

ARGUMENT

OF

PHILIP R. FENDALL,

U. S. ATTORNEY FOR THE DISTRICT OF COLUMBIA,

ON THE

TRIAL OF GEORGE A. GARDINER

IN

THE CRIMINAL COURT, D. C., MARCH TERM, 1853,

FOR

FALSE SWEARING.

TAKEN IN SHORTHAND

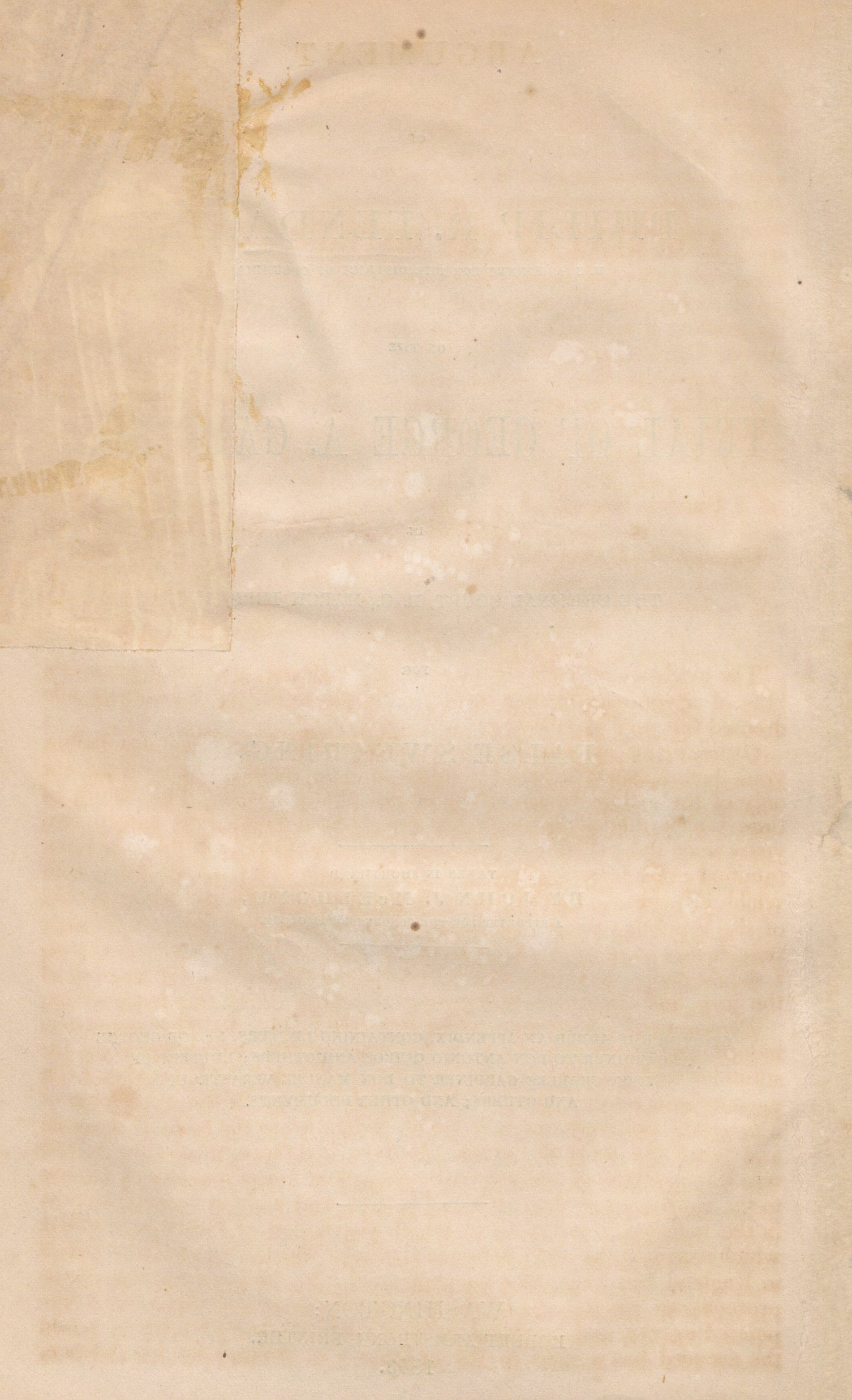
BY JOHN J. McELHONE,

A REPORTER FOR THE CONGRESSIONAL GLOBE.

