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SPEECHES

OF

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COUNSEL FOR THE PLAINTIFF

IN THE

Wilkinson-Tribune Libel Suit

CIRCUIT COURT OF COOK COUNTY,

DECEMBER TERM, 1868.

GEORGE BUCKLEY, REPORTER.

CHICAGO:

ROUNDS & JAMES, PRINTERS, 46 STATE STREET.

1869.

SPEECHES

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PREFACE.

The case of FRANCES M. WILKINSON *vs.* THE CHICAGO TRIBUNE COMPANY, tried in the Circuit Court of Cook County, December Term, 1868, resulting in a verdict of guilty and assessment of plaintiff's damages at $7,500, has excited a more than ordinary and local interest. As a reporter, it was my intention to publish a full, *verbatim* report of all the testimony, the incidental arguments of counsel to the Court, all the addresses to the jury, and the instructions of the Court. But, I found that the execution of that design would expand the publication, beyond readable pamphlet proportions, into the bulk of a volume, and retard its appearance longer than was anticipated. On reflection, it has seemed better to modify the original design into merely a publication of the speeches of counsel for the plaintiff. The *Tribune's* side of the case, in all its fullness, has found all the publicity of that paper's circulation, in its so-called report of the trial, in its columns. The plaintiff's case can be only so slightly and imperfectly gathered from the *Tribune's* professed report—the only one published—that there would seem to be propriety and justice in a fairer and fuller presentation of her side of it to the public. It is believed that there is enough of interest felt in the case, and, in the questions as to the press, involved in it, to make a publication of this kind acceptable, timely and desirable.

A verdict, such as that given in this case, is so unusual, that the considerations of law and fact, concurring to produce it, as they were summed up and enforced by plaintiff's counsel, in their own words and way, will excite curiosity and command attention. The speeches, as specimens of forensic effort, merit a more prolonged and formal preservation and permanence than their mere utterance to the jury could give them. The charges of Judge Williams to the jury, the comments of the *Tribune* on the verdict, the explanatory card of plaintiff's counsel, and the jurors' card, in reference to the *Tribune* editorial, are, also, added.

GEORGE BUCKLEY.

CHICAGO, January, 1869.

ARGUMENTS.

Mr. E. W. EVANS, on behalf of the plaintiff, opened the case as follows:

IF THE COURT PLEASE:

I wish to occupy the time of the Court, a few moments, in calling its attention to certain authorities, which have undoubtedly been read to your Honor, before this, in other actions of like character.

The first point is, in reference to the pleadings in this suit. The action is, case for libel; the plaintiff is Mrs. Frances M. Wilkinson, the defendant, "The Chicago *Tribune* Company." The declaration is in the common form, setting forth the libel complained of, which is in the following words and figures, to wit:

"*Scandal and Turmoil—A Wife Breaking in on her Husband's Devotions—The Affray Carried into the Police Court.*

"A scandalous affair was yesterday partially ventilated in the Police Court. The particulars were revealed at the examination of A. C. Ellithorpe, his wife, and Mrs. Emma Wilkinson, on the charge of disorderly conduct. Mr. Ellithorpe is a Real Estate Agent, doing quite an extensive business in this city. He occupies, with his family, a house in the West Division. Mr. Ellithorpe has had charge of a portion of the building No. 277 Randolph street, and the collection of its rents. In the discharge of his duties, he became acquainted with Mrs. Wilkinson, who occupied the 2d floor; his acquaintance ripened into intimacy, and he became in the habit of making frequent visits to Mrs. Wilkinson. By some means or

other his wife was made acquainted with these facts; her suspicions were at once aroused, and she decided to examine further into the matter. On Thursday evening last she noticed that her husband arrayed himself in his best garments, and made an elaborate toilet before going out. As soon as he had left the house, she put on her bonnet and shawl, and followed him. His steps led him to No. 277 Randolph street, where he ascended the stairs, and disappeared within. The jealous wife succeeded in effecting admission to the building adjoining, and from thence she proceeded along the veranda in front of No. 277. Peering through the window into the darkened room, she beheld her husband in the arms of *another woman*. Mrs. Ellithorpe rushed into the room, and in a frenzy of rage seized the woman, to whom she administered a severe beating. The noise attracted the attention of a policeman in the vicinity, who appeared on the scene in time to take the trio into custody. They were placed under bond to appear for examination yesterday. In the meantime, Ellithorpe succeeded in appeasing the anger of his wife, so that yesterday, the charge of disorderly conduct alone was preferred against Ellithorpe, his wife and Mrs. Wilkinson. Mrs. Ellithorpe was fined $10, and the woman Wilkinson and Mr. Ellithorpe were discharged."

To the above libel, as complained of in the declaration, the defendant, "The Chicago *Tribune* Company," pleaded:

First, The general Issue, and, *Second*, a special *Plea of Justification;* which second plea of justification is in the following words and figures, and which I read for the purpose of the argument to the jury:

PLEA OF JUSTIFICATION.

CIRCUIT COURT OF COOK COUNTY.—TERM 1868.

FRANCES M. WILKINSON
vs.
THE TRIBUNE COMPANY.

And for a further plea in this behalf as to the composing and publishing of the said supposed libel, in the first and second counts of said declaration set forth, the defendant by leave of the Court, &c., says plaintiff ought not to have or maintain her aforesaid action thereof against the defendant, because the defendant says that prior to the composing and

publishing of the said libelous matters there was a great "scandal and turmoil occasioned in the neighborhood of the residence of the plaintiff, and in the city of Chicago, by and on account of the circumstances hereinafter mentioned; that it was and is true, as mentioned in the heading of said supposed libelous article, that Mrs. Ellithorpe, the wife of Albert C. Ellithorpe, did break in on her said husband while he was in the act of paying illicit and improper attention to plaintiff, as more particularly hereinafter mentioned; that an affray or disturbance was thereby created which caused the arrest of the parties concerned and their examination in the Police Court, as hereinafter mentioned. And defendant further says the matters so hereinafter stated were and constituted a scandalous affair, and the particulars thereof were revealed in the Police Court of Chicago, to-wit: on the 22d day of October, 1867, in the examination of Albert C. Ellithorpe, the plaintiff, and the wife of A. C. Ellithorpe, who were sworn and testified as to said scandalous affair on a charge of disorderly conduct. And defendant further says it is true that Albert C. Ellithorpe had charge of the building No. 277 Randolph street, to collect the rents thereof, and that in the discharge of his duties in regard to such buildings, in which plaintiff then resided, said Albert C. Ellithorpe became acquainted with said plaintiff occupying the second floor of said building, and that his acquaintance with plaintiff ripened into adulterous intimacy, and he became in the habit of making frequent visits to plaintiff for adulterous and improper purposes; that by some means the wife of said Albert C. Ellithorpe became acquainted with these facts of adulterous intimacy, and her suspicions were aroused, and she decided to further examine into the matter; and that on the Thursday evening preceding the publishing of said supposed libelous article, Mrs. Ellithorpe noticed that her husband arrayed himself in his best garments and made an elaborate toilet, on going out of his house; that said Mrs. Ellithorpe did follow him, and that he went to the residence of plaintiff, No. 277 Randolph street, and entered therein; that the jealousy of said Mrs. Ellithorpe was aroused, and she obtained entrance to the building adjoining plaintiff's residence, and thence to a veranda fronting the residence of plaintiff, where she peered into a darkened room of plaintiff's residence, and then and there saw her said husband Albert C. Ellithorpe in the arms of the plaintiff, and thereupon said Mrs. Ellithorpe rushed into the room, and in a frenzy of rage seized the plaintiff and severely beat her; that a policeman, hearing the disturbance, entered

the room and took the plaintiff, said Ellithorpe and his wife in custody, and caused them to give bonds to appear at the Police Court for examination.

It is further true, as defendant avers, that said Albert C. Ellithorpe did appease the anger of his wife, so that no more serious charge than that of disorderly conduct was preferred on the occasion at the Police Court; and, further, it is true that the Police Magistrate fined the said Mrs. Ellithorpe $10, and discharged plaintiff and Albert C. Ellithorpe.

And defendant further says that the circumstances aforesaid were those entitled "scandal and turmoil"—"a wife breaking in on her husband's devotions"—"the affray carried into the Police Court"—and that said circumstances were "ventilated," and appeared from the testimony given on the said examination.

Wherefore the defendant composed and published, and caused to be composed and published, the said alleged libelous matter in this plea mentioned, as it lawfully might for the cause aforesaid. And this the defendant is ready to verify.

WALKER & DEXTER, Attys. for Deft.

I will not occupy the time of the Court in reading to any extent the decisions upon the Plea of Justification, which plea will be the prominent subject matter of discussion by myself in my remarks to the jury, because I am well advised that such decisions have been often presented to your Honor in this Court, where the question has been discussed. I read what I do more by way of laying the foundation for my argument to the jury, than to give any new light upon the question to the Court.

The point I shall contend for before the Court and jury will not be denied by counsel for the defense, namely—"that where the defendant files his plea of the general issue, and also a plea of justification, the responsibility of *proving such plea devolves upon the defendant*," and that it is a question for the jury to consider and decide whether such plea of justification was filed in good faith or otherwise.

I first refer the Court to the case of Beasley *vs.* Meigs, in 16th Ills. R., page 140, wherein the Court say:

"At the instance of the plaintiff (the defendant below), the Court charged the jury—That the fact that the defendant filed a notice in the nature of a plea of justification, charging the

plaintiff with the crime of adultery, and that he was a man of general bad character in his neighborhood; and caused his counsel to read the notice publicly to the jury, and in the hearing of the audience present, and then abandoning the notice of justification, and in not giving or attempting to give any evidence under it, but after the testimony of the plaintiff was closed withdrew such notice, may be considered as an aggravation of the defendant's conduct, and evidence of malice, and is a circumstance which, if they find the defendant guilty, the jury have the right to take into consideration in aggravation of damages." And further the Court say: "It is a question for the jury, in each particular case, whether the damages shall be increased because a plea of justification is spread upon the record." And on page 141, of the same case, the Supreme Court, after approving of the charge as above given by the Court below, say:

"Nor did the fact that the notice was withdrawn render the instruction improper. It had been read in the hearing of the jury and bystanders, and the striking it from the record did not destroy the effect it may have produced, or relieved the defendant from the consequences of republishing the charge. If the use made of the notice was a *causeless* or *wanton repetition* of the slander, the jury were justified giving greater damages, notwithstanding the defendant may have withdrawn it by leave of the Court."

Again, in the case of Spencer *vs.* McMasters and Wife, in the same volume, on page 407, the Court say:

"In the case of Sloan *vs.* Petrie, 15 Ill., 425, this Court held, after a full review of the authorities, that if a defendant in slander pleads a justification, with a view of injuring the plaintiff, or without any expectation of sustaining it by proof, the jury may properly consider the plea as a reiteration of the slander, and as good grounds for enhancing the damages."

And, in the same case, on the point of damages, which I here allude to, because I shall not have occasion to again read from this volume, the Court say:

"The damages are not excessive. In actions for slander,

the jury are to determine, from all the circumstances of the case, what damages ought to be given; and they are not confined in their determination to mere pecuniary loss or injury; and, unless the damages are such as to satisfy the Court that the jury acted from prejudice, partiality or corruption, the verdict should not be disturbed."

I now turn to the case of Donahue *vs.* Thomas, found in 30th Ill. R., page 388. This is the last case that I shall refer to in the Illinois Reports for the doctrine of the case and to sustain the point I am contending for in the suit at bar. The case is somewhat lengthy, and I read it because it contains all the authorities upon the questions at issue, and for which I shall contend to the jury in this suit, namely:

That, under proper instructions from the Court, it is a question for the jury to decide whether the plea of justification was pleaded in good faith, or was wantonly experimented upon.

Your Honor will here note that formerly, and under many decisions of other States, the mere fact of pleading justification, and without proof to sustain it, was, of itself, *per se* absolute evidence of malice. Under our decisions, it is not *positive evidence* of *malice*, and, at best, only *prima facie* evidence, and the question is to be considered by the jury *under all the circumstances of the case*, whether the defendant was warranted in filing it. In this case, on page 388, the Court say:

"If the jury believed, from all the circumstances of the case, that appellant relied upon and was satisfied of the truth of the statement made to him by Jesse Dunaway, and that he was not actuated solely by malignity, they would have been justified in giving less damages than if the publication had been wantonly made. If, *on the contrary, he knew that the witness was unworthy of belief and only resorted to his evidence to further injure and blacken the character of appellee, it would aggravate the damage instead of mitigating the offense.* These are properly questions for the consideration of the jury."

I give the defense the full benefit of the law, because I understand the full extent which counsel for defendant will claim that the law protects them in pleading justification. It

will not do, your Honor, for a party to catch at any rumor he may hear, or take the statement of any witness he may pick up on the street, and from such sources of information set up his plea of justification. He is bound to exercise a sound judgment, and to rely upon truthful and reliable evidence when he pleads such a plea. If he does not, he elects to take his chance before the jury, and they will judge from all the connecting and surrounding circumstances whether the defendant exercised a fair and honest judgment when he placed his defense of justification upon record.

Turning to other States, we find in the case of Clinton *vs.* Mitchell, in 3d J. R., 143, which was an action for libel, Rugg, on behalf of the defendant, moved to strike out the plea of justification, and the Court said: "We are not disposed to countenance this mode of pleading, unless it be done in good faith. If done *wantonly*, and for the purpose of experiment, it ought not to be suffered."

Now, your Honor, the word *wantonly*, used by the Court in the latter case, embraces the whole theory of my argument in this case.

This defendant cannot take up the random street remarks that he may hear from this or that irresponsible scandal-monger, or seize upon the idle statements of an unreliable tale-bearer, and out of such worthless aud disgraceful trash draw his plea of *justification*, which, only, is the more libelous, and which will the more absolutely and irremediably *damn* the character of any person to eternal infamy, be they man or woman—father or son, mother or daughter. They have no right thus to trifle with the fair fame of any one, unless there is evidence enough, and more than enough, to support their plea. They must not forget that there is a Court that can and will, acting under the humane law of the land, regulate and control all these matters, and will order them justly. If done *wantonly*, and for the purpose of *experiment*, in the language of the case just read from 3d J. R., and for the purpose of "*experiment*," the Court and the law will teach them that *such experience* will be dearly bought.

I read these authorities from other States to show this Court and jury where Courts stand on such questions in other times and in other places, and what have been the rulings of Judges who have passed away, but who have given us *precedents* rich in experience, high in moral surroundings, and who have been actuated only by a controling sense of justice and humanity; for the moment the Judge leaves his humanity behind when he becomes the Judge, then there is but the indifferent part of such man on the bench. I never addressed a Court yet but that I recognized the highest excellences of such Judge to be his controlling sense of humanity, and a sad condition of society will be found when we receive from the bench only dry conclusions of black letter law, devoid of the life-giving principles of human benevolence and philanthropy.

The next and last case from New York I shall refer to will be from 3d Cowen Reports, page 371, the case of Lent *vs.* Butler, which was a case of slander; and the defendant moved to withdraw his plea of justification, and Wadsworth, Justice, said that "the application was even a still further aggravation of the slander," and gives the reasons why.

I now call the attention of the Court to one more case on this point in Massachusetts Reports, and shall cite no more authorities on this plea of justification and its consequences. I refer to the case of Bodwell *vs.* Osgood, in 3 Pick R., 384, where the Court say:

"The deliberate publication of a calumny, where the publisher knows it to be false, or has no reason to believe it to be true, is *conclusive evidence* of malice. It is, however, unnecessary to weigh the evidence; it is sufficient that it was satisfactory to the jury, and proper for their consideration; and it is clear, that in the class of cases in which this ranges itself, the question of malice is exclusively for the jury. It was, therefore, properly left to the jury to say whether, considering all the circumstances of the case, the conduct of the defendant was not malicious."

The above authorities from Illinois, New York and Massachusetts, are all the cases I propose to refer to in relation to

the plea of justification, made a part of the record in the suit at bar, and I shall, your Honor, go to the jury upon the questions under the evidence.

That it is for the jury to say—

First—Whether that plea has been made in *good faith*; and,

Second—Whether it has been sustained by the proof.

I ask now the attention of the Court for a moment longer, in order that I may submit to your Honor one authority only upon the question of the *responsibility* of the defendants, although the defendants may have shown that the publication in question was made against their orders and directions to their workmen in the printing department of the *Tribune* Company; or in other words, that the parties (defendants) are responsible for the acts of their agents in the publication of this libel, even though the defendants had directed their foreman not to insert the article in the paper.

Every man in this country is free to elect his own vocation, and what business he is to follow; and if any person, or body corporate, shall become the proprietor of a printing press—and the editor of a newspaper, or its publisher—it is necessary that such party see to it, that such paper shall be so conducted as not to trifle with the rights, privileges and fair characters of others. Should it disregard such responsibilities, and should it heedlessly and carelessly publish to the world a wanton attack upon the private life of a member of society, then its proprietor is held answerable in law, not only for his own acts, but also for those of his employees.

It will not do for Mr. Medill, the proprietor of the *Tribune*, living on the corner of Morgan and Washington streets, to go to his office and give general or special instructions to his foreman that such and such articles shall not be inserted in his paper, then retire to his snug house to sleep and dream, and the next morning awake, and find his next door neighbor has been most outrageously libeled in his morning paper. The law will not allow him to say, True, this libel was issued from my press; true, my foreman did this great wickedness with my machinery, with my types. He took my money to do it with,

and that was the very object I put him there for, namely, to write *sensation articles*—articles which may damn the fair fame of any woman that they name, but all that, brings money to my coffers, helps sell my papers, creates a demand for a larger issue, no matter who suffers in mind, body or estate. Yet I, the proprietor, am not responsible, because, forsooth, in order to avoid a suit for libel, I quietly and privately directed my pressman not to insert the article. No, no, your Honor, such pretext will not do. The law abhors such policy or excuse as this. The *principal cannot thus shield himself* behind his agent.

In the case which I now read from in 1st Carter, Indiana Reports, on page 354, we find an analagous case, and the law is laid down as follows, which to us seems correct: "But it was ruled by Lord Tenterdon that this was no excuse, and that a person who derives profit from, and who furnishes the means for carrying on the concern, and entrusts the conduct of the publication to one whom he selects, and in whom he confides, ought to be answerable, even criminally, although it cannot be shown that he was individually concerned in the particular publication. See also on the subject, Andres *vs.* Wills, 6 Johns. R. 260, and Rex *vs.* Walter, 3 Esp. R. 21." According to the principles established by these cases, and we have no doubt of their correctness, the circumstances detailed in the present case afford no excuse for the appellants. If Mr. Dunn himself had been at home and suffered one of his journeymen to insert the libelous article in his paper, under his own eyes, he certainly could not have excused himself by proving that he had given the journeyman private directions not to do so; and if he chose to leave the management of his business in the hands of a foreman, he must be held equally responsible for the neglect or incompetency of the latter, in not obeying his instructions, and in suffering such a thing to be done. If publishers could avoid responsibility by telling their foreman not to admit anything personal, and then absenting themselves while a libel was inserted, they could very easily make the newspapers vehicles for the insertion of the most atrocious slanders with perfect impunity. But, indeed, it would be presumed in all cases that a

principal, in giving charge of his business to an agent, directed such agent to transact it lawfully, and proof that he instructed such agent to manage it unlawfully, seems to be superfluous and irrelevant for any purpose."

And we have only to add on this point, that if publishers could thus evade responsibility, they could circulate the most outrageous slanders and calumny with impunity, they could gratify any personal spite and thus destroy the character of any one, of every one. We hope this is not what is sought here; we hope this is not desired by *defendants* in this case.

And now, gentlemen of the jury, we are limited in time. But before I go into the evidence before you, I wish cordially on my own part, to express to you my thanks for the close attention you have given to this long and unpleasant trial thus far. I know how tedious it has been; how severe a duty it is, thus to act as jurors. I know how much citizens seek to avoid such requirements of citizenship. Yet, gentlemen, such duties are stern necessities, incident to the well-being of all good society.

