properly. Dr. Hawkes when asked if he should come again, left the patient with Faxon. Shown the leg later on, and again defective, he declined to touch it, because he knew that he had done all he knew how to do. His opinion of himself was verified, for all of the Boston doctors, united, could do nothing, and insisted that nothing more could be done. If Dr. Hawkes left Dr. Faxon in charge, he did right, for Dr. Faxon was the family doctor, and the older man. It had been told to the jury that Dr. Hawkes had applied liniments to the leg without looking at its condition, just as if anybody could rub anything into a great big hip joint like that without looking to see what he was doing. It had been said that Dr. Hawkes looked at the hollow in the leg, did nothing, said that he would come again, but never came. This is brother Joshua's unsupported testi-
mony. Where is Mrs. Quigley to support this assertion? She was there night and day, but where is she now? Where were Mrs. Lowell and the child all this time? Kept off by Brother Joshua and Mrs. Quigley? If they wanted Dr. Hawkes, how does it happen that in all these weeks they never discharged Dr. Faxon, but let him call every day? Why didn’t the wife and child hurry home if the case were as bad as they claim? In all their testimony there is not a word of that promenade of a hundred rods from house to house on the fourteenth day. It is true that Brother Joshua swears that the hollow was there before the walk, discovered accidentally by a witness subpoenaed by Lowell, but thrown overboard when they found that he knew the hollow never was seen until after the walk, although the plaintiff told him he feared it was “due to a fit.”

Dr. Brown next came in for a good deal of good-humored raillery, with “wonderment” how he had happened to see so many dislocations, when all of the famous Boston doctors had seen but thirteen in all. It was public talk that the good-natured Doctor Brown had only signed his affidavit after painfully accurate perusal of the questions put to Dr. Warren and his associates. Attention was then called to the very important fact that the jury in looking at the plaintiff’s leg could have no idea of what it looked like, before it had been subjected to those “brutal manipulations in the Boston hospital.” If it seemed now displaced, was it not solely due to those manipulations, under which it is a wonder that Lowell did not die during the awful torture? “I dare to tell you, gentlemen, that there is no dislocation there at all, for if so it could not help being reduced by the enormous force employed.”

Dr. Nathan Smith, this student by the light of his solitary taper, yet daring alone to testify against the combined Harvard medical faculty, was next eulogized. In this eulogy, Daveis recalled how John Hunter in the celebrated case of Capt. Donellan for poisoning Sir Theodosius Boughton, stood out against five of the shining lights of his era. After the law had hanged an innocent man, Hunter was shown to be right while all the rest were wrong. If Nathan Smith says this is not a dislocation,
he may be right. Sir Astley Cooper was then mentioned, and
the jury heard sentences like this: "Why, gentlemen, when the
king of England needs a surgeon, Sir Astley Cooper is summoned
to the royal residence." Now this man has seen more disloca-
tions than any surgeon living or dead, and he says that the
femur cannot possibly be dislocated downward and backward
into the "ischiatric notch." "If Sir Astley Cooper and Dr. Nathan
Smith had been there with Mr. Lowell, do you believe that these
men from Boston would have dared to say to the contrary, and to
operate, on the assertion that they were right and Sir Astley
Cooper wrong?" Finishing with Dr. Smith, the attorney allu-
ded to a recent trial in Maine in which this surgeon had been
eulogized as the brightest light in the medical firmament of to-
day. If so then, is he not stronger still as an authority to-day?
Take the Medical Journal of the Boston men, and it says such
dislocation is impossible. Yet they now turn about and insist
that it may occur. But I tell you if it does exist, the leg would
be shorter and the foot turned in. The only possible neglect
that you can impute to Dr. Hawkes is that he did not use pul-
leys, yet they did use pulleys in Boston, and with what results,
you see for yourself. You must acquit Dr. Hawkes, for he did
all that could be done in a terribly difficult case, and in one which
if you believe the Boston doctors is *unique* in medical history;
for if it never occurred before, how can you expect that any
doctor would know just what to do? Once for all and for the
last time, the defendant, Dr. Hawkes, did all that could be done
in a supremely difficult case.