TO WHICH IS ADDED AN APPENDIX, CONTAINING LETTERS, &c., OF GEORGE
A. GARDINER TO DON ANTONIO QUIROS AND OTHERS; LETTERS OF
JOHN CHARLES GARDINER TO DON MANUEL VERASTEGUI
AND OTHERS; AND OTHER DOCUMENTS.

WASHINGTON:
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1853.



ARGUMENT OF THE DISTRICT ATTORNEY.

UNITED STATES
vs.
GEORGE A. GARDINER. } *Indictment for False Swearing.*

FIFTY-FOURTH DAY.—*Tuesday, May 17, 1853.*

The evidence on both sides having been closed, and the defendant's bills of exceptions having been sealed, the DISTRICT ATTORNEY addressed the jury as follows:

GENTLEMEN OF THE JURY: I rejoice that at last we are before you—before *you*, who stand to this trial in the relation of guardians, not only of the public treasure, but of the public honor. The length of time which this prosecution has covered—it being now nearly two years since the indictment was found;—the magnitude of the case; the ramified and interesting bearings which belong to it; the attention with which it has been, and continues to be, regarded by the whole people of the republic; these considerations permit, if they do not require, that, before examining the evidence which has been submitted to you, I should notice, as briefly as may be, the efforts made in the hearing of the jury, and elsewhere, to represent this prosecution as a persecution.

Persecution! A strange cry in this free land. In other countries, indeed, and at one time even in the country from which our laws, institutions, and manners are derived, State prosecutions have often been persecutions, set on foot at the bidding of a tyrant or the solicitation of a favorite: unhappy times, in which judges were the tools of despots, and juries the tools of judges. In days like those, miserable indeed was the condition of the accused—subject at every moment of his life to the vengeance or the caprice of power, and without counsel, except in the unfrequent instances in which the fiction of law was realized which assumed the court to be his counsel. Such a condition of things in England has long since been changed. In our own country, State prosecutions are the acts of the people themselves through their appointed agents, and instituted in vindication of their own laws; while the accused has a right to the assistance of counsel for his defence.

This right is secured to him by express provision in the constitution of the United States. In our day a judge, so far from being expected, even in legal fiction, to act as counsel for the accused, would as justly deserve censure for doing so as if he were to take sides with the prosecution. In either case he assuredly would be amenable to *impeachment*.

No, gentlemen, there is nothing in the history of this prosecution which subjects it to the imputation of being a persecution. Such an imputation, even if deserved, would, I feel certain, not sway this jury; because, gentlemen, even if you were to suppose that the government, or any of its officers, had in this prosecution manifested a persecuting spirit, though you would hold the persecutors one and all to their proper responsibility, you would say that such considerations ought not to influence you on the trial of this issue—that, no matter how badly those functionaries might have acted, the issue which you are to try is, whether the accused is guilty or not guilty, on the evidence brought before you. But, gentlemen, we are all men—we are all subject to the passions of men; and I know that the generous spirit of an American juror, if he could once be brought to believe that the government had acted in a persecuting spirit in indicting and trying this man, would prompt a desire to be able to find him innocent on the evidence. This feeling is natural—it is creditable to the human heart—it is congenial to the American character.

It is important, however, to the just administration of our laws, that a juror should not go into the box or retire to his chamber with a desire to find a verdict one way or the other. I shall therefore show to you, by a brief review of this part of the case, that there is nothing in either the object, the origin, or the history of this prosecution, which can justly subject it in the slightest degree to the opprobrium of being a persecution. What is its object? To vindicate public justice, and to secure the treasury of the people of these United States against future deprivations, by showing to every man that if the accused be guilty on the law and the evidence, he shall not go unpunished; that there shall be no impunity in this case to encourage future offenders. This is a most important consideration; and it required those to whose hands the people had confided the executive government of this country to leave no fair and honest means untried to have the truth investigated; and if the accused should be guilty, to bring him to justice. There is no man connected in any way with this prosecution, so far as I know, who has not acted in that spirit, and who does not feel disposed to say, if the defendant is innocent, God send him a safe deliverance.

