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Massachusetts. House, 1811.

... A Copy of the Report of the Case of
Thomas Barnes.

[Portland? 1811]. [18] pp.

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Commonwealth of Massachusetts.

*IN THE HOUSE of REPRESENTATIVES, }
Feb. 8th, 1811. }*

ORDERED, That the Reporter of the Decisions of the Supreme Judicial Court of this Commonwealth be requested to lay before this House a copy of the Report of the case of Thomas Barnes, Plaintiff and Appellant, against the First Parish in the town of Falmouth, in the County of Cumberland, Defendants and Appellees, determined in said County of Cumberland in May Term last, by the Supreme Judicial Court of this Commonwealth.

Boston, February 14, 1811.

SIR,

I ENCLOSE, herewith, a copy of the Report of the case of Thomas Barnes, Plaintiff and Appellant, against the First Parish in Falmouth, in the County of Cumberland, determined in said County of Cumberland, by the Supreme Judicial Court of this Commonwealth, at the last May Term, pursuant to the Order of the Honourable House of Representatives of the 8th instant.

I am, Sir, very respectfully,

your obedient servant,

DUDLEY A. TYNG,

*Reporter of the Decisions of the
Supreme Judicial Court.*

To the Honourable

The SPEAKER

of the House of Representatives.

John W. B. B. B.

AT THE SUPREME JUDICIAL COURT,

May Term, 1810, in Cumberland.

PRESENT,

Hon. Theophilus Parsons, Chief Justice.

Hon. Samuel Sewall,

Hon. George Thacher,

Hon. Isaac Parker,

} *Justices.*

THOMAS BARNES,

versus

The INHABITANTS of the FIRST PARISH in FALMOUTH.

THIS was an action of Assumpsit, brought to recover of the Defendants a sum of money, which had been assessed by the proper Officers of the said Parish, on the polls and estates of JAMES BUXTON and AMOS KNIGHT, as their Ministerial taxes for the years 1798 to 1805 inclusive, for the support of the congregational minister settled in said parish; the said

Buxton and Knight having been, during said years, inhabitants of said parish; which sum the Plaintiff demands, that it may be applied to his support and maintenance as the Protestant teacher of a religious society, in said town of Falmouth, alledged to be of a different denomination from that of the congregational society, composing said Parish—viz: Universalists; said Buxton and Knight being also alledged to have belonged to the said society whereof the Plaintiff is alledged to be the teacher as aforesaid.

Upon the trial of the cause, which was had upon the general issue, before THACHER, J. October term, 1807. The Plaintiff's counsel having proved the payment to the

A person who in the character of a public protestant teacher of piety, religion and morality, demands the taxes paid by his hearers for the support of public worship, &c. must be the teacher of an incorporated society.

Defendants of the taxes demanded in the declaration, and a proper demand of them by the Plaintiff before the date of the writ, offered to prove to the Jury, by witnesses, that the Plaintiff was and had been for several years, including the years above named, a public teacher, as aforesaid of the society aforesaid in said Falmouth; and was about seven years previous to the trial, by the wish and consent of the said society, placed and ordained over them as their teacher (although the mode of ordination was not stated) and so continued; although the said society has never been incorporated by any act of the legislature.

But the Judge rejected the proof so offered, as improper and inadmissible, in as much as such facts could only be proved by record; and accordingly no further proof was afterwards offered in the cause. And the Judge instructed and directed the Jury, that as the said society, over which the Plaintiff was alledged to be ordained, was not a town, parish, precinct or body politic, or religious society, incorporated within the meaning of the Constitution and laws of this Commonwealth, the said action could not in law be maintained.

The Jury returned a verdict for the Defendants, pursuant to the said direction. The opinion and direction aforesaid were excepted to by the counsel for the plaintiff; and the exceptions being allowed by the Judge, the action stood over for the opinion of the whole court thereon, and was argued at the May term, 1808, and again at the last May term, by Mellen, for the Plaintiff, and Longfellow, for the Defendants.

MELLEN observed, that at the trial the Defendants had principally relied on the statute of 1779, C. 84, as requiring an incorporation of a society, before its teacher can have a right to demand the taxes paid by his hearers for the support of public worship. He denied this to be the true construction of that statute. But if it was, he contended that it was opposed to the declaration of rights, as relating to this subject, and was therefore void: and if the statute was consistent with the declaration of rights, it

ought to receive such a construction as shall not militate with it.

The declaration gives the right, which the Plaintiff is, by this action, endeavouring to avail himself of to the public teachers of religious societies of a different sect or denomination from that of the town or parish. The word *public* is opposed to private or domestic: and a public teacher must mean one who openly instructs in a stated place or places, those who resort to him for instruction. Such an assembly may be, and in fact frequently is, much more numerous than many of those which are incorporated. The Plaintiff in this case has received regular ordination, and the case finds, that during the years for which the tax is demanded, he has uniformly officiated with a society of which the persons whose taxes are demanded are members. That the Universalists are of a different denomination from the incorporated Parish, the defendants, it is presumed, will not be disposed to deny.

LONGFELLOW contended—1. That the Plaintiff was not a teacher of a different sect or denomination from the defendants. Those terms relate wholly to discipline, in which these parties agree. They are both Congregationalists. But, 2d. He insisted that to constitute one a public teacher within the meaning of the declaration of rights, it was necessary that he be the teacher of an incorporated society; such an one as could be compelled to support their teacher, and such an one too as might be punishable for neglect of providing a public teacher. He expatiated on the mischiefs arising out of another construction, and argued that the Legislature, by the statute of 1799, had given the same construction which he contended for.

The action stood over to this term for advisement, and now the opinion of the Court was delivered by, PARSONS, C. J.

The Plaintiff claims to be a public teacher of piety, religion and morality, within the third article of the declaration of rights, prefixed to the Constitution of this Commonwealth; but of a sect of christians different

from the inhabitants of the first parish in Falmouth ; and publicly instructing several of the said inhabitants, who are of the same sect with himself, who usually attend on his preaching, and who have directed their taxes, paid for supporting public worship in the parish, to be paid over for his support ; and he has instituted this suit to recover those taxes of the parish.

Not pretending to be the public teacher of any incorporated religious society, obliged by law to maintain a public teacher, to maintain the issue on his part, he offered evidence, that in fact he was the teacher of a voluntary society of Universalists, who actually attended on his instruction. This evidence was rejected by the Judge, on the ground that no person could maintain this action, but a protestant teacher of piety, religion and morality, of some incorporated religious society ; and to this rejection the Plaintiff excepts.

The legal effect of evidence of this kind, in cases of this nature, has been often a subject of discussion ; and among Judges there have been different opinions. The subject certainly requires a diligent examination, exempt as far as possible from the influence of any prepossessions, or pre-conceived opinions. For this purpose I shall consider the motives, which induced the people to introduce into the constitution a religious establishment ; the nature of the establishment introduced ; and the rights and privileges it secured to the people and to their public teachers. If these points shall be clearly and justly explained, it will then be easy to infer the principles by which the present action must be decided.

The object of a free civil Government, is the promotion and security of the happiness of the citizens. These effects cannot be produced, but by the knowledge and practice of our moral duties, which comprehend all the social and civil obligations of man to man, and of the citizen to the State. If the civil magistrate in any State, could procure by his regulations, an uniform practice of these duties, the Government of that State would be perfect. To obtain that perfection, it is not enough for the magistrate to define the rights of the several citizens, as