I know of no position in which jurors can be placed more responsible than the one you now fill, except, perhaps, that where the life of a fellow-being is to be disposed of by the verdict of a jury. The duties which now devolve upon you, are more sacred perhaps than life itself, for you are now disposing of what to the plaintiff in this case is dearer and more cherished than life itself. I mean the reputation of this plaintiff for virtue and chastity.

Gentlemen, in addressing you, I only desire to place the evidence in this case before the jury, in the manner I think it ought to be regarded by them; when I shall have done that, if I am capable of so doing, I shall then have discharged my whole duty to my client.

The party defendant is before you on trial for libel. This libel you have heard read during the progress of this trial, and you are all familiar with the character of the same. The defendant has not only pleaded the general issue, but it has pleaded a full plea of justification, in which they have more

directly and with additional particularity again declared to the world the infamy of the plaintiff in this suit, Mrs. Frances M. Wilkinson. I again read the plea to you, desiring thereby to keep constantly in your minds, that the defendants have elected voluntarily, not only to publish to the world this false and wicked attack upon the character of the plaintiff in and by their original publication, but that they have voluntarily assumed to prove their unhallowed charge in this Court, on this trial, and before this jury. In other words, gentlemen, they have *dared to declare* that the plaintiff *did commit adultery with A. C. Ellithorpe*, and have dared to attempt to prove this monstrous charge by the kind of witnesses they have brought before you. The *gravamen* of the libel is, that the plaintiff *committed adultery*. It is for the jury to decide whether they have proven their charge—and they will particularly take into consideration, how minutely the defendants have in and by their plea of justification, set forth this charge. How much more libelous the plea is, than the original publication. In one word, then, gentlemen of the jury, I say, if the original article in the *Chicago Tribune* of October 3d, 1867, was libelous, by how much more, has it become libelous by this plea of justification and this attempt to sustain it by the evidence, which has been before this jury on the part of the defendant? and how much more injury has the plaintiff suffered at the hands of the defendants by the manner in which this defense has been conducted? I am now to ask the jury, *why it is—on what principle of common decency, of common humanity, of common truth, or of justice—why it is*, I ask, that the name of Mrs. Frances M. Wilkinson has been connected with this affray? That is, why has the plaintiff been dragged into this family quarrel between Ellithorpe and his wife? Where is there any evidence that is reliable and that has not been fully contradicted or explained, that connects Mrs. Wilkinson with Mr. Ellithorpe, in *any manner*, *at any time*, *on any occasion*, *or at any place improperly?* What right had the *Tribune* Company to publish to the world that Mrs. Wilkinson was connected with that family affray between Ellithorpe and his wife?

They declare that Mrs. Wilkinson and Mr. Ellithorpe were discharged, but that Mrs. Ellithorpe was fined $10 for disorderly conduct.

Now I ask again, why, under the evidence before this Court and jury, on the part of the defendants, Mrs. Wilkinson should be dragged before the public, her private life be inquired into, her fair name aspersed, and blackened, by the notoriety of this long trial, any more, I say, than any stranger in the city; any more than the wife of any citizen of Chicago; any more than any woman who walks the streets of our city? *What evidence is there against* HER? WHO IS HER ACCUSER? Who is it that dares thus assail the fair fame of the plaintiff in this suit?—this lady, who has been a resident of this city during the past fifteen or twenty years; she, the wife of one of our most talented lawyers; a widow, who has become such, *because, like thousands of other American wives*, she gave her husband to her country; she, who has suffered more than death, that her, that our beloved country might live; she, a mother unaided, unbefriended, overwhelmed with poverty. *Virtuous* beyond the cavil of any man, or so far as there is one word of reliable evidence against her; and I stand before this Court, before this jury, before the counsel for the defendants, and demand of them—aye, I dare them, I defy them to arise here before you, gentlemen, and breathe one word against the fair fame of this plaintiff—so far as any proof has been produced against her virtue in this suit. I here say, that such proof has not been shown; nay, it does not exist.

Slander; wicked, false, malicious slander, has been poured out in torrents upon her unprotected, unguarded head; combined slander and calumny, with an apparent maliciousness, it would seem to me as emanating from the foul fiend himself, has been hurled against her, in her womanly weakness and unprotected condition.

Look, now, to the proof:

Ellithorpe, [A. C.,] first in behalf of the plaintiff, takes the witness stand, and he tells you that Mrs. Wilkinson was a tenant of his at No. 277 Randolph street. Now, who is this

A. C. Ellithorpe? He is a stranger to me, and to you, but it seems he has been a citizen of Chicago during the past thirty years and upwards, and so far as I know his character is irreproachable. But I do not care whether his character is good or bad. It is not for them to wreak their vengeance on the plaintiff in this suit, because of a fight between Ellithorpe and his crazy, jealous wife. Who is safe, in the name of high heaven? A mad, a crazy, a jealous wife rushes into a room, where, as she says herself, she saw nothing improper between Ellithorpe and the plaintiff. "They sat near each other, and I thought he could touch her with his arm." A juror asked her, "Did you see him touch her?" Infuriated with jealousy, as she was, mad and malicious, yet this woman dared not to answer that juror that she saw Ellithorpe touch Mrs. Wilkinson or anything of the kind; she dared not say it, because it was false.

Now note what A. C. Ellithorpe tells you. He says, "Mrs. W. was a tenant of his; that he had seen her on one, two, or perhaps three occasions before this night of the row; that on that evening he was, about 7 o'clock, coming down Randolph street, and met Mrs. Wilkinson on the street; that she asked him to call at her house and settle some difficulty between her and the other tenants, about some rear yard affair." And he says: "I then went along with her; I went into the front room, and I had not sat there but a few moments when in rushed Mrs. Ellithorpe through the front window." On the report of what occurred at the Police Court, in reference to the affray that took place in that room, between Ellithorpe and his wife, on that occasion, this slander or libel originates.

Is there any truth in that article purporting to give a history of what did transpire at the Police Court?

I have sat here, and so have you, jurors, and have heard witness after witness testify that there was nothing transpired at the Armory, of the kind, that was published in the Chicago *Tribune*, to wit: declaring that it was proven that Mrs. Wilkinson was caught in the arms of A. C. Ellithorpe, or that they

ever were known to have acted in an improper manner in their lives. *Here is the slander ; here is the libel.* Here are their reeking stink-pots hurled at us : and this, by this all-powerful and all-wealthy Company. They tell you, themselves, the next day, that it was not true. Why, then, did they do it ? Why, but to get up a *sensation story;* that their paper may be sold ; a *sensation article*, that steals into the private homes of our families, and drags them before the public to gratify the morbid demand for slanderous attacks upon female virtue. All this is done that their paper may be sold, that they may put money in their purse—no matter whose character is assailed ; no matter who suffers in this unhallowed onslaught, upon the most cherished sentiments of the human heart ; no matter what wounds and sufferings may be the sure consequence of such raids upon the sacred retreats of the home fireside. No, gentlemen, it is right here. If this plaintiff were a man, I should not care so much ; if she were able to combat with this all-powerful corporation, I would not care so much. But such is not the case. We find the defendants here, for the purpose of getting up a sensation paper, draining the very heart's blood of this poor woman—this woman who has not a friend on God's earth to help and support her, in this, her hour of trial ; left in poverty ; left in care, and in sorrow ; with no kind support to lean upon, or willing hand to lend her aid, against this powerful defendant, that is entering the sacred precincts of private life, and is publishing to the world, in falsehood and calumny, her infamy, and refusing her redress. *A woman, whose character is her all.* What is man, robbed of his character, or when his virtue is gone ? By how much more does the woman suffer, may I ask, in the name of common justice ? How shall we answer it to her ? Widowed and alone ! Aye, gentlemen, look to it. The friends of her childhood, and of her young maiden life, are to-day watching with anxiety the result of your verdict. Here the defendants have sown broadcast, throughout this broad land, through the columns of their widely circulated paper, this infamous lie upon her character. They are publishing to the world this scandal to help sell their

paper. It is all well for them, but it is literally death to her. She now appeals to you for redress.

Who, who, shall answer back to the aged father, in his New England home, that now asks you if she is guilty? Where is the story of her wrongs recited to send back to the home of her infancy, and to tell them that the education of her childhood was not in vain? From whence does any redress come? *Alas, alas! We have no power on our side to give it.*

Ellithorpe, as I have already said, tells you that all these charges are false; all the witnesses tell you this publication was, and is, false; the *Tribune* itself tells you the same, the next day. But mind, they make no recantation; they make no apology to this injured woman. And after they have done her this great wrong, recollect, they cannot place her back where they found her. They have dragged her down from the high pedestal on which she then stood, and relying on their wealth, power and influence, they now defy her.

But they do not stop there. If they had, I would be silent; I would not longer delay this jury. But they do not stop there. Instead of meeting this case as men and as Christians (for Christ himself said to the woman, Where is thy accuser?) the *Chicago Tribune* has hunted up the accusers. They have brought them before this jury, and you see who and what they are. Instead of apologizing to this much-injured woman, they have spread upon the records of this Court, where it will remain forever, a slander viler than the original. They, in their pleadings, declare the original libel true. I here read again the plea to you, so that there shall be no mistake.

[Here the plea of justification was read.]

* * * * * * * * *

Now, gentlemen, the whole of that plea more than repeats the original slander or libel. Again I ask you to turn to the proof. Where and what is it? So far as A. C. Ellithorpe's statement is concerned, he gives you the plain and simple facts of the case. He swears that he had never been in that house but once or twice, and then on legitimate business, before this raid occurred, and that since then he had not been there at all.

What do the defense do? They put on the stand Mrs. Ellithorpe, a woman jealous of her husband, and *so jealous* that she could not tell the truth if she would. There can be no question but that this woman got up a tissue of anything that would support her side of the case, and would injure the plaintiff in this suit. Weigh her evidence by any of the established and well-defined standards of truth. *She had been* DISGRACED, BY HER OWN ACTS, *before the public. She* HAD BEEN PUBLICLY FINED *in the* POLICE COURT FOR DISORDERLY CONDUCT. NOW, test her evidence by what she states occurred at the Police Station on the night in question. Was there one gentleman on this jury that for one moment believed that Mrs. Wilkinson visited the room where Mr. Ellithorpe was then confined, when they were all there? You all understand it could not be. And yet this woman sat in that witness-box and gave you to understand—nay, tried to induce you to believe—that in that prison-house Mrs. Wilkinson and Mr. Ellithorpe had an interview, and had, or might have had, adulterous intercourse, and all this right before the eyes of the officers of the law. I don't overstate it when I say to you that all her evidence was tainted with the same kind of falsehood. She rushed into the house. She calls it a house of ill-fame. A juror asked her how she knew it was a house of *ill-fame? How do you know that?* Oh! the neighbors so told me. *Gentlemen attorneys for the defense,* WHERE ARE THESE NEIGHBORS? *Where? Is there one single, solitary neighbor who dares breathe a breath of scandal and calumny against the reputation of the plaintiff in this suit? If there were, gentlemen of the jury, do you not know that the Chicago Tribune would have had them before you, on this trial, as witnesses to sustain their plea of justification?*

Do you not well understand that *such neighbors would have been the only or most reliable witnesses on behalf of the defense in this emergency? and that the Tribune Company would have paid away their last dollar to have brought such neighbors before this jury?* Again and again I ask the learned counsel for the defendants, I ask the defendants themselves, *where* are these neighbors?

It is for them to answer this all-important question to this jury; and it will not be well with them unless it is truthfully and satisfactorily answered.

Oh, no—no neighbor comes here to utter one word against Mrs. Frances M. Wilkinson. But there are neighbors—good, truth-loving and Christian neighbors—who have some sense of justice and humanity left. They appear before you to the number of twelve; and we could have added to that number all who have known the plaintiff in this city. We bring twelve of the most unexceptionable men and women in this whole city, each and all having such knowledge of the plaintiff as would of necessity qualify them to speak understandingly. All of them tell you, before the world, what their means of knowledge is. Two of them had occupied rooms directly *under* the plaintiff; two of them occupied rooms directly over the plaintiff; others had boarded in the family; and the rest having been, during all this time, the next-door neighbors to plaintiff. What do they say? Do they tell you that the plaintiff kept a house of ill-fame? Not one. But they all declare under oath, before high heaven, *that her character is, was, and has ever been,* BEYOND REPROACH.

Look at this array of witnesses—men and women. Who are they, that dare to brave the thunders of the *Chicago Tribune?* Here is Bond, high in legislative position; Dow, one of our most talented lawyers—a man respected by all; Haines, a member of the Chicago Bar, and one who has filled some of the most important offices of Cook county. Here, again, are Mr. Dalrymple, Capron, Barstow, Bronson, and Frank Sleighton. These, with Mrs. Smith, Mrs. Dalrymple, Mrs. Wesley—all having the means of knowing whereof they testified—and they, each and all, unqualifiedly tell you that the plaintiff's character is beyond question. Yet this Mrs. Ellithorpe, with a fiendish smile upon her broad face, a *smile* that we never saw described—a smile that has to be seen to be appreciated, and which may be painted on canvas, but can never be written with the pen—this Mrs. Ellithorpe, the main witness of the defendants, *she* tells you what occurred in that

house. This Mrs. Ellithorpe, solitary and alone of all the world, declares the house was a house of *ill-fame.* I do not wish to repeat before you the *other word* she used—a word that a virtuous woman would hardly suffer to pass her lips. It is enough for me to give her thoughts in more decent language. But *how does she know?* She was told so by the neighbors. Again I say, bring them forward. No, they have not appeared with one single neighbor. Nay, nor they cannot bring one here who will or can utter one syllable against the fair fame of the plaintiff.

Sad, sad indeed, is the picture before you. A woman thus assailed by this widely circulated paper—a paper that boasts of, and really has, a circulation unsurpassed by any other in the West. A woman whose only wealth on earth is now her pure character. She a mother—a widow as we have said—unsupported, except by her conscious innocence and her firm reliance upon her God. This plaintiff has thus been wronged, and without cause, without provocation. She has become the innocent victim of the envenomed jealousy of Mrs. Ellithorpe, and the great *Chicago Tribune* has thus opened its batteries upon her, charged with the stink-pots with which Mrs. Ellithorpe alone has supplied them.

Gentlemen of the jury—When this devoted woman's husband died, her sun set at noon-day. Her after life has been spent in grief and mourning. No sunshine has shed bright promise upon her home-life. All has been, indeed, dark, gloomy and unhappy.

And no picture could be more heart-rending than this unhallowed effort that has thus been made before you to blacken and blast the character of the plaintiff. In God's name, and I speak with reverence, is there no pity left in the human heart? Has manhood departed and passed away from among us?

If they had subpœnaed before you one neighbor who gave such information to Mrs. Ellithorpe; one neighbor—man, woman or child—who could truthfully say aught against Mrs. Wilkinson, I could not thus address you. If such proof existed, why

did they not present them instead of attempting to prove these charges by these hired Chicago policemen?

[Here the speaker was loudly cheered by the crowd of spectators, and his Honor, Judge Williams, said, "I cannot allow any manifestations of feeling here, and if such demonstrations be made again, I shall order the Court-room cleared at once. I have bailiffs enough to do it, and it shall be done. I wish this to be distinctly understood.]

Mr. Evans then resumed, and said: I most sincerely beg the pardon, both of the Court and jury, if, in conducting this case, my feelings have been so outraged as to call from me severe comments. But, to go on with the case:

We have shown you the almost unlimited power of this defendant. We have shown you how, from day to day, they have borne down upon this woman, and how they have proclaimed her infamy throughout this broad land through the columns of their paper. But, gentlemen of the jury, we have had no means of telling our side of the story as they have had to tell theirs. We have had no head-notes, in flaming capitals, to send abroad to deceive the public, but I tell you, jurors, that that woman has been sent back through the columns of that paper to her own New England home, and these vile reports have there been read and re-read by her gray-haired father and her broken-hearted mother—they that have reared her in piety and love; and I could only insufficiently condemn a jury of Western men who would not give her back her rich inheritance, and who would not redress her great wrongs by their verdict. If they will not do it, they do not belong to our own Western home, nor are they citizens of this, our adopted State of Illinois, renowned alike for its chivalry and its protections to the oppressed. And if, gentlemen, I have felt this great and unfair advantage that the defendant in this suit has had in thus reporting this trial to the world in this *ex-parte* character, if I, as her counsel, have thus smarted under this condition of things, what has been the suffering of the plaintiff, herself, whose all is at stake?

But, gentlemen, what do we ask of the *Tribune?* Nothing.

Nothing, under any circumstances, but just what we would give and what we would ask of all. Let them deal justly with one and all. Not thus drag an innocent woman before the public, and then hire a secret policeman, like a sleuth-hound, to hunt her down—to follow her in the manner this woman has been followed.

Was it true that this policeman followed this plaintiff up stairs and down stairs in the manner he swears he did? Was it true that he saw men going into her rooms, or coming from her rooms at unusual and improper hours of the night? Was it true that he saw her standing alone with a gentleman on the corner of Randolph and Morgan streets of a cold, November night, from one-quarter to eleven until one-half past twelve o'clock—one hour and three-quarters—all exposed to the passers-by and to the rigors of the season—both standing under the gas-light, and no place to sit down? Was all this true? I ask you to remember the cross-examination of this policeman, and then answer back that it was untrue! When we came to test their memories and recollections, they had not an isolated fact in their minds to give you one time or occasion when these things happened. Forgetting the fact of the plaintiff's position; forgetting the fact that during all that time she kept boarders at her then residence; forgetting the fact that there were rooms over her own entered by the same stairway where they also kept boarders, and, further, forgetting that there were houses, or tenements, in the same block east and west of the plaintiff's, entered by the same kind of stairway, and ignoring the fact that her own boarders, as has been shown to you, were out in the evening—one of them always until two o'clock, and one other until eleven o'clock, and often later,—forgetting all these things, these policemen come here and tell you that they saw people going in and coming out of the plaintiff's *stairway*—mind you, they don't say rooms—at improper hours of the night. But tell me who they were, I ask? "I don't know," is the reply. "How were they dressed?" "Invariably in black." "Where did they go to?" Always "down town." "Give me any cer-

tain time, that you remember of seeing one gentleman going to, or coming from, the rooms of plaintiff at a late hour of the night?" Neither of them could tell the month, and but one of them could give the year; and not one single person whom these wise policemen pretended to have seen, was known to them, but they were all in black. Now, I ask you, gentlemen, what kind of evidence is this for us to meet in a court of law? How are we called upon to refute it, when the Court will tell you that the proof to sustain a charge of this kind, must be just as critical as that to sustain any crime charged against a party?

The language of the law, I have read in your hearing, it is, "When an inquiry into the reputation of the plaintiff is permissible, it is his or her *general* reputation as a whole—and *not* his reputation as to any particular act, or any particular transaction that can be inquired into; and therefore evidence cannot be given or taken of his or her guilt of any particular act of misconduct; where the words alleged, charge the plaintiff with having committed adultery with one person, it cannot be admitted in evidence that he committed *another offence*, neither with the same, nor with any other person."

Thus, in Townsend on Slander, page 491, it reads, "Where the plaintiff was charged with adultery with 'I. S.' it was held that proof of adultery with others than 'I. S.' could not be received," all going to show that there was no relevancy in that evidence. It was nothing against her. Why was it introduced, but to give some vague general public impression against the plaintiff? And, gentlemen of the jury, a man tells just as gross a lie, and sometimes much more wicked by suppressing the truth, than in telling a direct falsehood. Thus, how easy it was, how readily it could have been done, if they had been fair, truthful and just, for those policemen to have accounted for every person, whom they pretended to have seen enter that house, or come away therefrom. But, thank heaven, the character of all this evidence you are judges of. Was it fair? Was it impartial? Was it true? In other words, was it not bought with a price? Judge for yourselves; when we see a witness

taking the stand, as Sergeant Garrity did, and on the direct examination swearing, that the first time he saw this woman (the plaintiff) was when she came to the police station, and asked him to go to her house and arrest her son Willie for stealing her jewelry. *Ah, the malignity of this man!* What right had he to make that answer? He had not been asked anything about plaintiff's wish to have her son arrested for stealing. Why should he volunteer such statement, unless he had received his thirty pieces of silver in advance, and was to earn them by injuring the character of the plaintiff all in his power. But was it true, that that was the first time he ever saw the plaintiff? Was it true, that then and there she (the plaintiff) wished him to arrest her son for stealing her jewelry? No, *not one* word of it was true. On cross-examination he did not dare repeat the statement; he even denied that he had so stated in the first instance. But *was it true that she ever accused her son of stealing her jewelry?* No, no; not one word of it was true; and we have direct and positive testimony to the contrary, aside from her own. I asked Barstow if he knew when that jewelry was stolen? if he knew about the time of the year? I asked him to state just what he knew. He answered that he knew all about it; and knew when it was stolen. I asked him if he knew Willie Wilkinson? He said he did. I asked him where Willie was when the jewelry was stolen? He answered, "he was absent from home, and was in the State of Minnesota, and was gone three or four months during the time the jewelry was stolen." I now ask you, gentlemen of the jury, how Mrs. Wilkinson could have accused her son Willie of that act of stealing her jewelry, when he was away long before and long after it was stolen? Ah, gentlemen, the man who can and will volunteer such a statement as that never possessed the rich inheritance of a mother's love, If he had, he would have known that that mother could never have forgotten her love for her child. That she would not if she could, and could not if she would, have accused her own son of stealing.