What is the origin of the prosecution? It has been charged upon its conductors that they desire to shield it under the name of the late President of the United States. We desire to shield our agency in this matter under no name. We are willing to take our full share of the responsibility. Indeed, one of the counsel has been charged with taking rather more than his share; for it has been a topic of complaint, which I shall notice in its proper place, that when the President of the United States was disposed to accept a certain proposition made on the part of the defendant, the District Attorney undertook to refuse it when referred to him. That is true. The proposition was referred to the District Attorney, and he did refuse it; and for reasons on which he is

willing to stand before you and before the country. But, gentlemen, while we do not desire to shield our action in this prosecution under the authority of the late President of the United States, Millard Fillmore, we have no disposition to hear in silence that high and virtuous name invoked, directly or indirectly, as authority against us. It therefore becomes me to repeat what I may have said on several previous occasions in your hearing—that this prosecution was instituted by the express directions of President Fillmore. That illustrious and patriotic man, who looked with a single eye to the good of his country, and whose loyalty to duty has enabled him to retire from office with general applause from men of all parties—with the unanimous verdict of his countrymen that he was a faithful public servant—that exalted functionary, in obedience to the clause of the constitution which requires the President of the United States to “take care that the laws be faithfully executed,” when he was informed that statements had been made to the effect that the award to George A. Gardiner had been obtained by fraud, directed the matter to be brought before the grand jury of this District. There were peculiar bearings of the case, fresh in your recollection, but which it is unnecessary more precisely to advert to, which made it, in the judgment of the President, proper that the intercourse of the executive branch of the government with its law officers in regard to the case should be had by the President himself; and, accordingly, in all the important stages of the prosecution he was consulted. The most important steps which were taken were under his advice and direction; and his proceedings have been approved and adopted by his successor.

This prosecution is said to be a conspiracy between the government of the United States and the government of Mexico to oppress an individual. Two great governments conspiring together to oppress and destroy this forlorn and innocent man! If it be a conspiracy, then, on the American side of it, Millard Fillmore is the arch conspirator! It was he who instituted this prosecution! It was he who decoyed the defendant across the Atlantic, and then incarcerated him! You have heard something about that. You have heard of a breach of the public faith which was committed in holding the defendant to bail, after he had come across the ocean under a sort of treaty between him and the government. If there was any breach of the public faith, who committed it? Not the clerk in the State Department, as the learned counsel intimated, but President Fillmore. You are aware that the extradition treaty between England and the United States makes no provision for the case of perjury or false swearing. It is not one of those cases in which, by the stipulations of the treaty, a person committing a crime here, and then flying to England, can be demanded of that country. The government of England could not be called upon, under the treaty, to surrender this defendant. I agree that the defendant's return to this country, in the summer or fall of 1851, was a voluntary act; and I desire him to have the full benefit of it before you. I shall hereafter notice it more particularly.

Gentlemen, from whom did the proposition come that the defendant should return to this country and stand his trial? Was it from the government? Surely not. You recollect the letter from Mr. Fillmore,

which was read to you, addressed to one of the counsel for the defendant. It is as follows :

“ JULY 30, 1851.

“ I have reflected on your verbal request, in behalf of Dr. Gardiner, that he should, in case he will come here and submit himself to trial upon the indictment found against him, be permitted to use so much of the money received from the government on his claim against Mexico as may be necessary to indemnify his bail; and I see no objection to the request being granted, if the money be deposited in some safe place, to the credit of the Secretary of the Treasury, under a stipulation that it should remain on deposit until Dr. Gardiner be tried and acquitted or convicted, unless he shall in the mean time forfeit his bail, in which case it shall be paid over to satisfy his own recognizance and that of his bail; but in case of his acquittal it shall be returned to him, to hold by the same right, and no other, as if the agreement had not been made.”