The closing speech for the plaintiff was strictly a law speech:
This man had been shockingly neglected. Dr. Faxon’s attend-
ance at all was a gross interference with Lowell’s right to have
something proper in the way of skilful treatment. Ignorant
of what to do, Faxon should have insisted on a consultation.
Having done his worst, and having it thrust in his face by a com-
mon bystander that his attempt had been in vain, he could not
now save himself before the jury, because he ought not to have
tried at all. Most of the unfortunate resultant condition of
things is due to his original interference. "The entire case exhibits
the results of the gratuitous offices of an incompetent fellow!" The plea that he sent in no bill, is no defense at all. As for Hawkes he knew more, but his results were as bad as those of Faxon.

The attorney now proceeded to talk medicine as a doctor would talk law, arguing that hip joint dislocations were so common, that every doctor ought to know just how to diagnosticate and to reduce them. "Why," said he, "there are only four dislocations of the hip joint, anyhow you look at it, and a doctor ought to be ashamed of himself if he could not attend to a small number like that." "If a doctor doesn't know what the matter is, it is illegal for him to pretend that he does." Replying to the vile insinuation that the greatest injury had been accomplished by the barbarous treatment in Boston, it was urged that since no violence there, had been shown, it was positive that the joint had never been properly set by either of the defendants. Soon after, with a curious ignorance of anatomy, the counsel argued that these two doctors did not know the difference between a wrench of the hip from the backbone, and a dislocation of the bone from its socket. Dr. Brown was eulogized as a man whose long experience agreed fully with that of the men of Boston. Dr. Hawkes having once accepted the case of Mr. Lowell was in duty bound to carry it through; engagements with other persons could not avail him in the least as an excuse. There stood Lowell, maimed for life by Dr. Hawkes, and that doctor must be held responsible to the utmost limit of the law.

If the Chief Justice had favored the plaintiff before, Justice Weston, this time, rather leaned towards the defendants. He expressed his indignation at the unfair treatment to which Dr. Hawkes had been subjected by being tantalizingly deprived of the testimony of Dr. Faxon. Ordinary skill was such as prevailed where the physicians lived. Skill in small towns was less than in larger places, owing to lack of opportunity of seeing rare cases. Dr. Faxon "thought" he had done his best and succeeded. Not having absolute confidence, he asked for a consultation. Up to that point it is not shown that he had done Mr. Lowell any harm. Nor is there any testimony to show that he harmed him later. Nor is it shown that Dr. Hawkes did the
plaintiff any harm. The doctors used a fair method, and although they did not try pulleys, there is divergency of opinion as to the need of them at all. The operations seemed well done, the bone was heard to snap into place, motion was as good with one leg as with the other, and the knees were tied together. What more could you expect? The testimony regarding the walk on the fourteenth day was very important, and as to its truth and its effect on the leg the jury must decide. At a friendly call, Dr. Hawkes, examined the leg and it seemed perfect. At the next visit, something had happened, and the leg was bad. Was it a “fit” or was it the “walk?” Now notwithstanding the failure of the Boston doctors to reduce the dislocation they still insist that it is into the Ischiatic Notch, and you have to fall back on Sir Astley Cooper. Personally I believe that the head of the bone is in the foramen ovale. I do not believe it is in the Ischiatic notch. If it would need more than ordinary skill to reduce this dislocation, as proved by the inability of the Boston surgeons to accomplish it, what can you expect from Dr. Hawkes living in the country? You can also ask yourselves could he have done anything more by seeing the plaintiff daily, and was he under any responsibility at all to attend to the patients of Dr. Faxon?

The jury promptly acquitted Dr. Faxon, sat a while longer discussing the responsibility of Dr. Hawkes, when one of the jury fell suddenly ill. The Chief Justice being in town was consulted, the two judges decided that the Court could waste no more time on the trial, and as an agreement in the event of a fourth trial seemed problematical, the best thing for all parties was for the plaintiff to accept a non-suit and the defendant to take no costs.