But was it true that anything of the kind occurred? It

was not true. It was a lie; and we all knew it, and Sergeant Garrity dare not stand forth before high heaven and swear to it. Was he advancing the interests of the defendants in thus telling such a monstrous story? No, he was injuring them and their cause. A lie never helps; a lie never can be reconciled with truth. Roll it in velvet, sugar-coat it as you will, it is still a lie, a foul, loathsome, festering corruption of human depravity. That is all it is. There is no good in it, and no good can come of it.

But, gentlemen, what does the mother say of that volunteer love-offering of this Sergeant Garrity? this volunteer bid for the future influence of the *Tribune*, or this voluntary draft on Sergeant Garrity's imagination in gratitude for past favors perhaps from the *Tribune?* What does she say? She tells you that the first time she ever saw Sergeant Garrity she sent her son Willie to the station house for him, or some one else, and he brought him to our house; that the boy had got on the track of her stolen jewelry; and she wished Garrity to help the boy find it. "But did you tell him that the boy had stolen it, and you wished him to arrest your son?" No, no; such a thought never entered her mind, and was abhorrent to her, and yet this devoted mother, has been here, six, seven, eight, ten and twelve days in this court-room, on this torture-rack, and the truth has not been said of her; but in this widely circulated sheet—this wicked, cruel, monstrous lie has been retained—has been carried back on the wings of the wind, to taint and corrupt the pure atmosphere of her own New England home. It is *there* that the iron has entered her soul. It is there the fatal stab has been made; there, where the memories of her past life are the most cherished; and where the wound which has been given will carry down to the grave those that are the nearest and dearest to her—those who are the most interested in this woman's well-being, who now stands before you, and who up to this moment has not had an opportunity to tell her wrongs. Here, day after day, have these accursed charges been hurled at her, and the vials of their wrath have been poured out upon her head; they publicly here, declaring to the world, their

story about bottles of foul medicine being found in her rooms, the day after she left; and such foul statements re-issued in large capital headings in the columns of the *Chicago Tribune*, and thus scattered broad-cast over the whole world. And of all such foul matter, not one word of proof. They have not, they could not prove one word of it.

But all this comes from Mrs. Ellithorpe, and by her they could have proved anything. When I asked Mrs. Ellithorpe if she knew when the plaintiff first went into No. 277 Randolph street? No, she answered, she could not tell. Do you know when plaintiff left the Lake street house? No, she could not say; but Ellithorpe himself says that she was out of town, and was absent some days in Wisconsin, at that time. Now, let me ask, how could she say such bottles were found in the plaintiff's house on Lake street the next day after plaintiff left? And here let me again ask why you should believe anything such witnesses may tell? Measure them all by the old law maxim: "*Falsus in uno, falsus in omnis*"—"False in one thing, false in all things." How will they stand such application of well-established rules? Again, when we come to explain, as we do by Barstow, about the boarders going up and down stairs in the evening and late at night; when we show all this by Barstow, who then boarded in the family of plaintiff; who tells you that he was out at his lodge as late as eleven o'clock twice per week, and often much later; that when he went home, he always found a light left burning in the front parlor for him; that he always blowed out the light, spoke to Mrs. W. who was in the rear room, and then retired to his own rooms—all this explains that light in the front parlor which troubled these suspicious policemen so much. When we further show by Mr. Barstow, whose story was too truthful for contradiction, and whose reputation as a man is too well established in this city to be questioned, that during all that time the eldest son of the plaintiff was employed at the Opera House, and always returned home at two o'clock in the night, and always slept on the sofa in this very front parlor; who always went up these same stairways at two o'clock each night—when we show all these things, what then

becomes of this silly, foolish story of these policemen, about seeing men that they did not know go up those stairways late at night? What becomes of that other very suspicious circumstance about lights being seen there late at night? Now, gentlemen, why, in the name of common decency, why not give the plaintiff the benefit of all this convincing evidence of her innocence, instead of corrupting public taste by getting up such sensation headings in large capitals, and publishing such trash to the world, in the manner and form we have seen during this trial? And here I wish to say to you, gentlemen of the jury, that it is high time these sensation items thus scattered over the land should be stopped. Unless there can be found some remedy for this great evil, it were better that types had never been known. The greatest curse that can corrupt public morals throughout our country to-day is the publication of such sensation items for effect—for money. The press, in that respect, has degenerated into licentiousness. Certain papers in New York City have acquired uncounted wealth through the publication of just such immoral and licentious tales. The public taste has become corrupted. Our young men are led astray—their moral character has been debased by these impure and unholy publications.

It is for you to say whether the *Chicago Tribune* shall follow after these false gods. But if slander and libel is to be, and must be, published to the world, under the specious pretext of freedom of the press, then let it be made of and concerning some able-bodied man, so that if peradventure he cannot get his redress by the laws of the land, he can then defend and redress himself as nature and justice have taught him. All I know of the *Tribune* is, that it is a rich and influential journal; that it boasts of wealth, power and influence, and does not claim these improperly. It counts its circulation by the thousands; it limits its subscription lists only by the boundaries of our broad continent. From one ocean to the other it is found, in every city, town and hamlet, and in all these far-distant localities has this original libel been carried in its columns. But I again repeat, that that original libel, however untrue and

wicked it may have been, dwindles into utter insignificance when we compare it with what has transpired during this trial—when we read this plea of justification and review the evidence adduced to support it. And, gentlemen, a few moments more, and I shall have finished all I have to say of the evidence. I once more call your attention to the testimony of Barstow. How fully and truthfully he explains the whole course and manner of living at that house during the fall of 1867. Everything was orderly and correct. He was in a position to know.

Is there a man on this jury who doubts for an instant the whole evidence of Barstow? Not one. Truth is too self-evident to be doubted. It is too closely allied with virtue to be for a moment mistaken. We are never deceived by truth; we are only beguiled by the lie. We all know, as well as we know our existence, that all Barstow said was reliable. He tells you that if anything improper had transpired in that family he would have known it. All was correct—all was as it should be. He tells you, Mr. Sealey tells you and Mrs. Dalrymple tells you that Mrs. Wilkinson rarely left her house in the evening.

But for one moment reflect upon the evidence of the merchant policeman, Capron, who, during all this time that the other policeman saw so many gentlemen in black go into that house in the fall of 1867, he tells you, he was hired to watch the store under this very house; that he walked past that house as often as once in one-fourth and one-half hour every night. Did you ever see strangers enter that house at improper hours of the night? "Never—never one; I only saw Mr. Barstow and the elder son of plaintiff go there late at night." Review in your minds the honest old face of this man, and tell me if any false coloring could come from his lips? Nothing wrong there. He only saw Barstow and the elder son go there late at night, on their return from their nightly toil. If strange men had gone there, would this man have seen them? He says he could not have helped seeing them if they were there; but he did not see them because they were not there. Gentlemen, consider all this evidence, and all the

circumstances of the case, and say with me, that there was nothing improper, nothing wrong about those premises during the time inquired of by the defense.

And now, gentlemen of the jury, pardon me for calling your attention to one more witness, and I have done: This witness is the plaintiff herself. You will here bear in mind that we were not necessitated to call her at all; but we had defied the defendants to attack her at any point, and we wished to give them a full orportunity to cross-examine the plaintiff, and do all in their power to establish the truth of their plea of justification. We wished further that the jury should have full power to examine the plaintiff on any question they should desire; we wished to anticipate every objection, and do away with every doubt. In one word, gentlemen, we wished you to see and know the plaintiff in person, and thus to give you an opportunity to judge for yourselves who had been wronged—whether it was Mrs. Ellithorpe, as counsel for defendant say, or Mrs. Wilkinson, as we declare. Well, gentlemen, she explains all this matter; she tells you that she never left her house evenings at all; other witnesses tell you the same. She tells you, she never saw the Policeman Miller; she tells you that she never stood on the street with a strange gentleman, nor with any gentleman one and three-fourths hours, nor any time; but she further tells you all about her doings at the Police Station. She tells the jury that she was not in the room where Ellithorpe was that night; that she did not leave the main hall at all; that she did not speak to Mr. Ellithorpe there, only in presence of the officer in charge. Now you are to say which person told the truth—whether it was Mrs. Ellithorpe or Mrs. Wilkinson. I think the circumstances are in favor of Mrs. Wilkinson. I know you will agree with me. And remember one other point of evidence, as made by the defense, and that is, the evidence of Sergeant Garrity, in relation to what was said by the eldest son of the plaintiff in her presence, and that she did not deny it. It would seem that the main object that this Sergeant G. was put on the stand was to swear to the above; we objected, and the objection was sus-

tained by the Court, because the evidence had nothing to do with the issue, and the facts were too remote. He was the second time put upon the stand, for the same purpose, and we withdrew our objections. I defied them and told them to come on with their evidence and do their worst, or their best. Now he tells you that the boy came down to the Station, wanting him to go up and get his clothes, which his mother had locked up and would not let him have them; that he went along. What was his reason for going there; what cause had he for going there, any more than you or I, without a warrant, is more than I can tell. When he got up there, this boy used harsh language to his mother. I then, out of mercy, and to give him a chance to explain, asked him if anything was said about clothes? if anything was said by his mother about wanting him not to have these clothes? He said, "Never; not one word." Of course, they were locked up, "because she was with a South Water street merchant all night," as the boy said; and she was silent. Supposing the boy had said it! There is many a boy that has brought his mother's life to grief; many a boy that has carried his father, his relatives and friends to the grave, without any misconduct on their part, and the mother may not have any more control over that boy than I or you have; yet all this is to be hunted up against her and her character for truth and virtue; but she explains all this, and says that the boy wanted to have these clothes, to go away and spend some money he had got; and she wanted the money; groaning in poverty, she wanted the boy to help her support the family, that she might not become a beggar on the streets; an object of charity on the public; and she forbade him wearing the clothes, and locked them up in the front parlor. I then asked her if anything was said of the character Sergeant Garrity swore to? "NOT ONE WORD; *not a word!*" That there was anger between them, *I am not* here to deny; that there was anything said reflecting upon the character of that mother, *I am* here to deny; I am here to *hurl it back* upon you, gentlemen defendants, and to say to you that you are here engaged in the meanest defense I ever knew brought into

a court of law in my life; I make no reflections upon the counsel; that is not my motive; but I here say that this defense has been manufactured by the *Tribune*, and they have given it here to their counsel, and their counsel have brought it here and given it to you, as it was their duty to do. And I say here, too, that if they had been half fair; if they had not used here language that would affect her out of doors, I would be silent; but when they say this woman was guilty of criminal intercourse with Ellithorpe, because Ellithorpe and his wife had quarrelled, I say *out upon that kind of manhood and that kind of charge;* counsel cannot rise here, and say that Mrs. Ellithorpe is a wronged woman; the wrong is here, with us; it is with the plaintiff. It is not Mrs. Ellithorpe that has been wronged; it is this plaintiff, who asks you to tell the world that these slanderous articles in the *Tribune* are untrue; and I tell you that the shield of truth covers us, and that as sure as virtue is rewarded, as sure as judgments are meted out to those that are guilty, so sure is it a fact that that woman is a wronged, an injured, a slandered woman, and that by this great corporation, with all its power bringing in the kind of evidence they have, and with its ability and money to procure the talent and ability they have to defend them.

I ask nothing more than that the thing should be justly weighed by you and justly considered. I care nothing about the verdict personally, one way or the other, but I do care that there shall be a precedent established that shall teach our venal press that sensation articles have had their day; that lies shall not be circulated in the community without punishment, and that a woman, though unsupported, will find friends in this our city. And this is what I ask in the premises.

I then wish, gentlemen of the jury, that you will consider in regard to this matter. I wish you now to consider for a moment when that plea of justification was filed. I ask you if that was not filed, unquestionably, on the reports that were given to them by Mrs. Ellithorpe? I ask you then to say with me, exercising your own fair and right judgment in the premises, whether men of the character of

the editors of the *Tribune*—men who have built up a paper of that ability, and character, and influence—men whose influence is felt in every part of the State, and who are, beyond question, powerful—I ask you if, knowing, as they did themselves say in their paper, that the former statement was untrue, if such men are justified in their defense? I ask you to say whether this woman has not a right to feel herself wronged? The counsel told you, in opening, that "Hell has no fury like a woman scorned!" We cannot describe them—we do not know them; we can only see them and *fear them.* Cool and cunning in device, how magnificently she described that crawling around in the hall at the station that she heard in the dark! But, although she was watching her, "I stumbled in the dark," she says, "and she heard me, and did not have that interview with Mr. Ellithorpe which she was after." Was it not intended to impress you with the fact that they did then and there meet in the station, and then and there were in the room together in adulterous intercourse. If that woman was fair and telling the truth, do you imagine that *there*, under the omnipotent guardianship of Sergeant Garrity, they should meet together? Sergeant Garrity had charge at that time, and you will find that he would not allow anything of that kind. It was not in accordance with his morals. You saw how the counsel cross-examined Mrs. Wilkinson when she took the stand to-day and stated to the jury, under oath, that she was not there in that room that night—that she and Ellithorpe did not meet together at all in the Station House.

Look at the motive. "But," said Mr. Smith, "have you not been down to Mr. Ellithorpe's office, where he admits he lives?" Gentlemen, if she had been a woman of corrupt heart, would she have answered "*Yes, sir*, I have been there." "How many times?" "Twice." "What for?" "On business." I will give you good bail that if you will pay this woman's rent to Mr. Ellithorpe, she never will cross his threshold again and he will never cross her's. If she goes there, it is because the harsh hand of poverty compels her to do it. If she has had business with him, it is because she has had to work and to

struggle for her children. Shall the hand of the *Tribune* close upon her? I ask you again, had they any right to believe what that woman Ellithorpe told them? Had they any right to believe her story and file that plea as they did?

Now, one point more. They say that they marked "out" on this article on the margin. It occurred to me all along in that evidence that if the *Tribune* did not want to publish that article they had only to tear it up. What was it sent into the press-room for? Why did they not take it and tear it up and throw it into the waste-paper basket? That word "out" may or may not have been there. If it had really and sincerely been the object of the *Tribune* to keep it out, I cannot see any reason why it should have been sent into the press-room. I do not see why it should have been written on the margin "out" if it did not take as much labor to do that as it would to throw it away, if they had an honest desire not to publish it. But, notwithstanding all that, it does not excuse them for publishing it, because, when it is done, it is work they cannot undo. What does the law say? Simply that the editors of papers shall be held responsible for the work of their agents through which, and by which, they acquire their money. "Who does by another, does by himself." If, then, this publication was made, and had gone abroad, it had done its work and could not be recalled. It had brought the name of Mrs. Wilkinson into disgrace. They may have suffered more than herself. The jury are to judge of this from all the circumstances in this case. The manner of pleading the plea of justification, the origin of their information in regard to it, the reliability of the information they had to take, their conduct on the trial before the jury, the manner of publication since this trial began; all of it has to be taken into account. If you find them following her with blood-hounds on the scent, or with money in their purses, trying to abuse her character—trying to ruin whatever hopes she may have on earth—I say all these circumstances are to be taken into account. All I ask of you is to do justice to her. "Do justice if the heavens fall!" And, in doing justice, do it for

both sides—as much for the *Tribune* as the plaintiff; but, remember, if you send this woman away without her rights being sustained by a jury, the precedent is one which will reflect upon the rights of every member of society. It would be hard for me to limit it. I say it would be hard for me to state the consequences. We all have mothers, we all have sisters, we all have wives that are liable to-morrow to just such an attack; and I say to this jury, that there is not a woman in the city of Chicago but that is just as liable to be dragged into slander as Mrs. Wilkinson was on the third day of October, 1867, when she was dragged into prominence by that article. It was a fight between Ellithorpe and his wife. She had nothing to do with it. I say, then, that unless these things are condemned by a jury, society has a most unstable foundation.

And, gentlemen, one word in regard to the damages. As the law has been read to the Court, these are to be made up by the jury from all the circumstances of the case; but you are to look to the original publication, to its character, to its animus, to everything that has transpired since; to look at the character of the evidence adduced; you are to regard the manner of publication of this trial; you are to take it all into account, and then you are to say to the *Tribune* Company, give this poor woman the one-hundredth part of the money that you have made by ruining her character and good name by publishing a sensation story, and we are content. Let us have done with this morbid appetite that is administered to in this city, by the publication of such articles as these. Let the paper be scouted out of society that does it, until it shall feel it necessary to check and alter its course.

With these remarks, and begging pardon if in anything I have been harsh, for it is abhorrent to my wish to be so, I leave the matter with the jury.

MR. JOHN LYLE KING closed the argument to the jury (Thursday, December 31, 1868), as follows:

IF THE COURT PLEASE, AND YOU, GENTLEMEN OF THE JURY:

I have felt, from the commencement of this case, a very unusual interest in it. This was on account of the nature of the suit and of the parties to it. It involves an important subject, irrespective of those who are its parties. It involves a question, on the one hand, of the rights, responsibilities and privileges of the public press, and, on the other hand, of the rights of persons and of character. Since its commencement, the suit, as you are aware from the crowded audiences, has attracted a remarkable interest, and that is because not merely of the nature of the testimony unfolded, but also is owing to the general concern which is felt in a question touching the relations of our public journals to the people. Notwithstanding, however, the fact that the case thus overreaches the parties and looks beyond them, and, though no fair and just consideration of the case can or ought to exclude a view of its broader significance, it is yet to be remembered that your cognizance of it, your functions as a jury, are founded on its personal phases and particular facts. And, it is well to remember, too, who are the particular parties here, because, from the argument made to you this morning, it would seem as if it were sought to involve others in the suit who are not on the record. Who are the parties? It is necessary for me to recall them to you. The plaintiff was the wife, and is now the widow, of a deceased lawyer, and brings to the bar again a name once familiar in the litigations of this court-room, and which revives, in surviving members of the profession, the memory of a man whose qualities were most genial and whose natural abilities were most remarkable. To those of us who were the cotemporaries of L. D. Wilkinson—sometimes his associate, and sometimes his antagonist, in the friendly contests of the bar—the plaintiff, then in the bloom of her attractiveness, was known personally or by repute, as the sharer with him in a social position worthy of

his rank and eminence at the bar. But it is not now the lawyer, who could carry the court and sway the jury, who comes here, but it is his widow who brings here the name—the only legacy of her husband left her—and she comes now aggrieved by the great wrong of a thoughtless or malignant calumny. Considering what the defendant is—a powerful, wealthy and prosperous newspaper corporation, which can do so much to make or mar, to build or break down a character—and, that a contest between her and it, is a conflict most unequal and uneven—a contest of rare and manifold advantage on its part, and, with but the single claim of a suffered wrong to cry aloud on her's, the odds would seem too great against her for her to confront and defy, but for the sustaining conviction that her case is at the disposal of an impartial jury to try its facts. A controversy with a leading and powerful journal is one not willingly to be sought, but to be accepted as a necessity, by parties and counsel. Especially is this so, with me, as to the *Chicago Tribune*. Its editors and conductors have been my friends—only lately I enjoyed the social hours of its ablest editor. I have been its habitual reader; day by day, week by week, month and month, year and year, earliest in the morning, and, sometimes, latest at night, it has been my friendly companion, acquiring from me sympathy in its feelings and unison with its opinions, and gained from me a friendly, almost personal, concern. It is the last of all journals with which I would, of choice, seek a contest. But the service was asked of me—it was asked by the widow of one who had been a professional brother and a friend—the case involved questions more far-reaching than its particular facts, which raised it to something of the dignity of a public interest, and I was not at liberty to decline the service—no lawyer who understood his obligations to his profession, would be at liberty to decline an exercise of his functions, or, could hesitate to enlist a fair and honorable use of his faculties in such a case. Gentlemen, it is a point of honor in our profession to accept even a desperate service, if it be an honorable one—and it is the proudest tradition of that profession, its immemorial glory and distinction, that in its

ranks have always been found champions of the poor, the friendless, the defenceless and oppressed, who have been true to their trust with a fidelity that knew no variableness and a zeal that never wavered in the face of odds, difficulty and danger. But recently in a French court of justice, it was a young lawyer who uttered bold and daring words, long unheard, which even reached the despot in the imperial palace, and made him turn pale and tremble.