The proposition, then, is made by the defendant himself, or by his counsel acting under his authority. It is a proposition on his part to come hither and stand his trial on conditions, and those conditions were complied with. By an unheard of novelty in the history of criminal prosecutions, this conspiring government of the United States actually did what in substance made them the bail of the accused. They had by injunction laid hands on all of this fund which the defendant, so far as could be ascertained, had not put out of his possession or control—on nearly \$100,000 deposited with Corcoran & Riggs, of this city, and \$130,000 with the New York Life Insurance and Trust Company; and they consented that a portion of it should be set aside to indemnify the defendant's bail, in the event of his coming home and standing his trial. Whatever may be said of the policy of that arrangement on the part of the government, no human being can pretend that it looked like oppression. Then, gentlemen, the defendant came hither under that arrangement, proposed by himself, of which the terms are stated in that letter, to “submit himself to trial on the indictment *found against him,*” which had been found on the 19th of July, 1851. This is the indictment which you are trying. There being no witnesses here on the part of the United States, or not enough to maintain the prosecution, he became clamorous for trial, and the government was placed in the position of a defendant fighting off the trial, until it could get its witnesses. Of course, in order to do that, much time was required. According to the theory of the prosecution, this was a fraud which had been concocted in a distant land—a fraud which had required the concerted action of numerous agents—a fraud which had taken much time, labor, and astuteness to fabricate. Evidence was to be sought out, not only in a foreign country, but in a country whose recent relations to the United States had produced a feeling unpropitious to the probability of promptly obtaining there the facilities necessary for the investigation. The rankling feeling of resentment in a conquered foe was a circumstance unfavorable to the object. It was necessary, in the first instance, for the government to ascertain what it could prove. To bring witnesses to the United States without first knowing what they could prove, and whether they were reliable, from a distance of between 2,000 and 3,000 miles, and at an enormous expense, would have been a mode of proceeding wholly indefensible. It was deemed proper for the government to send out an agent to ascertain what could be proved. That agent was sent out promptly, and he acted promptly. He returned,

bringing with him the result of his labors—certain written testimony which he had obtained. The affidavits were examined; and then it became the duty of the government to procure, if it could, the attendance of such of the affiants and of other witnesses named by the agent as were deemed important to prove the case of the prosecution; for, gentlemen, this government, which has been described as so strong, had no power to compel the attendance of witnesses from a foreign country. They could only be got here by persuasion—by appeals to their sense of justice, and by the assurance that they should sustain no loss by leaving their business. After some delay and difficulty, witnesses were obtained. They arrived here in June, 1852, and then the government was prepared for the case now before you; but the defendant, who had always been ready before, suddenly became unready. Some of the witnesses who came hither, after inspecting the papers filed by the defendant in support of his claim, pronounced them to be forgeries. We knew before, if the claim was a false one, that the papers must have been either forged or purchased; that if the signatures to the papers were genuine, they had been fabricated by some bribed official; but we did not know what kind of fraud had been committed, and therefore, when the matter came before the grand jury, their consideration was confined to the memorial falsely sworn to, and their action to finding the indictment which is now trying. The witnesses who declared some of the papers to be forgeries were sent to the grand jury, and on the 3d of July, 1852, the grand jury made a presentment against the defendant for forgery. On this presentment an indictment was subsequently found. The defendant was held to bail on the charge of forgery. It was then complained of, as it is now, that bail was demanded. And it has been further stated to the jury that bail in the sum of \$100,000 was demanded. The prosecuting officers asked for bail, I think, to the amount of \$60,000; but I do not remember the precise sum. One hundred thousand dollars would not be too high for the offence.

THE COURT. I think it was \$100,000; but I may be mistaken.

MR. MAY. The largest amount of bail to secure the man was insisted upon.