Thus the suit ended but not so the literature bearing upon it, for letters and pamphlets innumerable soon followed. January 1, 1825, brought out a bitter attack by Mr. Lowell on Judge Weston demanding his instant impeachment. Lowell asserted that he had wilfully misled the jury in every direction; that Faxon did pretend to be a first-rate surgeon; that Hawkes was as much his family doctor as Faxon; that Hawkes had persistently
disparaged Faxon and asserted that with ordinary care, Faxon would not have given him a chance to dislocate the joint a second time. Lowell admitted that after the accident, the leg stood off from the body but that after Dr. Hawkes had operated it seemed perfectly in place, yet that Warren had told him it never had been properly reduced at all. Sir Astley Cooper, he went on to say, exhibited most egregious errors in denying Ischiatic Notch dislocation, and had no idea of human anatomy or of the construction of the human body. Benjamin Brown was a great man, but Nathan Smith did not know his business at all. Hawkes had purposely deserted him, in order to make him a living example of the ignorance of Dr. Faxon. Those two assassins and quacks, why they ought to maintain me and my family for life. As for the Judge, what right had he to tell the jury that he thought the bone was in the “foramen ovale?” “If pulleys were needed,” says the Judge, “the plaintiff should have proved their absolute necessity” and I say “how absurd?” “They did all they could” says the Judge; and I say: “atrocious! for if they didn’t know what they were about they shouldn’t have tried at all.” The pamphlet abounds in religious talk, “Kissing the Rod,” “political abuse,” “Party Zeal,” “Violent Prejudice,” “Wealth and Numbers” “lying against me,” and “as for Judge Weston may God forgive him, for I cannot, and as one eminent lawyer said,” “I never knew a Judge so much at sea as he was in your case.” This diatribe caused so much talk, that the friends of Judge Weston published in the fall of 1825 a reply with the evidence, arguments and charge. It displayed, however, many errors of judgment, by inserting disparaging remarks about the “Boston Faculty,” and so on, for State feeling still ran high. It must have been extremely unpleasant, to say the least, for people to read that Nathan Smith had said that the Massachusetts Hospital Staff were a pack of old grannies, or that Dr. Hawkes had said that Dr. Faxon wasn’t fit to treat a hog; nor was it agreeable for so eminent a man as Dr. Warren to be accused of “ignorance of anatomy and surgery,” “incredible anatomical opinions,” “defamation of Sir Astley Cooper” and “anatomical hallucinations of the most extraordinary character,” as he had been, in the speech for the defense.
This second important pamphlet had a large circulation, and together with a large number of defamatory anonymous letters reached Dr. Warren who might not possibly have paid much attention to rumors of what Dr. Smith had said, but was roused to justifiable anger by assertions that he had put Lowell up to this business in order to ruin Dr. Hawkes. Dr. Warren's reply printed in 1826 was entitled "An Open Letter to Chief Justice Isaac Parker, of Massachusetts." In it he emphasized two points: that he had no intention of injuring the two physicians, and that there was an ischiatic dislocation, even if Sir Astley Cooper had never seen one. He insisted that he did not know either of the surgeons, and here by the way mention must be made that Warren calls no one by name, and that the initials used are always different from those of the actual person meant, so that it requires knowledge of the case to understand the pamphlet thoroughly. Warren had hardly heard of either of those men. To those who accused him of favoring the suit to advertise the new Massachusetts Hospital opened September, 1821, he replied that a failure as in Lowell's case would have had a bad effect on the new institution. He defended pulleys as against Smith's assertions of their uselessness, and eulogized Benjamin Brown and John Hubbard Estabrook. In conclusion he proceeded to prove beyond doubt that ischiatic dislocations could occur, had been seen and described in France, added many drawings and appended a bibliography of the subject of hip joint dislocations. Altogether Dr. Warren's pamphlet was very able and throws much light on this malpractice suit.

Finally in 1827 the long drawn-out battle came to a public end, and people looked about for new sensations. Suits for malpractice generally end in a verdict or private settlement and that is the last ever heard of them. But it was not to be so in this instance and here comes in the unique condition of Lowell vs. Faxon and Hawkes. Let us therefore follow these three men to the end of their lives and see what we can discover.