But let me now turn to the matters properly in the case. I desire to call your attention to the true and real issues before you and to the evidence connected with them. But first of all, I may as well state to you—as no definition has been given—what a libel is. It is any writing tending to bring the subject of it into scandal, infamy and disgrace—which tends to disparage reputation, to degrade in society and to injure feelings. We have a criminal statute, of this State, which defines libel to be, any publication which impeaches the honesty, virtue or reputation of a person and exposes him or her to hatred, contempt or ridicule. The two elements, then, of libel are, that it is injurious to the reputation and to the feelings of the parties concerned. There is no doubt as to the character of this libel. In its terms and on its face, it is discommendatory and injurious. The nature of the defence here, and the evidence given, exclude any doubt as to the character of this publication. It is, unquestionably, a libel in any definition of the term.

And now, gentlemen, I wish to ask your attention, more particularly than it has yet been called, to the libel, in its parts and as a whole. A closer inspection of it reveals the art and intention of an ingenious, skillful and experienced reporter to give it the most conspicuous publicity, and to adorn it with the most telling touches. It purports to be a report of a police court proceeding, but, by the writer's art, it is reclaimed from the obscurity and insignificanee of the ordinary dull and common chronicles of the drunks, disorderlies and petty offences of unknown nobodies. It is singled out, separately placed, brought to sight in the very foreground of attention, and glaringly blazed into notice, as it were, by a calcium light of head-

line capitals, which could not fail to light the eye of every reader to it. Who, on the morning of the 3d of October, 1867, as he sat at his breakfast table, and turned to that paper to learn the news, could fail to turn his eye upon that reporter's invention of "scandal and turmoil," and seeing it, would fail to follow the graphic details, breathlessly, to the end—only to find a woman tortured and a reputation ruined? Who, of all the tens of thousands of readers of that day's *Tribune*, failed to discern in the broad sheet, as plainly as they would the single dark cloud in an otherwise clear heaven, the deep shadow of that conspicuous calumny? The very title of the article, like a prologue to the play, is made a tempting foretaste of the feast of scandal to follow. The first word—"scandal"—is the key-note. The alluring nature of the details is emphasized in the capitals, "A WIFE BREAKING IN ON HER HUSRAND'S DEVOTIONS," and then the romance begins—"A scandalous affair was yesterday partially ventilated in the police court." "*Partially* ventilated!" Here is an instance of what Byron calls "the kind mendacity of hints." Ah! we are to understand the story is only half told, only part of the affair is revealed; there is a reserved chapter of this scandal and intrigue, there is more than meets the eye, more behind, and thus the plaintiff is introduced at the outset, and condemned with the damning and suggestive suspicion of yet unrevealed enormities. We are then left to infer that the particulars were brought out on the examination of Ellithorpe and plaintiff; and so she is made to condemn herself out of her own mouth. Ellithorpe is said to be a "real estate agent, doing quite an extensive business in this city." Why was that statement made, when the witnesses tell you no such evidence was given, but that by giving him a business which, in Chicago, where vast amounts are handled, invested and expended by agencies of this kind, is important and responsible, and thus a corresponding position, so that this would appear to be a scandal in high life—a touch above the vulgar?

On "Thursday evening last," Ellithorpe's wife, we are told, "noticed that her husband arrayed himself in his best garments and made an elaborate toilet before going out." Well, gentlemen, here was something to arouse Mrs. Ellithorpe's "suspicions." Why should her husband, there, in his home, be making an "elaborate toilet," except for a purpose, and for what purpose except to make himself presentable and attractive, and to whom but to some woman, and that woman not his wife? We are thus prepared to expect that Mrs. Ellithorpe, seeing his unusual devotion to his toilet, would have her "suspicions aroused" at that, and so we don't wonder to find that she immediately followed him, and so this writer states it. She goes to the premises, No. 277 Randolph street, gets access through the window of a neighboring house to a veranda in front of Mrs. Wilkinson's residence, "peering through the window into the *darkened* room," &c. The "darkened room," added to the elaborate toilet,," leave us in no doubt that here is a criminal assignation. We have the darkness, which is the fitting precursor and concomitant of what was to follow; and, peering into the room, with its adjusted lights, it is not too obscure, there, for Mrs. Ellithorpe to discover her husband in the "arms of another woman!" And then comes the rage of jealousy, the rush into the room, the collision with her husband, the turmoil, the arrival of a policeman, and the arrest. And still there are other damaging imputations. Ellithorpe "succeeded in appeasing the anger of his wife." How appease the anger of his wife, except by a penitence which confesses guilt and craves forgiveness by an appeal to that love of the wife for even an erring husband, so warmly painted by Mr. Dexter, and so, after confession of wrong, and by a successful appeal to her loving kindness, the charge at the Police Court is changed from one of a serious nature into a charge of disorderly—the lightest of the petty offenses. Here, gentlemen, is one of the most expert touches of the romancer's art. It is to

the forgiving connivance of Mrs. Ellithorpe that the charge was but a trivial one, which spared plaintiff from a fuller revelation of her forbidden love and gave us a story only "partially ventilated." Why were these touches colored in the piece except to sensationalize it and to create a romance of lawless love and conjugal aberration? And why the "appeasing the anger of the wife" except to show us these detected parties thrown upon Mrs. Ellithorpe's generous connivance and loving forgiveness for their escape from a severer fate at the Police Court, and from the fuller details of their intimacy?

This article, gentlemen, purports to be a report of a Police Court proceeding. This pretension imparts to it a credit and verity which "sensation" articles ordinarily cannot claim, and infinitely aggravates the calumny. We are to assume that there was the form of a judicial proceeding—that the facts were elicited in the formalities of a trial, under the sanctions of an oath, in presence of a magistrate, by an examination of the parties; and so the circumstances related come to us clothed with guarantees and credentials the most reliable known to us. Whatever credit we may attach to ordinary newspaper sensations, here the plaintiff is branded with defamation which is, as it were, the judgment of a court. It exacts our faith, silences and excludes all doubt, and converts the invention of a malicious or thoughtless detractor into the semblance of a sentence and the verity of an adjudication.

This libel—and it is such as I have characterized it to you—was published by the defendant. Its publication has been proved and confessed.

I proceed now, gentlemen, briefly as I can, and in their order and in connection with the evidence, to consider the defenses put in here. These defenses are, first, that the statements of the article are true, as is alleged in the plea in justification. The second defense is, that the article, being a report of a Police Court proceeding, is "privileged;" and the third

answer they make us is, that the publication was made by mistake.

I ask your attention to this plea of justification, and, in connection with it, remember the position of the parties before the Court. This plea is what the defendant says is true of the parties mentioned in it. It is their defense on the record, and it being that such and such things are true, it is an affirmative defense. In such case, the burden of proof is on the party pleading it. The defendant must prove to your satisfaction what it alleges, and as the plea reiterates the circumstances of the libel, the defendant undertakes and is bound to make out to your satisfaction that they are true. Neither the rules of evidence nor of common sense or fairness require or call on the plaintiff to disprove the allegations, or any of them, of this plea. The defendant voluntarily pleaded this plea, and assumed to prove its truth. Mr. Smith told you I drew the plea for them. This is true—and I will come to this in another connection. But what does the plea allege? Why, that Ellithorpe was a real estate agent doing a large business; that he collected rents of the premises occupied by plaintiff; that there was an acquaintance between himself and plaintiff which ripened into intimacy; that he made frequent visits to her house; that Mrs. Ellithorpe became acquainted with the fact, and her suspicions were aroused; that on a Thursday night he arrayed himself in his best garments and made an elaborate toilet before going out; that she followed him to 277 Randolph street, where her husband had gone; that she got access to the premises by a veranda; that she peered through the window into the darkened room; saw her husband in the arms of another woman; that she rushed into the room in a frenzy of rage, seized plaintiff and severely beat her; that a policeman appeared and arrested all the parties; their appearance at the Police Court; Ellithorpe appeasing the anger of his wife, so only a charge of disorderly conduct was preferred, &c.; and, last of all, that

these facts were proved at the Police Court. Now, gentlemen, these circumstantial details are all set out in the plea, and as they were worked up, by the writer of the libel, as proofs or circumstances tending to prove the criminal intimacy of plaintiff and Ellithorpe, and having been incorporated in the plea, they are thus made material and substantial, and enter into and make up together one entire defense. Mr. Smith read a passage from Greenleaf, as to proofs of adultery, to the effect that adultery is rarely to be proved otherwise than by circumstances, and there is no disputing that law or the fact. But here, they not only charge adulterous intimacy between Ellithorpe and plaintiff, but they submit the proofs on which the charge is predicated in a recital of these circumstances. They not only charge the main fact, but they give us the details of that intimacy. The libel is of a very different character with or without these details. With them, it proves itself by a series of criminating facts; without them, it is simply an unsupported statement. The effect and force of the libel, therefore, are greatly dependent upon or increased by these details; and so, having pleaded truth, and that the truth consists in the happening of a series of circumstances set out in the plea, they are required to prove the plea in its substance and materiality. And by recurring to one of the titles of the libel—"a wife breaking in on her husband's devotions"—you will see that the charge is of a criminal act or intended criminal act, at No. 277 Randolph street, at the time of Mrs. Ellithorpe appearing on the scene, and the preceding particular circumstances are given as proofs that the purpose was illicit. And this plea, thus circumstantial, they must prove. The plea is in regard to the whole libel. They might have pleaded truth as to a part of the libel. They could have selected some portions of it to be justified. But they do not divide the publication—they select no particular portion of which to allege the truth; but the plea is to the whole of the article, from its first word of the caption to the

last word of the article. What, then, is incumbent on them under this plea? Why, to prove, substantially, the material criminating circumstances alleged. They undertook to do this, and they must come up to the undertaking. And how have they answered this requirement of the law in the testimony offered? Not very satisfactorily, I venture to say. There have been three kinds of evidence introduced into the case. There is what may be called the direct evidence, and that is the testimony of Mrs. Ellithorpe and of her husband. Then, there is the indirect, being that relative to the acts of Mrs. Wilkinson and the character of her house. And, last of all, is the *Tribune's* "retraction."

And what are the kind and value of the direct evidence offered by them to sustain the plea? Mrs. Ellithorpe is the only witness who professes, or who is claimed, to have given any direct testimony on the criminal intimacy, so called. Remembering, as I have told you, where rests the burden of proof, how far have they proved, by Mrs. Ellithorpe, the criminating circumstances alleged? Do you hear from her anything about that "best garment" and the "elaborate toilet?" We learn from her that Ellithorpe, that evening, stood before the glass and brushed his hair; but we are to infer that so "elaborate a toilet" as that of the hair-brush, had no unhappy effect in arousing the suspicions of Mrs. Ellithorpe, for, she says, she continued stitching at the skirt of a dress she was attending to for nearly an hour after he left. It is probable that the brushing of the hair was no unusual occurrence, and certainly was not suspicious. At any rate, it was not until she went out to the baker's to get bread for her breakfast, that she heard of Ellithorpe's having gone up stairs. Certainly, then, her immediately following her husband, as she naturally might do if the "best garment" and the "elaborate toilet" had aroused her suspicion, is not proved. She went out, not fired with jealousy, but on an errand to the baker's. So, as to that, the coloring

of the reporter's romance fades off and leaves but an ordinary business matter.

But let us follow her, now, to the veranda in front of plaintiff's rooms, to which she has gained access. How, then, about the "*darkened* room?" She tells us she stood there silently, looking in between the shade and the window frame—she saw Ellithorpe's cane standing by the table, and she saw his hat on the table—and it could not be a very "darkened room" in which she could see the cane and hat. But she tells us the gas was burning, and gives us no intimation that it was turned down or that it was dim; in fine, we have nothing from her to supply us with the item of the darkened room. She sees, and plainly sees, all that is going on; she returns home, brings her boy, Albert, with her back to the veranda, shows him or places him where he can see inside, and he observes all she did. Now, what becomes of that circumstance of the "darkened room"—that one of the circumstances which, if true, would most strongly and conclusively, of itself, criminate the parties seeking the concealment and vail of obscurity? How much substance or fact does it turn out, on her testimony even, there was in the touch that Ellithorpe was "seen in the arms of another woman"—the very point, the culmination and consummation of the whole intimacy—almost itself the ecstacy of forbidden love? In her testimony this thrilling part of the romance reduces itself to the bare fact, as she alleges it, of their sitting close together, and of Mrs. Wilkinson "*seeming*" to put her hand on his shoulder! "It hath this extent—no more." And, as to the appeasing the anger of the wife, not a syllable of testimony is had from her from which it could be, by any possibility, imagined that there was any sort of a scene of confession, penitence and forgiveness between Ellithorpe and his wife, or any thought of any such circumstance. On the contrary, she expressly states that nothing occurred between them of the kind. Now, gentlemen,

as to the facts alleged in the plea, to which there is no pretence of there being any other witness than Mrs. Ellithorpe, what are you to think of the plea? is it sustained by her or does it come near being sustained?

Gentlemen, the occurrences at the police station were of no sort of consequence, and the time spent on them was really wasted; but they have been brought to your attention, in Mrs. Ellithorpe's testimony, with the purpose of giving them an importance as still further tending to show guilty intimacy between Ellithorpe and plaintiff. And, if the evidence she gave as to those things had not been designed by her to create a very false impression, and if they did not afford me an opportunity of testing the credibility of the woman, I should not even allude to them. You saw, that, in all her minute and cunning statements about the rooms in the station, during the night these parties were held there, and about the alleged actions and conduct of Mrs. Wilkinson and of Ellithorpe while there, she sought to create the impression that there were opportunities and a disposition for criminal intercourse, even in the police station, and with police officers passing in and out among them at will and frequently. She was minutely questioned as to what took place and the situation of herself and of the others, and all her testimony shrewdly and purposely pointed in that direction. If she did not mean that, she meant nothing. But her evidence, given for that purpose—considering time, place, persons and circumstances—was so preposterous and absurd, so improbable and incredible, that Mr. Smith felt it necessary, in his speech, to you, to apologize for it and put it on the ground of merely showing a sympathy and understanding between Mrs. Wilkinson and Ellithorpe. But if that is to be the effect given to it, why was Mrs. Ellithorpe brought to say that Ellithorpe called for a bed, that there was something like a bed in his cell, that when she moved into the dark room where she could see but not be seen, Mrs. Wilkinson came in

there and groped about in the dark to find where she was, then stepped back into the lighted hall, cautiously looked around, slipped up to Ellithorpe's cell and entered it, and, only when Mrs. Ellithorpe stumbled in the dark and made a noise, Mrs. Wilkinson returned from his cell, as if in fear of being discovered? Why were such circumstances as these asked for and given by her if merely a sympathy was meant to be shown? If that was all, why should Ellithorpe and Mrs. Wilkinson hesitate to meet, face to face, in presence of Mrs. Ellithorpe? She had already discovered them together at Mrs. Wilkinson's. Why should they retire to Ellithorpe's cell and sneak cautiously about for fear of Mrs. Ellithorpe observing them? I ask these questions on the supposition that the facts were as stated by Mrs. Ellithorpe. Yet, in claiming them as facts, Mr. Smith would, and does, disclaim the conclusions Mrs. Ellithorpe unquestionably intended to create—disclaims them, because the conclusions are so preposterous that they discredit the statements and the witness who makes them. And we know they are not true. The circumstances of time and place utterly and absolutely discredit and disprobableize them. And both Ellithorpe and Mrs. Wilkinson positively, minutely and concurrently, deny them; and when counsel disavow the effect and force Mrs. Ellithorpe intended to give this evidence, they virtually confess that she breaks down and fails as a witness. And it is upon her unsupported evidence that the plea of justification rests! What kind of estimate are you going to form of her as a woman and a witness? You heard, as I did—and I heard with pleasure, for he was eloquent—the glowing eulogies passed by Mr. Dexter this morning on the wifely constancy, the maternal devotion and tenderness, and the unsullied purity of Mrs. Ellithorpe, who was clothed by him in all the excelling graces and virtues of a true and noble womanhood. The picture held up to the jury was marvelous for its beauty and loveliness; it was a perfection of

womanly virtue, and purity, and devotion; but where or who was the original of the picture? Where, in all this evidence, can the jury see any just warrant for considering Mrs. Ellithorpe that original? How do you know, from the testimony, that Albert C. Ellithorpe has voluntarily and willfully turned his back upon such a woman, and been faithless to such a loving, pure and tender wife? Can you say, from any evidence here, whether he is not the injured husband and has been compelled by the senseless jealousies, the unhappy temper, and, more, the infidelities even, of the wife on whom this glowing coloring of praise has been exhausted, to absent himself from that wife and the home made insupportable to him? Why, gentlemen, who can believe, if Mrs. Ellithorpe could justly sit for a picture, only one-half as charming and lovely as that which Mr. Dexter has depicted of her, that Albert C. Ellithorpe would have turned his back on such a wife and such a mother of his children, and on such a home as she would make a heaven of? Is it to women and wives having the qualities ascribed to Mrs. Ellithorpe that husbands turn faithless, and desert homes they can endear and make happy, and wander, as has been said of Ellithorpe, an outcast and vagabond? Do the husbands of such wives get caught in the toils of strange women and of lawless love? Look down in the depths of your own hearts and see if you find there any response to the counsel's invective against Ellithorpe as a deserter and a willing outcast from so much of affection, devotion and virtue? Look around you, find in the families of your friends a woman and wife who may wear the robe of beauty, loveliness and purity conceived by the counsel, and ask if husbands of such women are likely to desert the encircling arms of all this affection and purity which would entwine them? Is it reasonable to suppose that Ellithorpe would turn away from a home, where his children were, if it were made beautiful and radiant with the charms and graces of a so pure, unoffending

and worthy wife? Recollect, gentlemen, you are acting under oath. You have facts, and not fancies, to deal with. It is an imaginary Mrs. Ellithorpe, an ideal wife and mother, who is presented you here and for whom your sympathies are asked, as if she were an injured and outraged wife. For the picture held up to you, Mr. Dexter has drawn liberally upon the fertile and prolific resources of his imagination—and in the sphere of imagination it is easy for an exuberant fancy to create and draw at will. But such brilliant creations scarcely stand the test of oaths and the scrutiny they must be submitted to in the formalities of judicial proceedings. Now, if Mrs. Ellithorpe be of that purity and loveliness of character claimed for her, why were the gentlemen so anxious to close all inquiry into her domestic relations? Why were they so unwilling to allow us to learn the story of her home life from her own truthful lips, so that we might get glimpses into the home a woman so represented could so much adorn and happify? Here, too, was her son—an intelligent boy, living, when not at school, in her house, and, of course, under her influence—the spell of so much womanly virtue and of filial love upon him, on the stand, and when we sought to learn from him some of the phases of the life there of husband and wife—of his father and mother—upon their objection, the boy's lips are closed, and the interior of that household and the domestic and wifely virtues of that woman are shut from our view.