THE DISTRICT ATTORNEY. I am content to say \$100,000. In naming the amount of bail, I acted upon my responsibility. The court thought differently from me, and, acting upon its responsibility, reduced the bail to \$20,000. An attempt was made before the court at that time to show that the defendant ought not to be held to bail at all. The letter which has been read to the jury was then referred to; and this forgery matter was said to be the same transaction. The court, in holding him to bail, overruled that objection; the President of the United States was appealed to, and the agreement was invoked. The President's letter of 7th July, 1852, has been read to you, in which he refuses to dispense with bail—a letter said to come from the Department of State. It was President Fillmore's letter, but, according to official usage, was written and signed by the acting Secretary of State. It is not expected by the people of this country that the President of the United States can have the time, if there were no other objection, to correspond directly with everybody who has public business with

him. He acts through the executive departments; and one reason why these executive departments are created is, that they may discharge, under the President's direction, certain executive functions. President Fillmore says, in substance, in this letter: "No, gentlemen, it is not the same transaction; it is another matter; and the defendant must be held to bail." And he was held to bail. The same transaction! Suppose that the defendant had, in the furtherance of his fraud, killed a man: would it be pretended, if he were indicted for murder, that he ought not to be held to bail because the murder was connected with the fraud, and was therefore the same transaction? Surely not. Yet the principle is the same. The offence of forgery was a separate and distinct one; and therefore President Fillmore properly said, let the law take its course. But, gentlemen, this act of holding the defendant to bail, be it persecution or not, was the act of President Fillmore, because he approved and ratified that act, and sustained the principle on which it was done; and that being so, what becomes of the hollow praises which the learned counsel on the other side have showered upon him? He does not desire such applause. He is willing to take his full share of the responsibility of this whole transaction. He was ready to appear before you as a witness; and at one time it seemed probable that we might call him.

Well, gentlemen, so much for the executive branch of this government on the subject of conspiracy. Now look at other branches. Do you find anything in the conduct of the Senate committee, or the House committee, whose action has been the theme of opprobrium so often before you, which shows that they were conspiring against this defendant? The Senate committee raised to investigate Mexican claims, and having the Senate fund at their disposal, offered to send the defendant to Mexico at the public expense, to assist him in getting his witnesses, to procure for him a safe conduct, and, in short, to do anything in reason which could assist him in making out his defence, if he had any. You all have seen from the evidence how these offers resulted; that when it came to action, the defendant fell back upon the inadmissible pretension which is at the root of all the other propositions he had made—a pretension by which, in substance, he arrogated the right of selecting the government agents to be sent to Mexico. The Senate committee acted in the most liberal spirit. It invited the defendant to be present at its sittings; offered permission to him to make any statement, with or without oath, as he might prefer; and assured him that "in no case would he be required to give any answer that might have the least tendency to incriminate him." He did attend, with his counsel, and they cross-examined witnesses. The House committee acted towards him in a similar spirit. His counsel attended its sittings, and cross-examined witnesses so long as they thought fit to do so. There is, then, gentlemen, nothing in the action of this government which can subject it to the imputation of its being a conspirator against this defendant. I might as well explain here to you that when the Senate committee proposed to the defendant the arrangement of his going out to Mexico to point out his mines, it was deemed proper that the executive branch of the government of the United States should take no part in that arrangement. Though the defendant, having given