First, Dr. John Faxon being acquitted returned to his quiet practice at Lubec, continued to get his share of business round-about, and worked until his death in 1830 and so ended his career.
of usefulness. His children moved to Massachusetts. Dr. Micajah Collins Hawkes gradually paid off the debts contracted in so valiantly defending his rights, and practised with constantly increasing esteem and public satisfaction until in 1863 he passed to his reward. He built a fine house at Eastport and the mahogany wainscoting of some of the rooms is to-day a thing worth seeing. On the front of this house was painted in gorgeous colors, in life size with robe and turban, a picture of the Good Samaritan with the title and the good doctor's name in full underneath while a similar picture adorned the sides of his chaise. Being troubled by birds nibbling his garden fruit trees he sawed off the topmost branches and on them caused to be placed gilded balls which, reflecting the light in every direction, should frighten off the aerial thieves. Personally he was spare, tall, close-shaven, with a genial undercurrent of smile upon his lips, and to the day of his death tied his natural hair into a queue behind with a black ribband. His horse "Ridgeway" was also a public character, and feeling, in his old pasture, approaching dissolution, made his way home and died at his usual standing place outside his master's door. Dr. Hawkes lived to be 76, dying in 1863, but whether he heard of the examination performed upon his lifelong enemy has so far not yet been discovered.

Charles Lowell moved to Machias, went to New York, possibly in search of medical advice, studied law and became a good collector. No one could surpass him in squeezing money from delinquent debtors. He wrote violent political pamphlets. His opponents were "Assassins," "Double Distilled Villains," "Rowdies and Cutpurses," while physicians were "ignorant quacks poisoning suffering humanity." He drifted West, was cheated and returned to Ellsworth writing virulent letters on western swindlers, signed by "A Sucker." He established newspapers, built a "Lowell" block, limped on a cane, grew stout and suffered greatly for thirty-seven years as his physician declared. During all that time he commanded that at his death necropsy should be made to prove that "those villains, Faxon and Hawkes, were crassly ignorant and culpably negligent of my case from beginning to end." As he had received his injury on a Friday,
so on Friday, October, 29, 1858, about four in the morning he died. Dr. Greeley telegraphed at once to Dr. John Mason Warren, and on the same evening Dr. Henry K. Oliver, of Boston, arrived, performed the post-mortem examination, and took home with him the entire pelvis and parts of both femurs which can be seen to this day in the Warren Museum. The appended half-tones well display the exact condition of the parts, yet a few words from Dr. Oliver’s report may be added.

The body lying on the bed, the left foot was turned out, and the left knee raised a little. If the right knee were lifted to a level with the left, the left leg was then seen to be two inches shorter. The left leg could be moved slightly on the body and the leg on the thigh. Part of the acetabulum was absorbed and over it was stretched what remained of the old capsular ligament, partly enclosing the head of the femur. A new fibrous layer surrounded the new socket, so that no division between the old and the new could be discovered. The ligamentum teres were still attached to the bone in its new socket. The thyroid foramen was nearly obliterated by the base of the new socket, but retained its old membrane.

After maceration, the new socket was found below and in front of the old acetabulum, encroaching over half of it, while buttresses of bone are thrown across the body of the pubes and pubic portion of the ilium. The head of the femur is enlarged, and has a ridge of bone toward the trocanter. Careful scrutiny failed to show a fracture.

In the remarks, appended, it is suggested that the jury disagreed because a distinguished surgeon asserted that there was no dislocation. The injury was just what Dr. Warren always believed it to be, a simple dislocation. While disagreeing with Sir Astley Cooper, he insisted that the dislocation was downward and backward, and that such a dislocation was possible. The dislocation is now, however, seen to be not exactly as he claimed, for the socket lies a little forward of the acetabulum. The cause of the deception lies in the fact that the head of the bone rested almost immediately under the acetabulum, at the posterior portion of the thyroid foramen and in contact with the ischium.
Such a position would render its detection difficult even in a very thin person.

If now, after all, this famous dislocation were of such a nature that not a single surgeon of the greatest skill in the generation to which he belonged, could diagnosticate it, we can safely leave the memories of Dr. Faxon and Dr. Hawkes unsullied by malpractice. They not only did their best, but it now seems probable that they almost reduced the dislocation, and that the very unusual position of the head of the bone is really due to contributory negligence on the part of the plaintiff in walking one hundred and fifty rods on the fourteenth day after the accident. Curiously enough, the plaintiff despite his extraordinary verbosity and prolixity and innumerous denunciatory and defamatory communications to the press never in the slightest way alluded to this pedestrian tour. False or true his story falls or hangs upon it always.