Counsel preferred concealment—there is a "darkened room" in which they are unwilling to allow the penetration of any light. It is easier for them to draw freely on their fancies. Mr. Dexter holds up his fancy sketch, and you are asked to accept it as evidence—to receive this fine creation of his imagination as the Mrs. Ellithorpe who testified here—the paragon of perfection in whom blend all the graces of woman, all the purity of virtue, and all the fidelity and devotion of the wife

and mother. Mr. Dexter equally recurs to the ideal in his picture of Albert C. Ellithorpe. The dark shades, the coarse lines and repulsive features are alike, with the splendid coloring given her, the creations of his own touch; and, when he sat last night, in the light of his midnight lamp, carefully and elaborately touching up, line by line, the brilliant picture of the injured wife, at the same time, and, with a like freedom and boldness of fancy, and with the license of art, he as carefully and laboriously, and, with as little fidelity to nature as in the other case, added shade to shade in the dark forbidding and unsightly picture of a faithless and guilty husband. And these pictures—the one in light, the other in shadow—both untrue to the originals—he asks you to take as evidence in the case. Gentlemen, you, acting on oath and on testimony, would be recreant to your trust were you to take him at his word. You will remember that Ellithorpe and his wife are not parties to this suit, are not on trial here, and, are to be dealt with only as witnesses, and it would be the grossest injustice in you to try any issues between him and his wife, and settle the merits of their family and domestic relations, when he has not been heard and cannot be. You will do no such wrong as that.

But, gentlemen, the evidence does afford us some means of estimating Mrs. Ellithorpe as a woman as well as a witness; and I think on the test of a few facts, she will not be found quite to come up to Mr. Smith's description of her being "a lady in the broadest sense of the term." Yet this was the assumption they started out with. It was the *role* designed for her from the beginning, and how the counsel tried to play her, through her examination, in the *role* of "lady in the broadest sense of the term," you will not forget, when I recall you a couple of incidents. When she was on the stand, she testified so as to inculpate her husband and Mrs. Wilkinson in an actual or intended criminal intercourse in his cell in the station. On cross-examination, it became necessary for me, in view of her absurd at-

tempt to make the jury believe there were conveniences for such an act, such as a bed, or something of the kind, to ask her if she knew the difference between a bed and a lounge. Mr. Dexter, thereupon, swelling to the fullest dimensions of his moral grandeur, and rising, in indignant dignity, appealed to the Court to know "if *such* a lady" must submit to such a question! The Court very promptly replied he thought the question a very proper one, and so subsided Mr. Dexter, and he remained subsided during the rest of the trial, and that was the last of the moral grandeur business. And do you recollect, too, how my amiable friend, Mr. Smith, with his well-known delicacy, said, "Now, Mrs. Ellithorpe, I will ask you one more question, and then relieve you from your *painful* situation!" *Painful* situation! to Mrs. Ellithorpe, the heroine of the "raid" on Mrs. Wilkinson's premises! And, coming to that fact in the case—the abrupt and sudden descent on her husband and Mrs. Wilkinson, and in view of it, I ask you if that cir-cumstance is one likely to impress you that she is "a lady in the broadest sense of the term?" Is that exactly the kind of conduct you are to expect of a lady? Is it such conduct as you would care to see in your own wife or daughter? Is it in accordance with the gentleness, the delicacy, the propriety and the softness for which we idolize and idealize the sex? Do you expect of women, whom you consider ladies, bold, violent and reckless acts—such as this invasion of Mrs. Wilkinson's house, and the noisy altercation with the husband—which, if done by a man, would be called and treated as simple ruffian-ism? In all this occurrence, she showed herself reckless, frantic, foolish, furious and violent, and, are these the graces and qualities which are usually shown by the lady? To break suddenly into the premises of another lady, to seize her husband by the neck and attempt to drag him away, and raise such a "row" generally, as to call in the police—are these the delicacy, the refinement and the loveliness of the lady? Do such

commend her to your good opinion? Now, gentlemen, whenever any woman oversteps the modesty of her nature, or what should be that, she, at once, loses that which makes her a woman and a lady—the charm is gone—and nothing is left of her but what the rowdy and ruffian would have, brute force. Mr. Dexter foresaw the prejudice which this occurrence would excite against her, and thought he must conciliate your estimate of the fact. In his opening to the jury, he stated that, in my opening, I had imputed the occurrence to jealousy, and he said it was a fatal admission for me to make. He then declared his respect for the passion of jealousy, because, he said, it sprang from or was connected with love. He quoted a passage from Othello, showing that he had been studying the delineation of that passion. Well, gentlemen, the occasion is afforded me, too, of a reference to that drama. And while it may be true that jealousy is connected with love, it is also equally true, that the three kindred fiendish passions of envy, hatred and revenge spring from or are connected with love. And do *these* kindred passions, also, command his respect? Is he ready, as President of the Christian Union, to sanctify, along with the saintly feeling of jealousy, its sister passions of envy, hatred and revenge, and to elevate them, under the patronage of that organization, into the rank of Christian virtues? I point him to a noted example of the embodiment of all these shining Christian virtues, in startling action, in the person of Mollie Trussell, who, here in our city, exhibited these graces in "one glow of associated beauty," and I ask him how he likes the spectacle? As to jealousy itself, and its working, if you would see it, look to its delineation in Othello, and in the piteous fate of Desdemona, "the gentle lady married to the Moor." You may have seen Booth or Forrest play Othello, on our own stage. You have, then, seen the Moor—a warrior, the story of whose life had won the lady's love—with some of the best attributes of intellect and of manhood, yet made a poor "credulous fool,"

played upon and "fooled to the top of his bent," through his maddened jealousy, by Iago, the villain of the play and plot. This subtle "ancient" gives us the key-note to the moral infirmity of the jealous, when he says:—

"Trifles light as air
Are to the jealous, confirmations strong
As proofs of holy writ."

It is a passion of unreasoning credulity. Reason and judgment are impotent before its fury, and for this reason—because of its blind insensate nature—the phrases of Iago, which I have quoted to you, have become accepted as a text and are received as aphorisms, to be applied in our estimates of character affected by that weakness, and particularly to the motives of its action. From the testimony of Mrs. Ellithorpe herself, you must be convinced that "trifles light as air," the merest figments of a disordered fancy, that to a sound and healthy-minded lady, would not raise a faint suspicion of a husband's faithlessness, have seized upon and perverted her mind until she is a monomaniac as to her husband. Her judgment as to him—her suspicions as to him and other women—are wholly worthless and disentitle her testimony to any controlling weight. She has had as little, and, as few of the "trifles light as air" to justify her crazy jealousy of her husband in regard to Mrs. Wilkinson, as Shakespeare's Othello had for the baseless jealousy which crazed him into Desdemona's murder. But, says Mr. Dexter, Mrs. Ellithorpe had reasons for suspecting her husband's intimacy with the plaintiff, which could not be told—they were her *instincts* which revealed the story of his infidelity. In courts of justice, gentlemen, we are not governed by instincts, but by testimony. Instincts, which cannot be converted into facts about which witnesses can testify, are foreign to the province of a jury. Instincts can't be sworn or cross-examined, and of all instincts, those of a crazy, jealous woman are most unsafe and fallible. It very well suits the purpose of the gentlemen to grope into this shadowy realm, and to fall back upon

these indefinable instincts and inexpressible beliefs, but you, gentlemen, will hardly follow them from the region of facts where we have information given on oath. Mrs. Ellithorpe's unuttered beliefs and incommunicable instincts will scarcely be accepted by you to the prejudice of either her husband or Mrs. Wilkinson.

Now, gentlemen, submit Mrs. Ellithorpe and her testimony to another test—that of feeling and interest in this case. Has she any less of interest and feeling to effect her testimony than the other persons who figure upon the scene? As to her feeling, do you doubt, from what you have heard here, what that is, towards her husband and towards this plaintiff? As to him, what is it but hatred of the most manifest kind, and, as to her, the blindest and most senseless jealousy? Look at her, as she stands there on the veranda, a half hour, as she says, coolly gratifying these feelings by "peering in the window," and watching the advances of a warming love, returning home for her boy, and bringing him, unwillingly, to the scene, to make him a witness of his father's guilt, still silently looking in upon the parties for another half hour before the hurried entrance is forced. What suppose you were the feelings of that woman during that interval? And, you must bear in mind, that she, herself, is identified with this occurrence in all its publicity—it was as much an exposure of herself as of them—and she must know, if she had any true, womanly feelings, she had done, at least, an unladylike act, which must subject her to a not very enviable notoriety; and, appearing here as a witness, she has herself to vindicate, and an interest to relieve her conduct of the prejudice it would naturally excite against her. Does not this position give tone and color to her feelings? Of course, she is here to excuse herself. That is her business. She does, or thinks she does, that, and can only justify herself by criminating them. And then, too, the fact that Mrs. Wilkinson has a suit now pending

against her, for this violation of her premises, is not calculated particularly to soften her feeling. And yet, Mr. Smith intimates that she is, here, a sort of unwilling witness—that she is testifying in obedience to a subpœna. Indeed! was she so reluctant to come upon the stand? Was it in obedience to a subpœna that she had the interviews with Mr. Medill, we have heard of, and that she goes in a carriage to Mr. Dexter's office? And from whom, but from her, did the gentlemen obtain their information upon which they have conducted their defense? Was she subpœnaed to appear on the veranda and break into Mrs. Wilkinson's premises? So far as we can see, there was not much compulsion on this woman. And, it is solely upon her testimony that the criminating circumstances relied upon depend. What do you think of the plea of justification as far as it rests on her testimony?

Gentlemen, I ask you to recall Mr. Ellithorpe's testimony. He utterly denies all the circumstances on which the defendant relies for proof of the plea. And why should he be disentitled to credit? And yet, in the face of his denial, and with what must be conceded to be but a feeble show against him, he has sat here and heard himself denounced in the severest terms, and with a reiteration and copiousness as if he were a party to the suit. And what evidence, worthy of consideration, was there to justify this treatment of Ellithorpe? Why, Mr. Dexter's imagination. It is equal to the occasion when it is necessary, to make him odious; but you would not condemn a thief without proof against him. You have heard nothing from him as to his family relations, and gentlemen were unwilling, even for Mrs. Ellithorpe, to be examined as to them; yet, as a husband, he has been assumed to be false, recreant, and the destroyer of his wife's peace and happiness. This was necessary to the purposes of the case. Now, let me inquire, who is A. C. Ellithorpe? Until this suit, or, rather, until the occurrence which originated it, had any one heard his standing as a man and a

citizen impeached? For thirty years he has lived in Chicago. He came here a poor boy, and has grown into something like fortune; has been one of our best known citizens; has held many important public positions implying the popular confidence and respect, and has a reputation that cannot be successfully assailed in a court of justice. Were his reputation impeachable, these gentlemen knew how to impeach it. With the resources of the defendant, and the police to back them, they could be at no loss to have found impeaching witnesses to confront him here, if there were such. I want, again, to say to you that Ellithorpe is not a party to this suit. Mrs. Wilkinson is the plaintiff. It was her misfortune, without fault of her's, that the occurrence at her house happened. It was the misfortune of Ellithorpe that he was at variance—and by whose fault it is not your province to decide—with his wife, and Mr. Dexter has tried and condemned him without a hearing. But, regarding this plea of justification, and the evidence—the direct evidence—that of Ellithorpe and his wife—bearing on it; considering, too, that even her testimony falls far short of proof in many material circumstances, is it proved as pleaded?

The next defense made is, that the publication complained of was a report of a Police Court proceeding, and, as such, was what is called, "privileged." Well, gentlemen, if that claim is well founded, it would not, now, be an answer. It has been a matter of doubt whether a publication of the proceedings of Police Courts, and of inferior Courts, containing matter injurious to character, was legal or not. I think the law is now settled that such publications are privileged; but this privilege is allowed only on one essential condition; that is, that the reports must be strictly accurate. Mr. Smith stated to you that such reports need not be *verbatim*. That is, indeed, true; but it is, at the same time true, that they must be substantially correct, and, that means, they must be a presentation of the substance of the proceeding as it appeared in the testi-

mony. This excludes any statement of what did not occur, and requires a report of whatever is material that did occur. To suppress what was said, and to interpolate what was not said, equally destroys the privilege. The rule forbids comments and implications—facts, only, must be recited. If this were not so, every proceeding in a Court, and the parties to it, would be at the mercy of an ignorant, a careless or malicious reporter. When you come to look, through the evidence, at this publication, and apply this test of accuracy, the "privilege" totally fails. There is scarcely a suspicion of its correctness raised by the proof. It is true that Mr. Cowles, a reporter of the *Tribune*, has been introduced to substantiate the claim of "privilege," by his account of that proceeding at the Armory. I haven't the time to read passages from his testimony, but even he fails, in several particulars, to verify the pretended report, and, as to others, admitted they were rather inferences and implications than direct statements; and this admission is enough to invalidate its claim to the privilege. He got the items, and gave them in to the city editor of the *Tribune*, and, no doubt, believes all he has stated as to what was testified to. The fact that he tells us a policeman testified that Mrs. Ellithorpe *said* so and so—and some of them are the obnoxious items in the libel—amounts to saying that hearsay testimony was given against Ellithorpe and plaintiff. This, we know, was not admissible, and wholly unlikely; as we all know, the reporters at the Police Court pick up, among the police, parties, and from anybody, all the floating gossip of a case, and, are quite apt to embody them in their report. And so Cowles got from the policemen their information, and confuses it with the actual evidence given. Ellithorpe's testimony is perfectly explicit as to what did get "ventilated" at the Police Court, in the examination of the witnesses. As to what occurred at Mrs. Wilkinson's, he, himself, and she, were the only witnesses. To my interrogatories, embodying each item of

the libel, he was very positive and decided as to what was not testified to, and what was given in evidence. And, what is more decisive on this question as to the libel's being a report, is the evidence of Mr. Barker. He appeared there as the attorney of Mrs. Ellithorpe, and, as such, we may suppose his sympathy would naturally be for his client; but Mr. Barker is an acute, as well as honest and honorable lawyer, and, of course, was, from his professional training, keen to observe and perceive the force of any particular item of evidence affecting his client; and, to my questions as to the libelous particulars of the publication, one by one, he was emphatic in his denials. And, after all, gentlemen, what is the use of your weighing testimony to educe a conclusion on that matter, when you have the *Chicago Tribune*, of 4th October, retracting, and saying to its readers it was not a true report? How it looks, what impression it now makes, for them now to bring a reporter on the stand to testify that the report was, after all, correct, and the retraction a mistake or a deception, I leave you to say. They ask, why do we complain of their publishing a report of a Police Court matter? Well, I will answer. It was not a report; but it was a romance, created and embellished by a reporter who wanted to furnish a "sensation" item. If the *Tribune* had reported only the facts testified to; if, in fact, it had simply stated the occurrence from the lips of the witnesses and had not invented a "sensation" fiction, the whole affair would have passed among "the things that were," and there an end of it.

Now, gentlemen, I call your attention to the "retraction," as it has been called and treated throughout the case. It has figured singularly enough—has been specially referred to and commended. Mr. Smith claimed that it was full and ample, and ought to have satisfied the plaintiff, and rather wonders it didn't. Mr. Dexter made use of it, as not only full and complete, but handled it with a bit of poetic license in character-

izing it as "magnanimous," and indulged in a touch of the pathetic over the *Tribune's* magnanimity in taking the trouble, in all the pressure and hurry of a newspaper office, to turn aside from the weightier matters worthy of its attention, to give this poor, obscure woman the benefit of a retraction. And Mr. Dexter, too, is rather surprised this magnanimity was all thrown away. It was told you how very badly Mr. Medill felt at the appearance of the libel, and how he and Mr. White promptly made reparation—all the reparation in their power—in this retraction. Now, gentlemen, in what position does this retraction—conceding to it all the exculpatory and redeeming qualities claimed for it—place the defendant here? How in the face of that retraction, a complete recantation and denial of the criminating parts of the libel—an admission that the statements of the libel were untrue, and that wrong had been done the parties—how stands the plea of justification—a reiteration, in all its particulars, of the retracted libel—and the proof to sustain it? Are you to be called on to determine which was true, the retraction of the Chicago *Tribune*, of October 4th, 1867—a retraction which exonerated these parties—or the plea of justification, afterwards filed, which again charged them? Remember that the retraction was not an individual act of one of the editors, it was not merely Mr. White's expression of White's personal opinion; but it was the collective voice of the corporate body, deliberately expressed, in the printed form of all the corporate utterances. It was the expression and voice of the Chicago *Tribune*. Now, what are we to think of this blowing hot and cold? Is the defendant willing to say, here, that the Chicago *Tribune* of 4th October, 1867, in this retraction, was attempting to, and did, palm off, on its thousands of readers, a fraud and deception; that, when it said it had wronged Ellithorpe and Mrs. Wilkinson by its publication, it was guilty of falsehood and duplicity, and that it did not mean what it said, but the contrary? Yet

this is just what it comes to. There is the retraction. Here is the plea of justification. One takes back the charge; the plea reiterates it. Who believes that Joseph Medill or Horace White, men of character and standing, would, personally, be guilty of such duplicity and paltering in a double sense? We believe, gentlemen, that you will agree with us, that the Chicago *Tribune* must be held to stand by its own publications, and that you will not connive at its attempted escape from its published statements. Every consideration of honor, justice, fairness and good faith to its readers, demands that the conductors of our journals be taken at their word, and, that those whose vocation it is to inform and instruct the public, must be assumed to do so in all truth and good faith. Hold them to what they have said. And, if this is fair and right, I again ask, what is the use of your troubling yourselves to nicely weigh evidence offered to sustain the plea? Isn't it enough, when the Chicago *Tribune*, here, tries to convince you the plea is proved, to say, "Well, but the Chicago *Tribune* said, in advance, what it has pleaded as true in the plea, was not true?" Gentlemen, that is the view we take of this plea, and, we think even the defendant cannot expect you to do other than accept this view.

But we are asked why we were not satisfied with the retraction; it was "full" and "magnanimous;" it was all we ought to have expected. We do not concur in this statement that it was all we ought to have expected. While it does answer the purpose of convicting the *Tribune* of having defamed Ellithorpe and Mrs. Wilkinson, it was not what it should have been as to her. It is, in its terms, a disclaimer for the benefit of Ellithorpe. Mrs. Wilkinson faintly appears in it, in the single mention of her name, and, is given only the paltry justice of the reflection or inference that a clearance of Ellithorpe is an acquital of her; and while he is made to pass from the view, apparently rehabilitated and redeemed, she is

remitted to obscurity in the shadow of his name. Upon whom of the two fell most pitilessly and crushingly the blow of that wicked calumny? Upon whom rested its deepest shades of infamy? Who was most robbed and ruined of reputation? whose head most bowed in shame? Whose heart most beat with the throbbing palpitations of a consuming and bitter grief? Was there not due, at least, the civility of a regret for the wound given to her feelings, to say nothing of the generosity and chivalry which would prompt a liberal and ample amends, a full and friendly recantation to an injured woman, and the more, that the injury was claimed to be unintentional and accidental? Did not the circumstances call for something like an apology to her for the damaging notoriety given to her name? But there is not this sort of reparation. The magnanimity claimed for the retraction is imaginary. It seems as if it were framed more in cunning than candor; it is scanty in its excul-pation and without generosity. Considering the spendthrift affluence of the libel in its invention, the retraction, in any sense of generous amends, as to Mrs. Wilkinson, is beggarly. As there was not one word in it that could soothe a wounded feeling, nothing was left her but to reject the mockery of retraction, and seek other reparation.