bail, had a right to go to Mexico, or to any other country, at his pleasure, and though the President would not, and had not the right, to interpose any objection to his doing so, yet the President ought not, by any express assent, to make himself a party to the proceeding. And why? The President had instituted this prosecution; bail had been given on the first indictment, and a part of the funds claimed by the defendant, and enjoined by the United States, had been set aside to indemnify the bail, on the conditions set forth in President Fillmore's letter. In the other or forgery case, actual bail had been given. Was it not obvious that if Gardiner should go to Mexico under an arrangement with the Senate committee, if the President of the United States, or any officer of the executive government acting under authority from him, should become a party to that arrangement; and if, further, the result of the investigation in Mexico should be such as to deter Gardiner from returning to the United States; and if, in such a condition of things, a suit should be instituted against his bail, they never having consented to his going, and their consent never having been made a part of any of his propositions—was it not, I say, obvious that the government would have been placed in the predicament of suing the bail of a principal, whose absence it had caused or consented to? No reply could have been made to such a plea, and the United States would have been turned out of their own court. Therefore it was that President Fillmore deemed it proper to say, in substance, "While I do not object to the defendant's going to Mexico, or anywhere else, I tell you, gentlemen of the Senate committee, I give no assent to it. I am not a party to the agreement." You perceive, gentlemen of the jury, how palpable is the distinction. The defendant, being on bail, might go to Mexico, or to any other point in the universe, on agreement with the Senate committee or any one else, or on no agreement with anybody, but of his own will and pleasure; and if he should fail to appear in court according to the tenor of his recognizance, the remedy against the bail would remain perfect and unimpaired—just as much so as if nothing had been done by the Senate committee. But if the prosecution had become a party to an arrangement made without the consent of the bail, it would, or might, lose its remedy against the bail. In that posture of the affair the President determined to send out a separate agent himself to collect further evidence for the jury in regard to this claim—an agent wholly distinct and separate from agents going under an arrangement between the Senate committee and the accused. But when the time came for the defendant to go, according to his agreement with the Senate committee, he refused to go. He first pretended, by a plain implication, contained in his letter of October 6, 1852, to the committee, that the 15th of September had been agreed on as the day of his departure. Now, the agreement was, as you have seen, that he should "place himself at the disposition of the committee from the 15th of September." In that same letter he says: "I have been distinctly informed by the District Attorney that he has nothing to do with this arrangement, and I must be prepared for my trial;" referring, it may be presumed, to some conversation between *his counsel* and the District Attorney. On the 7th of October he informed the committee that he was about

leaving for Mexico. The committee then made to him the propositions which have been read to you, and of which the singular liberality must have struck you most forcibly.*

On the following day, after consultation with his counsel, he addressed a letter to the committee, stating his readiness to proceed, if the committee would furnish to him in writing what he describes as an arrangement already made by the committee with the "District attorney, that the trial should stand until the return of the commission; stating (he adds) again, however, that if Mr. Buckingham Smith, Mr. Slacum, Dr. Davis, the Mexican witnesses, or any other person who has already taken an active

*The following is the extract of the journal of the Senate committee, showing its proceedings on the 7th of October, 1852, had in the presence of the defendant, which was read to the jury:

"Dr. Gardiner soon made his appearance. The chairman informed him that his letter had just been received, and with it the intelligence that he had not left the city on yesterday, as stated in the same; that he wished him to be apprized of the course which the committee intended to pursue in reference to his case, in order that he might judge for himself what part it behooved him to act in connexion with it; that he would remark that the assertion implied in his letter of an agreement entered into between him and the committee, fixing his departure for the 15th of September, was utterly unfounded; that the entry in the record book of the committee was, not that he should leave on the 15th of September, but that he should place himself at the disposition of the committee from that date; that the commission with which he was to proceed to Mexico was now prepared to depart for New Orleans, where a government vessel would be in readiness to receive its members, and proceed immediately to Mexico; that he wished to ascertain from him whether, when stating in his letter that he was leaving on yesterday, he meant to say leaving for Mexico, (to which Gardiner replied, that he meant it so;) that if such were the case, he could have no better opportunity nor speedier means of reaching his destination; that the committee had offered, and offered him still, now, a passage on board of said vessel forth and back, his travelling expenses, and a safe conduct, with such protection as would secure him against being hindered or interfered with during his journey to and from Mexico; that if he preferred remaining here, he might send an agent or agents in his place, and that such agent or agents would also be received on board of the government vessel, and would be admitted to join the commission, and be free from all expenses, and be afforded the protection tendered to him personally; that the object of the committee was to afford him an opportunity of watching over his interest in the progress of the investigation, and of seeing that justice was done to his case; that the committee intend not to force him into compliance with their wishes, but merely to give him every facility in their power that may enable him to dispel the clouds that hang over his case; that he was at liberty to accept or refuse the proffer made to him, though perhaps he would at once see what inferences were likely to be drawn from a refusal on his part to join the commission, either in person or by agent; that should any of his (Gardiner's) counsel deem advisable to go with the commission, he might do so, and would be welcome to it, and be allowed to travel at the expense of the government; that the committee, in that case, would respectfully ask the President—and they had every reason to suppose that the request would be complied with—to appoint and send one of the counsel engaged on the part of the government, and both said counsel might then attend the investigation, and see that it were conducted in strict accordance with justice, and with the regard due to the position which he (Gardiner) was placed in; that should his apprehension of not being back here in time for his trial, as suggested in his letter, induce the least hesitation on his part as to what he should do, the committee would relieve him from it by tendering an arrangement by which the United States attorney, with his assent and the assent of his counsel, would agree to call his case late enough in the term of the court to leave the commission full time to return hither; that, finally, the committee would desire him to take counsel before he gave answer to the propositions now made to him, but that the committee would expect to be informed by to-morrow of whatever resolves he might come to.