Now, gentlemen, another branch of the case—that of malice and intent. It is claimed for the defendant, that there was neither malice or intent in the original publication. It is said there was no ill feeling against this woman, because she was unknown to the conductors of the paper, and there was no intent to publish the libel, because it was inserted against the positive directions of the editor, and got into the paper by mistake. It may be true that plaintiff was unknown to Mr. Medill or Mr. White; and Mr. Dexter asks, what motive, therefore, could there be to libel her? I answer, the motive for the article was that of a reporter, plying his vocation, the motive which inspires so many of the newspaper scandals and scurrilities—to make a

sensation; and how prodigal of his capabilities for sensation writing this reporter was, I have before adverted to. And Mr. Smith contended, to the Court, that if there was no intent to publish the article, there could be no action for its publication. And he argued that there was really no intent to publish; but there was an intent not to publish, as the editors directed its suppression, and, it at last made its appearance only by mistake. But, gentlemen, what is claimed for the *Tribune*, in these respects, is founded in misconception of the law. The truth and the law are, that the intent with which a libel is published, does not affect the liability of the libeler, and, is important only upon the question of damages. In other words, the intent is immaterial as to a right of action. You heard my associate read authorities, to the Court, on this point of malice and intent. You learned from them that, in consideration of law, every one whose neglect, carelessness and want of due regard of the rights of others, occasions injury to others, is equally bound to make reparation, to the extent of such injury, as one who willfully does the mischief, though the amount of damages would be greatly affected by the intention inspiring the wrong-doer. It makes no difference to the injured party, whether the injury was occasioned by a willful act, or by negligence, or a careless disregard of his rights, and such consideration does not affect his remedy; but damages it may. That is the law, and it is common sense. In this instance, the injurious effect of the libel is precisely the same to Mrs. Wilkinson, in injury to her reputation and feelings, as if it were a very "leprous distilment" of malevolence. It is immaterial, so far as her character and sensibilities are affected by the defamation, whether Medill and White were or were not ignorant, willing or unwilling, in their connection with it. And, I am glad to be able to adopt, as part of my argument to you—inasmuch as my friends have said so much or tried to make so much out of this want of malice and intent—some

extracts from a leading New York journal. It is, to say the very least, fully the equal of the Chicago *Tribune* in all the leading attributes of a powerful journal, and, its editor, Henry J. Raymond, is one of the foremost representative men of our journalism, and, may be supposed to be quite as jealous of the rights of the press as is just. They show that an editor may be careful of his own prerogatives and at the same time considerate of the rights of individuals.

In the New York Daily *Times*, of May 21st, 1864, in reference to the forged proclamation of the President of the United States, for the publication of which certain journals were suppressed, by the military authorities, that journal says (and in this case substitute forged Police Court report for forged proclamation, and the remarks are pertinent here):

> THE RESPONSIBILITY OF THE PRESS.—The *Evening Post* invokes the constitutional principle of the freedom of the press in behalf of the suspended *Journal of Commerce* and the *World*. This is not reasonable. Indeed, it seems to us little less than mockery—much like pleading the freedom of trade for the receiver of stolen goods, or the inviolability of your house for the assassin who shoots from your window.
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> The freedom of the press, rightly so-called, we religiously revere. There is, in fact, no liberty of which we are so jealous. It is the most sacred of all. "It is the right," as Mackintosh says, "which is the guardian of every other." It is what Milton meant when he wrote "Give me the liberty to know, to utter, and to argue freely, according to conscience, *above all liberties*." Any attack upon it, or any tresspass upon it, by the civil authority, we would be the first to resent, and the longest to resist. Uniformly in this war we have gone for giving its opponents the utmost lattitude of discussion. The Constitution guarantees it; reason enjoins it; expediency urges it. We have had such confidence in the strength of the cause that, above all things else, we have desired a fair field for it, both of discussion and of battle. That secured, its triumph was inevitable.
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> But what has this to do with fabricating official documents? How does liberty of discussion involve the right of forging the name of the President of the United States? Such a forgery has been committed. The two papers named have given currency to it. The cause of the government has thereby sustained great harm. In Europe and in the "Confederacy" that forgery will be republished as an authentic thing, and will be used as proof that the government itself is weak and despairing. Untold numbers will never hear of the falsification of it, or, if they do, will still give faith to it. For a time, at least, it may secure the Confederacy a large accession of financial credit abroad, and a great renewal of popular confidence at home. The crime may cost the government dear, both in money and in blood. The responsibility for it is a terrible one. Where does this lie? First with the forger. Is that all? We say that it lies, too, with the promulgators, without whom the forgery would have been futile; and we also say that the fact that these promulgators are newspaper publishers, is not a palliation, but an aggravation of their offence.

Everywhere responsibility is commensurate with power. The greater the means, the broader the obligation. It is safe to say that, apart from the government itself, there is no agency in this land that has such concentrated power for public benefit and public injury as the press of this city. If that press, or any portion of that press, lends itself to crime, its criminality is correspondingly great. No man of moral perception will dispute this.

But what is it for the press to lend itself to crime? Can it only be through the direct personal agency of the editors? May it not be done passively as well as actively? Is "I didn't see it" a valid editorial plea in bar? We can assent to no such idea. It, perhaps, is not as absurd on its face as the doctrine that the freedom of the press carries with it the freedom to print forgery; yet, it will not stand scrutiny for a moment. In every responsibility, negligence may constitute unfaithfulness as well as a positive misdoing, nonfeasance as well as malfeasance. Every conductor of a press is responsible for its right conduct, and is bound to see that the internal arrangements of his office are such as to *insure* that right conduct. Without these arrangements he has no more right to run his press than his engineer would have to run his engine without safeguards against explosion. Nay, not a thousandth part so much right. There is no comparison between the two powers in capacity for mischief. A discriminating and careful supervisor of night news is, or at least ought to be, an indispensable *attache* of every morning newspaper. The establishment which fails in this, trifles with the public interests. And it is trifling with the common sense of the public to plead that lack as an excuse, when injury has ensued.

The government is alike justifiable in holding to a rigid responsibility the conductors of the *Journal of Commerce* and the *World*, whether the wrong they have done came from malice or neglect. The summary suppression of these journals is another matter of much more questionable propriety. We confess that it seems to us very much like hanging a man charged with crime, in advance of trial, and at war with every principle of justice and public policy. But we cannot admit such doctrines as the *Evening Post* puts forth on behalf of the journals concerned. It is dishonoring journalism to claim for it undue immunities. It is sapping its rights to relax its duties. Insisting upon the utmost power for the press, we equally insist upon the utmost care in its exercise.

Then, again, on the 29th of May, 1867, the following passages occur in an article of the *Times*:

What the *Tribune* means is simply this: that if a newspaper publishes a libel, no matter how damaging, how fatally blasting to private character it may be, it should enjoy impunity, unless it can be proved that its editor or proprietor *intended* to do the wrong actually perpetrated. If the question were simply one of *punishing a wrong doer*, this position might be sound; but as the *protection of private character* is the main object of having any law of libel at all, it seems to us that this object would be utterly defeated by adopting it.

In the case of the editor of the *Tribune*, which he puts as conclusive, he does not deny that the *Tribune* libeled the complainant, or that the latter suffered thereby, but only that *he* knew nothing whatever about the person thus injured. Why, then, did he publish anything about him? Why did he libel him? Some employe, perhaps, did it; but is not an editor responsible for the acts of his agents? There must be *some* responsibility for what a newspaper *does*, as well as for what its editor may *intend* to do; if it damages character by false statements, it matters nothing at all, either to the victim or to the public, whether this was done intentionally or ignorantly,—whether it was the result of a deliberate purpose, or of heedless and imperfect editorial

surpervision. The editor may be much more to blame in the one case than in the other, and that may be taken into consideration in fixing the measure of punishment. But, in both cases, the paper which *does* the wrong should be held responsible to the party wronged. And it is an editor's special business to know whether what he publishes is true or false; a plea of ignorance is simply a proof of incompetency for his position, or of the inadequate performance of a duty he has voluntarily assumed.

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A newspaper is a tremendous power, especially when directed against private character. And it seems to us clearly just and essential to the public safety, that it should be directed by men who feel all the responsibility which its use involves—and that those who do not feel it naturally should be held to it by rigid provision of public law. If this is not done, the press will inevitably fall into careless, reckless and malicious hands. We may be mistaken, but it seems to us that the tendency is already very strong in this direction. Public men are assailed, not only in their public acts but in their private characters, with greater violence; less regard is paid to the truth or falsehood of statements made, and a general tone of irresponsibility pervades the columns of very many public journals. This has already gone to such an extent that very many public men make it a rule to take no notice of anything that newspapers may say about them; and the public have come to regard this silence as a proof of innocence rather than guilt. And, as the newspapers themselves complain, they find it more and more difficult to make any impression upon the public mind by denunciations of corruption and dishonesty in public affairs.

This is not a desirable result for journalism, and whatever tends to produce it does vital harm to the profession.

Once more, an extract from the *Times* of March 21, 1868, it was speaking of a verdict obtained in a libel suit for merely nominal damages:

But we should be sorry to think that this verdict conveyed any assurance of impunity to newspapers for publishing attacks on private character, no matter how accidentally or innocently, so far as malicious motives are concerned, it might be done. No editor has any right to conduct his paper carelessly, any more than the keeper of a powder magazine has a right to be careless in his supervision of it. A widely circulated journal can destroy the private character of almost any man or woman, and can often by mere inadvertance inflict injury which no subsequent effort can ever wholly redress. The personal and private character of private individuals, and especially of women, is not a matter for newspaper discussion; and, if every word stated in the paragraph concerning Mrs. Dean had been perfectly true, no public interest and no public duty required its publication. And although Mr. Beach was fully entitled to the equitable construction which the jury put upon his acts, we presume he would be the last person in the world to claim that the verdict relieved him in the least degree from the obligation to abstain from attacks upon private character, in the columns of any newspaper under his control. He certainly claimed no right to make such attacks, nor to be relieved from the degree of responsibility which fairly attaches to any one who does make them.

We congratulate him on having escaped heavy punishment for an offence which was unwittingly committed, and which he did all in his power to redress. But we fail to see that he has won any "triumph," or that he was waging any "battle" in which the rights of the press were involved.

Now, gentlemen, here, you have the views of an enlightened and influential journalist on newspaper responsibility, and, I here confront the pretensions of the *Chicago Tribune* with the opinions of the *New York Daily Times.* You will observe, gentlemen, that in one of these articles, the editor of the *Times* admits that the tendency of the press to fall into careless, reckless and malicious hands is very strong. And yet we are told, by the counsel for the *Tribune*, that there is no necessity for libel suits. That is equivalent to saying that the carelessness, the recklessness and malice of newspapers—and the injuries which may result—are, and, ought, to have a licensed impunity. And it is also given as the opinion of this leading American editor, that editorial ignorance, or even effort at suppression, is not a valid plea in bar, as to injuries of which the journal may be made an accidental or unintended vehicle.

I remind you, again, that Mrs. Wilkinson is as much injured, in reputation and in her susceptibilities, as if Mr. Medill had sat down deliberately and maliciously to plan havoc to her. The article has spread as far—and in her distant former home in Maine, for instance, it is as derogatory in its effects—as if its calumny were of malice aforethought and devilish.

But these are, really, considerations of little importance. The pleadings in the case, and, the nature of the evidence have given to another phase of the suit the decisive and controlling bearing. Of course, I mean the question of malice in fact, as it is concerned in or connected with the plea in justification. Whatever the intent or want of it, in the original publication, the reiteration of the charge in the plea, under the circumstances, we insist, amounts to actual malice. You have been told that this plea of justification was "drawn by John Lyle King" —and the *Tribune* report of the case makes a headline of the fact. This, gentlemen, is true, and when, in this connection I come to explain to you this fact, I can now promise you, in advance, that that matter will be set at rest, once for all, to your

satisfaction and my own. The law of Illinois—repeatedly held so in our Supreme Court—is, that when a plea of this kind is filed, and fails to be substantiated by the proof, the jury are to consider—the plea being a repetition of the charge—whether such plea was filed in good faith and with reasonable expectation of proving it, or knowingly that it was false, and if the jury find that it was not so filed in good faith, then the plea is an aggravation of the wrong, and supplies, or is equivalent to, actual malice, and is a ground for the jury giving vindictive damages. We believe that there is not room for doubt but that this plea was filed with a want of good faith. Was it filed with reasonable expectation of proving it? Providentially, almost, as I may say, there is conclusive evidence, in the pleadings on file, on this question. Mr. Smith told you that the charge of adultery made in the plea, which they assumed to prove, was not a conception of theirs, but was the work of "John Lyle King," and, with a tremendous emphasis of voice and manner, he avouched his statement by holding up the plea to your gaze and proclaiming, loudly, that there it was "in the hand-writing of John Lyle King." And so it was—that much is true, but it was not half the truth, and now I propose to tell you the whole truth. You see, as I hold it up before you, that the plea, though written by me, is signed, in their own hand-writing, by Walker and Dexter, attorneys for defendant. I might easily dispose of this matter by a single simple illustration. If I write the body of a promissory note and you sign your name to it, whose note is it, yours or mine—who is the maker of the note, you or I? But I want to make use of the fact, of my drafting the plea, to some purpose on this question of good faith. Mr. Smith has enabled me now—what I had lain awake, of nights, pondering how I could fairly and honorably, and professionally, as between ourselves as lawyers, do—to give you a history of the pleadings. He has unwittingly thrown this much desired chance in my hands, and I now thank him for the unexpected advantage.

Gentlemen, our declaration charges that the libel means and imputes adulterous intimacy between Ellithorpe and Mrs. Wilkinson. The defendant put in a plea, purporting to be a plea in justification, but the plea did not justify *in the sense charged* in the declaration, which the rules of pleading absolutely and always require. The plea was an evasion of the charge in the declaration—it was equivocal—was capable of a guilty and of an innocent sense—in other words, it was what one of the authorities, cited by my associate, termed an *experimental* plea, it did not meet, but sneaked, the issue tendered by us. The effect, if not the design, of the plea was, therefore, to enable the defendant to experiment in the proof, that is, to prove adultery if they could, and if not, to escape responsibility for the failure by saying they didn't mean to charge adultery. Of course, this sort of pleading is not honest and is not legal. They meant adultery if they proved that offence, and, if they failed in the proof, they were innocent of any suspicion of adultery, all the time. "It was a deer if they hit, and a calf if they missed." Well, I demurred to the plea, and Judge Williams sustained me, virtually saying, they must "come to time" on that question. They took leave to amend, and the amended plea, with a few frivolous verbal changes, was the same thing. I again demurred, and, as before, the Court was with me. Mr. Dexter then came to me, and professed that he was unable to draft a plea that would meet the requirements of the Court, and requested me to draw him a plea which would be good under the rulings of the Court. I drew his plea for him, and, as he now knows, it was well drawn. My agency, then, in regard to the plea, was simply to compel them to haul down their neutral flag and run up the right colors, and stand by them. This statement, for the opportunity of making which, I again thank Mr. Smith's over-reaching cunning, silences all doubt as to the good faith in filing their defence. Why equivocate and "palter in a double sense," if they honestly meant to plead truth to the charges we imputed to them, and reasonably expected to prove their truth? Why such shuffling and evasion of saying, explicitly in the plea, what they meant to

prove? Why were they unwilling to take and meet the responsibility of direct and positive averments, except for the purpose of experimenting with the proof—to prove adultery, if they could trump up the testimony, or a suspicion of it, or something else, to be determined by the result? Gentlemen, this duplicity with regard to the making of the issue in the case is utterly at variance with honesty, good faith and fair dealing. When their ambiguous pleas were framed and filed, they knew what Mrs. Ellithorpe's testimony would be as well as they know it now. They knew it would not make out a proper plea of justification, but under the pleas they first framed—so indefinite as to be meaningless—they expected, not to prove adultery, but to create an injurious suspicion of it against plaintiff. But the court foiled them in that intent, and compelled them, on our demurrers, to meet the issue. They found they would not be permitted to sneak through court with such a plea, and after the proof was in, turn round and say, "Well *we* didn't mean to say Mrs. Wilkinson was guilty of adultery—look at our plea, does it charge adultery?" Was it fair or magnanimous in this great newspaper corporation to deal in this way with this lady, and her character, which was more than life to her? Then why, you may ask, did the defendant come squarely up to the charge in the declaration and say adultery, at last? My answer to this inquiry is, it accepted the full responsibility on the chance of trumping up other damaging evidence which might weigh and crush down the plaintiff. Gentlemen, you have seen the hand and agency of the police in this matter. Sergeant Garrity and his police satellites are seen hovering through the back-ground of this case. Garrity, leaving his official duty, is found engineering the police evidence in the case, as a detailed *attache* of the *Tribune* Company, at the service of Mr. Dexter, its counsel. Why, and, for what purpose, is a police official, of this city, placed at the disposal and in the service of the *Chicago Tribune?* Was it the arrangement that Sergeant Garrity was to furnish testimony in the interest of the *Tribune*, and, of quantity and quality, to order? Singularly enough, three policemen—all taken to Mr. Dexter's office

by Garrity—turn out to be the only witnesses against the plaintiff. It was only three weeks ago, as they testify, that they imparted to Garrity their information. Of course, the alleged facts they testify to, were not known to the *Tribune* when the pleadings were filed, and could not constitute any part of any expectation they might then have had of proving the plea. The good faith in framing and filing the plea is to be determined on circumstances existing at the date of the plea. At that time, there could be no sort of expectation of making out the charge—but the *Tribune's* confidence in Garrity's being equal to the occasion and in his command of his subordinates, was unlimited. And, in reliance upon his resources for obtaining evidence, they "took the chances." This was to be their test case. They had the motive to risk much for the sake of making an example, in the way of damaging this lady, that would, in all time, deter any one from bringing a libel suit against the *Tribune*. It would be worth something to that paper, to have made the experiment, if it only prove successful. It would demonstrate what they could do in the way of pleading and proof. This, gentlemen, is my judgment as to the purpose of the defense and the testimony put in. Nothing but a motive to risk all and try the crushing process, and so put an end to libel suits, can account for the incongruity, and, what seems to me, the absolute stultification, of the *Tribune's* course in this case.

I now wish to say something about the indirect testimony. That is, that relating to the character of Mrs. Wilkinson and of her house. I do not propose so much to examine this testimony in detail as to submit it to some general considerations for testing its reliability. It is remarkable, gentlemen, that all the evidence of this kind is that of policemen. The official brass button glistened on every witness introduced on this part of the case. Behind all, in the dark or in the distance, we see these uniformed policemen gliding, noiselessly, on errands of evidence, in the work of hunting and making "points" for the defamation of Mrs. Wilkinson. Both her reputation—as shown in isolated acts—and the character of

her house, and the evidence as to them, were entrusted to the capabilities of Garrity, Miller and Rickets, and how they came, or aimed to come, up to the expectations formed of them, you have seen. If the testimony given by them was as important and decisive here with you as it has been made to appear in the head-lines of the *Tribune's* so-called "report" of this trial—head-lines more prominent than those with which the *Tribune* emblazoned the battle of Shiloh, or the capture of Vicksburg, or the victory at Atlanta—then, indeed, might the plaintiff have cause for alarm. But, gentlemen, you are not likely to accept the testimony of these policemen on points as to which there is contradictory evidence from better sources. To say nothing of the honesty of these policemen—of their intention to be fair and candid—they are to be regarded as a sort of professional witnesses. I mean by that, that it is part of their business, in detecting crime and arresting criminals, to collect and furnish testimony as to both. It, therefore, naturally lies within their duty to make the most of such evidence as they give, and make it go as far and bear as strongly as it can admit of. Besides, all who are familiar with that sort of testimony must have observed that it is, unconsciously, a habit of their mind to look out for the darker phases of character. Allowance must be made for these peculiarities when you listen to some policemen testifying. A great deal has been attempted to be made of the police testimony. It, of course, answered the requirements of the situation to assume that their testimony was absolutely reliable. Mr. Dexter asks, what interest or motive Garrity and his men have to falsify. Mr. Smith put the same question. If the gentlemen will tell me what motive or intent Garrity had to engineer the *Tribune's* testimony, I will then tell them what motive or interest he has in the matter. I think it not very far-fetched to suppose he had, at least, a motive to satisfy his employers. I can easily suppose, too, he has a motive to injure the plaintiff. As illustrating this—and, by it, the reliability of his testimony—recall the circumstances under which he says he first saw Mrs. Wilkinson. It was not at all responsive to the question that was asked, but he volun-

teered the statement that, the first time he saw her, she came to the police station to make a complaint of her boy—that her boy, in connection with other boys, had stolen her jewelry. Now, in regard to that, Mrs. Wilkinson positively swears she did not go to the police station, and that she did not complain of her boy for stealing the jewelry, and that when it was stolen from her house, her boy was in Minnesota. His absence in Minnesota, at the time of the robbery, was clearly proved, also, by Barstow. Why was Garrity so eager to thrust in that irrelevant matter, except to prejudice the boy, and, through him, the mother, with the jury? But that is enough to shake his credit, as well as to show his animus. In relation to Miller, if his manner of testifying did not, of itself, discredit him, we can gather enough from his statements to impeach him successfully. His duty, while on his beat, was to note all suspicious persons and places in his book. He testifies to seeing men going in and out of Mrs. Wilkinson's house at all hours of the night—sees her coming to the street door with men and kissing them at parting—sees her standing, for an hour and a half, under a street light, with a man, late at night—sees lights in her windows at all unseasonable hours, and notes these things in his book, on each occasion, by the light of the first street lamp he comes to. He says it was his duty to report these things to his superior officer. We asked him, "did you, then, report them?" "Oh, no, I never did; they occurred in the latter part of 1867, but I never breathed a word of them to any one, until I told them to Garrity, three weeks ago." Now, here, before you, and in the *Tribune* head-lines, these things are treated as the very emphasis and strength of their very disparaging testimony, yet Miller, at the time, and from time to time, as they occurred, although it was his duty to make them known, never reported them. This is Miller's statement. Who believes it? As to his book—that valuable repository of the Wilkinson immoralities—where is it? "Unfortunately, it was lost," says Miller. You will recollect, too, how very positive he was, on his direct examination, as to Mrs. Wilkinson's hour and a half dalliance with a lover on the street corner, at

night, being on the 12th or 15th November, 1867. On his cross-examination, all certainty or probability as to the time of that amorous imprudence vanishes, and he admits he has no idea when it was. I do not care to analyze his, or Garrity's, or Rickett's testimony, and show its manifest improbabilities. There is a more satisfactory way of disposing of them and of it, by our mass of contradictory evidence. The counsel for the *Tribune* have realized this to the full.

In the arguments to the Court on the admissibility of this kind of evidence, it was assumed and proposed as testimony, showing her to be a prostitute and her house one of public prostitution. Now, in his argument to you, after our evidence was heard, Mr. Smith comes down from his lofty pretensions and promise. "Oh no! we don't claim she keeps a house of prostitution—she only does business on the *sly!*" Miller's fictions, the goings in and out, of anybody and everybody, the street-door tendernesses of the kiss when policemen are beating about, the felicities of a ninety-minute street-corner assignation by gaslight—all these amorous eccentricities are what Mr. Smith discriminates from open shamelessnesses into doing things "on the sly!" This police evidence is flimsier than the stuff dreams are made of. It ought not to create a suspicion. To show you the utter want of probability of truth in this police rubbish, to show you its incongruity with other circumstances and facts, allow me to call to your mind one fact in Mrs. Wilkinson's position. Miller and Garrity allege these harlotries of the plaintiff as occurring *after* Mrs. Ellithorpe's "raid" on plaintiff's premises, and *after* the commencement of this libel suit. Just look at the positively and glaringly suicidal and stultifying conduct of Mrs. Wilkinson, if the police account of her and her house be true. She has a suit pending to vindicate her character in this very particular of virtue; she has been heard of by, and made known to, the tens of thousands of *Tribune* readers, and is the "observed of all observers." It is the interest of the police, who are watching her, and it is the interest of the *Tribune* to open the volume of her daily life and read her every action.

She knows that hired detectives are "piping" all her footsteps and haunt her like spectres; she knows that if prudence, discretion and modesty were ever a virtue, a necessity, or even policy, it was then; and that a single word or act, bordering on indiscretion, even, would, through the medium of her trial in Court, and its reflex in the *Tribune*, be heard and seen of all men and women. Yet, under this gravity and pressure of circumstances, the Garritys and Millers come here and reveal to you freaks of street lust and publicities of wantonness that would shame the old harlot of Babylon herself! Well, now, as to all that sort of proof and that sort of witnesses, how do we meet it and them? We believe we have met and disproved such testimony as Garrity's and Miller's, by the most irrefragible and conclusive evidence—that of the neighbors of Mrs. Wilkinson, at the time the police were noting her, as they say. You will have seen, gentlemen, from arguments addressed by us to the Court, on the admissibility of this police evidence, that we were not expecting its admission. We did not. But seeing it was admitted, we had to prepare ouselves to meet it as we could; and, fortunately for us, we were able, in the meantime, to find and produce here most of those who were Mrs. Wilkinson's neighbors at that time. You have not forgotten, too, that Mrs. Ellithorpe was interrogated to say that the neighbors called Mrs. Wilkinson "Ellithorpe's woman." It is very remarkable that, with all Garrity's zeal and resources for furnishing evidence, they have not been able to produce here a single one of those neighbors to tell us about "Ellithorpe's woman." When you come to ask what the neighbors say about the plaintiff, it is a different account they give. People living in the same building with her, in the same block, come and testify for her. There is first, Mr. Barstow, her brother-in-law, and his wife living, at this very time, in the house with her. He is a merchant, a mason of rank and standing—whom you may have seen, as I have, in the processions of the order in the streets—and, as you saw here, a man of intelligence, weight and dignity of character, and of the most unimpeachable respectability. He generally spent his

evenings at home; his and his wife's friends visited them there, and he says strangers did not visit Mrs. Wilkinson, nor did she go out at night. He often came home, late at night, from the lodge, and the light was left burning for him. At the same time, too, Mrs. Wilkinson's sons and another sister were living with her. Then, there was Mrs. Wilder, who, with her husband, rented rooms of plaintiff, her sleeping room being next Mrs. Wilkinson's; and, she says, that during, all the time, she heard or saw nothing to excite suspicion of her or of the house; that she was intimately acquainted with plaintiff, and strangers didn't visit her; she didn't go out at night; she didn't stand at the door with gentlemen, but spent her evenings at home always. Then, Mrs. Smith, the boardinghouse keeper next door, testifies, with equal point, to the good character of plaintiff and her house. Bronson, the grocery keeper, also, next door, living there with his family, and at home night and day, heard and saw nothing of impropriety, and never heard anything against her reputation. Mr. and Mrs. Dalrymple visited frequently there, of evenings; their evidence is to the same effect. And Capron, the private policeman, traveling that "beat," and hired to watch the store under her premises, passing there every half hour of the night, saw no persons going or coming there, except those belonging to the house; never saw her at the door, and saw nothing to excite a suspicion of her or her house.

Here, then, gentlemen, are the neighbors—such of them as we have been able, on short notice, to find, and that's the way they speak of the plaintiff—and what do we hear, from these neighbors, of "Ellithorpe's woman?" And, all the gentlemen can say is, "Oh! these people would not be as likely as the police to know what was going on." Barstow and his wife, living in her rooms, Mrs. Wilder, too, living in her rooms, and knowing all her home-life intimately, night and day—and these people, too, who are above suspicion—don't know that these things were going on, but the brass-button gentry, once in a while passing, happen to be "around" just in time to see sights that brought forth from Mr. Dexter a solemn recital of

a chapter of the Proverbs of Solomon! Well, gentlemen, I think you will give them the credit of being likely to know what they say they know. It is something, at least, for us to have witnesses who have opportunities of knowing, that will be believed. It is a fortunate thing, as it turns out, that this kind of testimony was introduced—it has enabled us to place Mrs. Wilkinson above suspicion and beyond reproach. But Mr. Smith asked, and asks again, very solemnly, "Where is Mrs. Barstow?" For the answer, we refer him to her physician, who will inform him why—and it is our misfortune that it is so—she is not here. Another one of those fortunate accidents which we have had the benefit of, occurred as to Frank Slayton. I knew him from boyhood, in my town, in Indiana. When I went from here to my office, I found him waiting there on a business matter of his own. I got him to come here. He is the druggist over whose premises, on Lake street, where he resided, also, with his family, and, where he was day and night, Mrs. Wilkinson lived, before going to Randolph street. Garrity and Miller, however, affix their brothel indications and bawdy signs upon her there. But Slayton tells you—and there aint a suspicion on his credit—he never saw or heard anything, while she lived there, to excite a suspicion of her. Now, is it not remarkable that, from those who could and should know her best, there is no word to condemn her? Another thing is singular. A woman giving as many signs of her looseness to indicate wantonness as her vocation, as the police testify to, must have a corresponding reputation—and, if there was such reputation, would it be difficult to prove it? Yet, where and who are the witnesses to prove that? The *Tribune* has matchless advantages for getting testimony—the police machinery is in their hands—they have influences they can work that individual parties cannot—their means of getting information are unlimited. But who comes here, in citizen's clothes, and says aught against Mrs. Wilkinson? Who are the persons to tell of "Ellithorpe's woman?" Where are the men and women from Randolph street, or from anywhere, who speak of a blemish on her name? And yet, with this entire want of

such witnesses, and with only Garrity and his like, they would strike down this soldier's widow, and so requite the patriotic services done by L. D. Wilkinson. While they are asking you to do this, we may imagine that the patriot, in his grave, might start to life again and strive to burst from his cerements and revisit the glimpses of the moon to clamor against it. Will you sit here and permit a woman to be defamed on such evidence, when, if but a fraction of their imputations were just, her whole neighborhood would know it and could be brought here to let you know it?

Gentlemen, on this point of general reputation, of the witnesses we had expected to call, we have examined but three. We called them, because, being lawyers, they were about the Court House, and could be conveniently produced. They are well known gentlemen—one of them prominent as a lawyer, another prominent as a lawyer and politician, and the other less prominent, because younger in the profession. Messrs. Bond, Dow and Haines, who have had opportunities of knowing Mrs. Wilkinson, and knowing of her, testify that best of testimonials to a woman's character—they never heard anything against the reputation of the plaintiff. Now, we thought, considering that there was no breath of imputation, save of the policemen, against her, that we might safely trust her case, as to general reputation, on the evidence of these gentlemen. We thought that, with that only, we were safe in trusting her to the sense of justice, the fairness and generosity of the jury, on the question and fact of her reputation.

On the question of damages—a really important one—I desire, now, to say a few words. There is a variety of considerations affecting it.

The gist of the action is for injury to character and to feelings. I need scarcely say to you that the law regards character as a species of property—a sacred, inestimable and inviolable property. A little reflection will satisfy us why this is so. We are social beings, living in society, where the interest, the well-being and destiny of each person is, more or less, involved in and bound up with those of others around us. Character is

the estimate others form of us, and upon that character—on their estimate, depend the extent and nature of each one's intercourse with others—and on that intercourse depend our comfort, happiness and everything that makes existence desirable or even tolerable. You can see how important a part character plays, and it may make life a pleasure and a glory to us or a burden and a curse. The law permits it, therefore, not to be robbed or injured. The law speaks as its own the Divine injunction, "Thou shalt not bear false witness against thy neighbor," and, in the spirit of the creed of Christian ethics, which bids us love our neighbor as ourself, it equally condemns him who injures a neighbor's name, with the one who injures a neighbor's person. Defamation is of two kinds, oral and written—slander and libel. Slander often perishes with the breath which utters it, and is limited in its reach. But libel is conceived in coolness and with malice aforethought, and remains and abides, and converted into print, is capable of indefinite circulation and prolonged propagation. The diffusibility of the libel is its main element of mischief. The scandals of the press are or may be irrepressible and inextinguishable. They are defamation in its most aggravated form. If, then, character is a wealth to be protected, and libel is its most deadly destroyer, we can see the necessity and justice of suits like this. And from its tendency to exasperate, and provoke breaches of the peace, libel is an offence criminally punished. It has been said, here, that there is no necessity for libel suits, that people of character do not come into courts to parade their wrongs to character. But, gentlemen, is this so? Experience and observation teach us, that for wrongs of this kind, there must be redress. The victim of libel or slander must have some redress. If he cannot find law to punish the wrong doer, he will be a law unto himself to avenge his wrong. He will seek a reparation of law or exact a reparation of violence. Between an arbitrament of law and an arbitrament of force, he must make a choice—a choice between the impartial and regulated judgment of the courts, or the swift and reckless vengeance of the sufferer. If juries give verdicts, with a proper sense of the value of charac-

ter and of the guilt of its destroyer—if it comes to be understood, that the slanderer and libeler can look to the jury box for little of tolerance or sympathy, the law will retain and maintain its supremacy to vindicate and repress. But if it come to be otherwise, we shall approach a condition of things which, unfortunately, exists in some parts of the country where law, as a mode of redress for personal wrongs, has fallen into disuse and contempt, and where, from the sympathy, the indifference or connivance of juries, so far as the law is concerned, there is complete immunity for the most grievous of calumnies and scandals. The echoes are scarcely yet hushed in our ears, of the assassination of an editorial libeler of ladies, who paid in his blood and with his life, the penalty of his aspersions. And when we hear, as part of the bloody tragedy, that the avenger of a sister's sullied honor, even while the blood of the slain was yet freshly smoking to heaven, received from the sympathetic crowd something of an ovation, and was hailed with the honors of a hero, we perceive, in these shocking accessories to the scene, a spontaneous conviction—an instinct of rude and barbarous justice—that libel is a crime, that newspaper libel is among the most criminal of crimes, and that the libeler of woman deserves the fate of that common enemy of the race, a pirate, to be shot at sight. Why is it, gentlemen, in this very instance of libel, that young Wilkinson, who has seen the mother who bore and reared him, emblazoned with infamous imputations which ruin her, which she will carry in sorrow to the grave, and which, through her, dishonor him, and indelibly deep-stain the name both of them bear, did not, like the Virginian avenger, bring down on the head of his mother's libeler a fate as swift, as bloody and as ghastly as that of Pollard? Why has not Ellithorpe, too, appealed to the law of Derringers or six-shooters for his reparation? The answer and the explanation are, that ours is a law-abiding community, where there yet are faith in, and reverence for, the courts, as tribunals to protect our dearest rights and to redress our most grievous wrongs. For a continued supremacy of the law of justice over the law of force, courts and juries are responsible—and this

supremacy is gone, only when they become recreant to duty and trifle with their trust, and we have verdicts, in this class of cases, which fritter away or abrogate the remedies they ought to apply, and, virtually, license or connive at offences they ought to punish. I have said these things to remind you that public interest, policy and good order find their best support, as regards wrongs to person and character, in a liberal enforcement of libel law.

Gentlemen, this libel is one against a lady. A libel against a woman is least excusable of all defamation, because, with the meanness of falsehood it blends something of the worse meanness of cowardliness. This libel grossly impeaches the plaintiff's virtue. I need hardly say, that an imputation on her virtue is the most fatal, damaging and disreputable which can be made against a woman. By common consent, all that we find or feign as lovely and lovable in woman, all in her that charms and wins and enslaves, all for which we adore and worship her, that which extorts for her Milton's praise, "as fairest of creation, last and best of all God's works," are summed up and center in that which we call her virtue—the crowning merit, grace and glory of her sex.

> "Her virtue is her life—both grow in one;
> Take virtue from her, and her life is done."

Your own consciousness verifies this; for you know that, in the whole range of exasperations, there is none which quicker fires the blood and inflames passion, which sinks deeper, lives longer, cries louder to be avenged, and, is less forgotten and forgiven than that which defames the virtue of wife, daughter, sister or mother. "*Their* honor is the nearest, dearest part of all men's honor." This is not sentimentalism or a gush of romance; it is a fact of common experience. It is only when virtue surrounds her like a resplendent atmosphere of warmth and light, beautifying and glorifying her, that woman exacts our homage, and we are her worshippers. This worship which her virtue wins her is sublimed and idealized into a very poetry of life in the tenderness and purity of the lover's

affection; it is matured and lives, serenely and steadily, in the devotion and fidelity of wedded life, and, like a still, small voice of filial love and piety, all through the advances of life, ever it devoutly whispers us the holy name of mother. Whoever, then, idly, wrongly and wantonly, asperses the virtue of a woman, profanes or commits sacrilege on the holiest sentiments of these, the endeared affinities of life. Gentlemen, this is the sort of injury the Chicago *Tribune* has done this plaintiff. It has pursued her in her home—the virtuous woman's real empire and right royal realm, where she is queen—and thrust aside the vail which hung over her quiet and secluded life, and unvailed and exposed her to the gaze of its world of readers, where is seen the brand set upon her by the *Tribune*, which most marks the shame of woman—a brand which as glaringly blazes guilt as the scarlet letter, that, in Hawthorne's romance, emblazoned in its indelible red imprint, the shame of Hester Prynne.

I will close with one other consideration. The Court will instruct you that, if you find this libel was published—whatever the want of malice or the mistake, in its original publication—and that the plea of justification is not proved, and was filed in bad faith, then the plea is an aggravation of the original wrong, and warrants you in giving vindictive damages. The object of the damages is, compensation and punishment—compensation to plaintiff and punishment to defendant. Both these purposes are blended, as commingling elements, in the damages. To enable you to determine what would be punishment, the Court has permitted to be, and, we have, given evidence, as to the circumstances of the Tribune Company. You have heard that evidence. That company scarcely knows its wealth. Its income divides into individual returns of tens of thousands; its shares of stock are better than the premium stocks of the share markets. If, then, you find it guilty, and its defence a failure and malicious, let your verdict be proportioned to its ability to respond. A verdict of nothing less than thousands would be felt and heeded where profits are counted by scores of thousands, and

a verdict on any other basis would fail of being a punishment, and would be a burlesque upon justice. It would only be fixing upon it a price to pay, for a lesson it needs to learn; an admonitory lesson valuable to it, and, in its salutary effects felt in the paper itself, valuable to its readers; and valuable, beyond all, as an example which may affect the whole journalism of the country—a price it can afford, and, in the end, will not regret, to pay.

A considerable verdict in this case, would be something like poetic justice. We all can recall some of the strange changes of circumstances made by the war. The parties to this suit personify the mutations of fortune and circumstance caused by the war. In 1861, L. D. Wilkinson, the plaintiff's husband, was a lawyer at this bar, with a competence and a prospect of independence. When the drum beat, he threw aside book and brief for the musket, turned his back on wife and home, and his face to the front on the fields of fight—followed the flag through all perils, and, at the siege of Vicksburg, sank before a disease which disabled him from service, transferred him from camp to hospital, and thence to his home, only to breathe out a dying prayer for his country, his wife and children, with but the consolation to them that he died a soldier and a patriot. But the cloud that overshadowed her and her home, had, for the *Chicago Tribune*, a silver lining, and was edged with the gleams and promise of a splendid prosperity. In 1861, when the war began, that company was insolvent, and, commercially speaking, was tottering to its foundation, and helpless at the mercy of creditors. The sudden and immense demand for news from the armies, gave new life to the journalism of the country, and no journal of them all more quickly than the *Chicago Tribune*, struck the tide, and took it at the flood that led on to fortune. Something of that fortune is employed here to-day to destroy the soldier's widow's sole possession—the only legacy left her of husband and of war—her good name. God, in Heaven, and you, in the jury-box, the temporary dispensers of His justice, are her only protectors!

Upon the conclusion of Mr. King's speech, the Court gave the following instructions to the jury on the part of the plaintiff:

THE INSTRUCTIONS.

The conductors of newspapers are entitled to no peculiar indulgence, and have no peculiar rights and privileges. They have no rights but such as are common to all. They have just the same rights that the rest of the community have, and no more. They have the right to publish the truth, but no right to publish falsehoods to the injury of others, with impunity.

If the jury believe, from the evidence, that the defendant published the article and in the sense and with the meaning alleged in the declaration, and that such article tends to impeach the virtue, and is injurious to the reputation of the plaintiff, the verdict ought to find the defendant guilty, unless the jury also believe from the evidence that the plea in justification is fully and substantially proved, or that the publication contains a correct report of the proceedings in the Police Court.

Malice, in its common acceptation, means ill-will, but, in its legal sense, it is a wrongful act, intentionally or voluntarily done, without legal justification or excuse. In actions for libel, malice in law is sufficient, and is to be inferred from the publication of the libellous matter without such justification or excuse. In an injury of this character the actual intention of the author is immaterial except upon the question of the amount of damages. The law considers every one whose neglect, carelessness and want of due regard of the rights of others, occasioning injury to others, equally bound to make reparation to the extent of such injury as one who willfully does the mischief, though the amount of damages would be greatly affected by the intention governing persons committing the injury. It can make no difference to the party injured whether the injury was occasioned by a willful act, or by negligence, or a careless disregard of his rights, and such a consideration ought not to affect his or her remedy; but upon the question of the amount of damages, the intention of the party to injure another becomes material, and in the absence of such intention, actual malice in the publication, as distinct from legal malice, cannot be considered as prompting the act.

If the jury believe, from the evidence, that the defendant published the article, and in the sense and with the meaning alleged and imputed in the declaration, and that the same is injurious to the plaintiff, the defendant, unless the plea in justification is fully proved, or the publication is a correct report of the proceedings in the Police Court, is liable for such publication, even though it was published by mistake, or against the directions of the managing authority of the defendant; provided it was published by servants of the defendant in the course of the execution of their duties as such servants; but upon the question of actual malice the jury should consider all the circumstances attending its publication, and if the managing editor, or any person having the actual control of the paper, in good faith, ordered and directed that the alleged libel should not be published, and against such order, and by the inadvertence or mistake of any of the employees of the defendant, the alleged libel was inserted, such facts will be considered by the jury in mitigation of damages.

Upon the question, whether the alleged libel is a correct report of the proceedings of the Police Court, if it purports to be such, the Court instructs the jury that the article in question, considered as a report of the proceedings of the Police Court, is required to be substantially true and accurate, so far as it contains facts in reference to the plaintiff. It is not necessary that the supposed report should contain every word uttered at the trial, or that

immaterial matter may not be omitted. Yet what *is* published must be, in substance, a true account of the proceedings, and must be true as to the whole charge against the plaintiff, and not merely correct in portions of it; and must state the facts adduced or testified to, and not the reporter's conclusions or implications from the alleged facts. Unless such report have these requisites it is not privileged, and will afford no protection to the publisher as a defense. If the jury believe, from the evidence, that the publication complained of purports to be a report of a proceeding in the Police Court, and that it contains substantial or material statements of alleged facts or circumstances, tending alone, or with others there stated, to criminate plaintiff in an illicit intimacy with A. C. Ellithorpe, which were not proved or testified to in the Police Court, then such publication is not true and correct as a report of such proceedings, and the same is not privileged, and can afford the defendant no protection on that ground.

The jury, in assessing damages, may take into consideration the pecuniary circumstances of the defendant, and find such damages as, under all the circumstances of the case, they may think proper, provided they find the defendant guilty.

The burden of proof under the plea of justification is on the defendant, and it must have sustained it to the satisfaction of the jury by the proof. The plaintiff is not called upon to disprove the plea; and, to sustain it, the defendant must have proved, by the evidence, all the material and substantial allegations of the plea, tending to criminate the plaintiff in an illicit intimacy with A. C. Ellithorpe.

The jury are instructed in behalf of the plaintiff, that the defendants having filed a plea of justification, it is incumbent upon them to sustain such plea by evidence, and it is for the jury to say whether the defendants have sustained such plea with evidence; and it is for the jury to say whether such plea was filed in good faith, with a reasonable expectation, under all the circumstances of the case, of proving the same. And if the jury believe such plea was filed wantonly, and in bad faith, and that the publication is not privileged, or the justification is not established, then such fact may be considered by the jury as aggravating the original libel, and as evidence of malice.

In regard to the damages, the jury is instructed, if it finds for plaintiff—

They may assess such an amount as they may think proportioned or adequate to the injury sustained by the plaintiff in her reputation, and for such injury to her feelings as is natural and unavoidable in consequence of the publication.

And, though the jury may believe, from the evidence, that there was no actual malice in the publication of the libel, yet, if they also further believe, from the evidence, that the plea of justification was not filed in good faith, or knowingly that it was false, or without any reasonable expectation of proving its truth, the filing and using of the plea is a reiteration of the original charge, and may be taken as evidence of, or equivalent to, actual malice; and the jury may give damages, by way of punishment, in any amount which they shall think proper under the evidence.

On the part of defendant the following instructions were given:

That, upon the point of privilege, the question is not whether the illicit intimacy in fact existed, but only whether the article contains a substantially fair and correct account of the testimony before the Police Court bearing upon this question; and, if the jury believe, from the testimony in this cause, that it does, then it is not material to inquire whether such testimony was, in fact, true, or whether the illicit intimacy, in fact, existed; the only questiona

to consider is, was the testimony before the Police Court, bearing upon this question, substantially correct as stated in the article; and if the jury believe from the evidence that it was, then, whether true or false, the article is privileged, and no action will lie for its publication in the *Tribune*.

In determining the question whether the article complained of was a fair report of the Police Court proceedings, the jury are instructed that it is not necessary that it should be a verbatim report, but only that it should be as to the facts stated substantially the same as the evidence given at the Police Court, assuming the evidence there given to be true.

That in determining as to whether the article in question was privileged, the jury are to consider, from the testimony in this cause, whether all that portion of the article which tends to convey to the mind of the reader the idea that an illicit intimacy existed between the plaintiff and Ellithorpe, is a substantially fair and true account of the proceedings and testimony in the Police Court bearing upon this question, and if they should find, from such testimony, that it is, then the article is privileged, and no action can be maintained for its publication in the *Tribune*.

The jury are instructed that privileged publications are not actionable; and, if the article in question was privileged, then no action will lie for its publication in the *Tribune*. That, in determining this question of privilege, it is not material to inquire whether it appeared from the testimony before the Police Court that Ellithorpe was a real estate agent, doing an extensive business in this city; or whether, upon the evening in question, his wife noticed that he arrayed himself in his best garments and made an elaborate toilet before going out; or whether, in the meantime, between the disturbance at the house and the trial in the Police Court, Ellithorpe succeeded in appeasing the anger of his wife, so that, at the Police Court, the charge of disorderly conduct alone was preferred against Ellithorpe, his wife, and Mrs. Wilkinson; but the jury are only upon the question of privilege, to consider the facts stated in the article in reference to plaintiff, and if such facts were stated substantially as they were detailed at the Police Court, then the law is for the defendant.

The jury are instructed that, under the issue presented by the plea of justification, the question for them to consider is, whether an illicit intimacy did take place between the plaintiff and A. C. Ellithorpe, as alleged in said plea, and to establish the truth of this plea it is not necessary for the defendant to prove the direct fact of adultery by positive proof, but the fact may be inferred from circumstances that lead to it by fair inference. As to what are sufficient circumstances to prove the charge, no definite rule can be laid down by the Court, except to say that if the circumstances in proof in this case are, in the opinion of the jury, such as should lead a discreet, reasonable and just man to the conclusion that the facts stated in the plea are true, then the jury would be warranted in finding for the defendant under the issue presented by such plea.

The jury are further instructed, that in considering the question as to the truth of said plea of justification, they may take into consideration, as tending to establish said plea, the circumstances given in evidence, such as the repeated visits of said Ellithorpe to the plaintiff, in her apartments at the time, if such visits have been proved by the evidence, and in the manner as testified to; the conduct and position of the said plaintiff and Ellithorpe, at 277 West Randolph street, when seen by Ellithorpe's wife through the window; their conduct after she entered the room, and their conduct as to each other at the Police Station that night, and also the general conduct of the plaintiff as bearing upon the question of her chastity, and the lewd character of the house she kept during the period of time in which Ellithorpe made visits to her, if it shall have been proven to have such a character; and if, from all the circumstances in proof bearing upon this question, the jury

believe that the illicit connection did take place as charged in said plea of justification, then they should find for the defendant.

The jury are instructed that if they should determine, by the evidence, that neither the privilege or plea of justification is sufficiently established, still, if they believe from the evidence that the publication of the article in question was in good faith prohibited by those managing and controlling the publication of *The Tribune*, and that all reasonable efforts to prevent its publication were made, and that the foreman, Langley, was by them directed not to publish, and in good faith intended to obey such direction, but that the same was published by him unintentionally, and by mere mistake or inadvertence, and that the mistake was corrected by the publication, in the next issue of *The Daily Tribune*, of a full retraction, then all these facts should be taken into consideration by the jury, in mitigation of the damages; and if the jury should think the facts should warrant it, they may find only nominal damages for the plaintiff.

After a short consultation, the jury returned a verdict of "guilty" against the defendant, and assessed the plaintiff's damages at $7,500.

In the Chicago *Tribune* of January 1, 1869, appeared the following article:

A MALICIOUS VERDICT.—The public have had an opportunity of reading in all the papers of the city, during the week, the trial of the libel suit in which a Mrs. Wilkinson claimed damages of the *Tribune* for the accidental publication of a report of a Police Court case in which she, Mr. A. C. Ellithorpe, and his wife, were parties under arrest. The facts of the publication are known to the public. and were known to the jury. In the face of the facts of the case, the jury, as if in defiance of common sense, law, justice and public decency, have rendered a verdict for the plaintiff, awarding her $7,500 damages. Had the jury been co-plaintiffs, and each man entitled to a *pro rata* share of the damages, their own self-interest, overriding all other considerations, would not have permitted them to have given a greater sum damages. We question whether there is on record a verdict which bears upon its face such incontestable evidence of ignorance and malice as this one. However intelligent persons may differ as to the completeness of the evidence pertaining to the character of the plaintiff, there is no person who will question the overbearing malice which marks this verdict. The effort to justify it on the ground that The Tribune Company is wealthy, is but an additional proof that the verdict proceeded from the lowest of all springs of human action—malicious ignorance.

The verdict will not arrest the publication of the *Tribune*. Hampden told the extortioner that it was not the mere payment of the filthy shillings that he objected to, but the tyranny which enabled crime thus to destroy his personal liberty. It is in behalf of the freedom of the press—in behalf of the freedom of every other paper published in this city, and in the country, and in behalf of the liberty of the people themselves—that we arraign this verdict as an embodiment of an ignorance whose stolidity is only equalled by its personal malignity. There is not a man who sat on that jury who does not owe the liberty he enjoys, and the peace and security of his family and of his business, to the protecting power of the public press. Men of such intellects and instincts would be serfs in any country, where there was not a free press to shield them from the tyranny of the powerful and unscrupulous. There is not a citizen who may not be arrested, confined and imprisoned without law or justice, were it not for the fear of the publicity which the

press would give to such proceedings, and yet, once permitting such verdicts to stand, no newspaper dare publish anything pertaining to the case. Such verdicts prevent a newspaper publishing any facts or news unless it has it in its power to prove their truth, and, in addition, the faculty of overcoming the low-born malevolence of a besotted jury.

The facts of this publication were:

1. That orders were given in the office that no mention of the disgraceful row should appear in the paper.

2. That no mention of it was made when it first occurred.

3. That when the Police Court trial came up, it was written by a reporter, without the knowledge of the editors; that the latter ordered and directed that the same should not appear in the paper, and that all the necessary precautions were taken to prevent its publication.

4. That it was published only by an accident, in defiance of all these precautions, and was promptly retracted and corrected.

If there ever was a case in which the absence of all actual malice was demonstrated, to the conviction of every reasoning mind, this was the case. We know there is a distinction between actual malice and legal malice. The latter is presumed by fiction of common law from the publication of the libel; but, as malice must be the measure of the damages, is there in all Chicago a disinterested, intelligent man, not actuated by a desire to punish the paper because it is prosperous in its business, who will say that there was left in the case the remotest point upon which to impute the slightest actual malice to the publishers? On the contrary, the whole evidence showed unusual efforts, not only to prevent the publication of that police item, but also to prevent any publicity whatever to the disgraceful proceeding at the house of the plaintiff.

If an accident of this kind, promptly and fully corrected at the time—an accident happening in spite of all reasonable precautions—is to be treated as malicious, there is not a newspaper in the country which may not be victimized every day. The change of a word—the change of a single letter—may make that libellous which otherwise might be harmless: and yet such a thing may occur to any office by accident or designedly, by any malicious employe, in any issue. A case of this kind occurred in Cincinnati less than a year ago. A reporter, in writing of a person, referred to him as a keeper of a boarding house; by a misprint he was described as the keeper of a "bawdy" house. He sued for libel. The newspaper proved that the accident occurred through the neglect and inadvertence of some of its compositors and proof-readers, and that it had corrected the error promptly. The Court ruled that there could be only nominal damages, and a verdict of *one cent* was rendered. The libel in the Cincinnati case was even greater than here. There was not the remotest evidence to justify the allegation that the person kept a "bawdy" house; but the jury and the Court refused to punish a wrong, even to a respectable person, which was purely the result of an accident, as malicious, and satisfied the legal presumption of malice by nominal damages. We repeat that the case that occurred in Cincinnati, as well as the one concluded yesterday, were so purely inadvertent and accidental that there is not a newspaper office in the country in which they or similar ones might not occur. A designing printer, proof-reader, foreman or pressman may, in spite of every precaution, insert libellous matter in the paper, and rely upon a stupid and malicious jury to punish it as an act of malice by the proprietors. If such a verdict is to stand, to mark the narrow boundary in which the press may be free, there must be an appeal to that higher tribunal—the people—for that sweeping remedy that will teach treacherous jurors that the liberties of the people are so bound up with and so intimately blended with that of the press, that the one cannot be assailed and outraged without doing violence to the other.

In the city papers, excepting the *Tribune*, appeared the following card "to the public:"

THE WILKINSON LIBEL SUIT AND THE VERDICT—A CARD FROM THE PLAINTIFF'S ATTORNEYS.—*Chicago, Jan.* 2, 1869.—The comments of the Chicago *Tribune* on the verdict against it, in the Wilkinson libel case, are unjust and unwarrantable. The Tribune Company itself, by its pleading in the case, made the circumstances attending the original publication—such as mistake and want of malice—of very little or no consequence; but, in its plea of justification, alleged, and, therefore, put directly in issue the *truth* in all particulars of the publication. It made *that* the issue, and, of course, it was the controlling and decisive one in the case and with the jury. It put its defence on the character and acts of Mrs. Wilkinson, and the issue, so made by itself, was, not *how* or under what circumstances the libel was published, but whether it was *true*.

There was, however, one fatal weakness and glaring inconsistency underlying this whole defense. The *Tribune* had, also, published a *retraction* of the libel. How it could expect to reconcile its recantation and its plea is inconceivable. This incongruity, as every intelligent person, who comprehended the matter, foresaw would be the case, proved fatal. Its testimony and its witnesses to sustain the plea hardly deserved serious consideration—at least, its defence entirely and signally failed. So, in the face of its retraction and of the evidence, its claim that the publication was a correct report of a police court proceeding, was equally untenable.

Its plea was a *reiteration of the charge*, and the Court instructed the jury, that when a plea of that kind is filed and is not sustained, the jury has a right to consider whether the plea was *filed in good faith*, and with a reasonable expectation of proving it, and, if it were not, then the plea itself became an aggravation of the wrong, and supplies, or is equivalent to, actual malice, and a ground for giving vindictive damages.

The jury found, as was foreseen by those who knew the issue and heard the testimony, that the defense was a failure, and had been made wantonly and without good faith, and reasonable expectation of proving it. The bar generally, we believe, during the progress of the trial anticipated the result. The applause given the verdict, on its return to the court, showed that the popular instinct responded to the judgment of the jury.

In a full report of the case, giving all the testimony, all the arguments to the Court, and all the addresses to the jury, taken by an accomplished reporter, which is to be published soon, without note or comment, the public will be enabled to see whether this verdict was the result of the "low-born malevolence of a besotted jury."

JOHN LYLE KING,
E. W. EVANS.

This was followed by the subjoined Card from the jurors:

THE LATE LIBEL SUIT.

CHICAGO, Jan. 2, 1869.

To the Editor of the Chicago *Republican:*

The following communication, in answer to the scurrilous article in the *Tribune* of yesterday morning, relative to the verdict of the jury, was handed Mr. Medill, of the *Tribune*, with the request that it be published in its columns, which request was refused by him. By inserting it in your issue of Monday next, you will greatly oblige myself and my associate jurors.

Yours respectfully, JOHN M. CYRUS.

THE LIBEL SUIT OF MRS. WILKINSON vs. THE CHICAGO TRIBUNE COMPANY.

CHICAGO, Jan. 2, 1869

To the Editors of the Chicago *Tribune;*

As a member of the jury in the above case, my surprise, mingled with indignation, was excited by reading in your issue of Jan. 1, your *leader* entitled "Malicious Verdict." You have almost exhausted the vocabulary of epithet in denouncing the verdict and the jury. Not content with this sweeping denunciation, at the end of *your* report—mind I say *your report* of the closing arguments of counsel in the case—you give the names in full of every member of the jury, *with our occupations and even our private residences.* You accuse us of "malice," of "ignorance," of "stolidity," of being actuated by "the lowest spring of all human action—malicious ignorance"—of "personal malice," of being "treacherous jurors," and you characterize our finding as the "low-born malevolence of a besotted jury."

Now, gentlemen, on what grounds do you bring these *sweeping* charges against us? Not one of us is acquainted with a single stockholder in your corporation or with the plaintiff in the suit. So far as the parties to the suit are concerned, we had not and could not have any *friends* to reward or any enemies to punish. No, gentlemen, your charge of *malice* will not stand the test of examination.

But, gentlemen, let me ask you what motive prompted you to call us, *ironically*, the "intelligent" jury, and to parade before your readers the details of our *names, occupations and private residences?* Was it any of that "malice" which you so fiercely assail in us? Why should we be called from our occupations, against our most urgent request, to listen for seven or eight days to the details of a case in which we had no personal interest, and spread before the public, on the broad pages of the *Tribune*, with our business and private affairs, *extorted* from us by the *examining counsel* to *test* our fitness and qualifications as jurors? Where, I would ask, in the annals of journalism, outside of the New York *Herald*, has ever so ferocious an attack been made on a jury and its verdict? Nor is this all. You have almost intimated that we were to share with the plaintiff the award of damages. Did the fear of *twelve* more libel suits deter you from making the direct charge?

Gentlemen, you have had your own reporter in the court room during the progress of the trial. Have you not *distorted* the evidence to suit your side of the case? Have you not *tinged* and *colored* every incident that *seemed* to disparage the plaintiff? Can you say, under the sanctions and solemnities of an oath (for bear in mind the jury were under oath), that *your* report of the evidence and the arguments of counsel were fair and honest.

Gentlemen, you know that the plaintiff has not been fully heard in this case. The jury have not been heard in the case, nor would they have sought a hearing had you been content to express your dissent from their verdict in a courteous manner, without reflecting upon their motives or their competency. It is certainly a poor compliment to your counsel, that, with their extensive legal experience, they would suffer themselves to be imposed upon by and intrust your interests in the hands of a "malicious," "ignorant," "stolid," "besotted" and "treacherous" jury. Why all these epithets upon the jury; why all this particularity of names, occupations and private residences, unless to injure us in our business, and to *scare* any *future* jury which might be called to try a case in which the Tribune Company was one of the parties to the suit?

Once more. I am informed from other sources than your paper that, immediately upon the rendition of the verdict (of which you were doubtless cognizant) that your counsel gave notice of a motion for a new trial. Would it not have been in better taste on your part to have deferred your comments until your motion for a new trial was decided by the Court? Your article now

partakes of the character of a *menace* to the Court, and virtually and by fair implication says to Judge Williams, "Unless you grant our motion for a new trial, all that we have said of the jury will apply to you, and you refuse to use your discretion as a court to give a re-hearing on a verdict which is in defiance of common sense, law, justice and public decency."

And finally, gentlemen, I ask, does not the *animus* of your article against the jury largely justify their award of damages, even if otherwise it *might* have appeared excessive?

As you have made this unprovoked attack upon us through your columns, I ask in justice to myself and my co-jurors, that you give us the use of the *same* columns for our vindication.

Yours respectfully,

JOHN M. CYRUS, Foreman, 132 Walnut street.

We, members of the jury in the case of Mrs. Wilkinson vs. The Chicago Tribune Company, have read the foregoing reply of Mr. John M. Cyrus to the aspersions upon the jury, as published in the Chicago *Tribune* of Jan. 1, 1869, and fully concur in the views and statements expressed by him.

M. J. FITCH, 129 South Water street.
W. D. MASON, 230 West Monroe street.
R. W. BROWN, 353 Wabash avenue.
S. ROSENFELS, 186 West Washington street.