"Dr. Gardiner thereupon said that he would advise with his counsel, and return an answer to-morrow morning.

"Dr. Gardiner, upon leaving the room, expressed his unwillingness that certain persons, whom he named, should be of the commission; to which the chairman replied that the committee could not be guided by his wishes in the course they meant to pursue.

"Adjourned."

part against me, are to be of the party, I cannot consent to accompany it, but will proceed in my own way, as I intended to do yesterday until I received your summons." Thus, not content with going to Mexico himself, and taking with him friends to act concurrently, in point of time and place, with the commissioners on the part of the government of the United States, he arrogated the right of vetoing certain gentlemen whom the committee might possibly appoint, and any other person who "has already taken an active part against" him; he, of course, to be the judge of what constituted activity of partisanship. This was, in substance, a claim to select the government agents; of dictating to the government whom it should trust; and a recognition of the claim was made a condition of his consent. If any of the individuals included by name or description in the denunciation is "to be of the party, I cannot consent to accompany it." The committee did not, as it could not, hesitate for an instant in repelling this insolent pretension. A man indicted for perjury and forgery asks to appoint the agents who are to inquire into his conduct! The mere suggestion of such a proposition was a conclusive commentary on the sincerity of the offer to show the mine. The Senate committee, of course, refused it:

"I acknowledge," says the chairman, "I acknowledge the receipt of the letter by which you inform me of your refusal to join the commission on any of the terms proposed by the committee.

"In reply, I have to say that the commission will proceed without you to Mexico, and enter upon the discharge of their duties, under the instructions of the committee."

Before the arrangement made by the Senate committee with the defendant was thus brought to a close, the President had resolved on sending an agent on a separate mission to Mexico in relation to the fraud. By his direction, the District Attorney, on the 9th of October, addressed to the defendant the communication which has been read to you, apprizing him of that purpose, and making three propositions to him. The first invited him to send with the agent, at the expense of the government, a person instructed by the defendant to conduct the agent to the site of the alleged mine; the second invited the defendant to refer the agent to any six or more persons in the republic of Mexico, with a precise designation of their respective places of residence, and with instructions to convey the agent to the site of the alleged mine, who would accordingly call on one or more of the persons so named, request to be conducted to it, and proceed thither, should the request be complied with. This proposition, instead of restricting him to the district of Lagunillas, where he had sworn that his mine was, gave him the whole republic of Mexico in which to point out an individual who could show the mine. It did not occur to me till after the notice had been despatched, how unnecessarily extensive—extensive beyond any reasonable requirement—was this range. The third proposition was, that should the defendant prefer to either of the foregoing alternatives to provide the agent with a description of the site of the alleged mine, so particular as to enable a stranger to the localities of the country to find the site of the alleged mine, if then existing, or if it had before existed, then the agent would proceed to the spot indicated by the description, make the necessary inspection and examination, and report accordingly.

You will observe, gentlemen, that those several propositions were all reasonable; that they offered to the defendant an opportunity of showing his mine, if he had one, and thus of establishing his innocence at the public expense; and that they all avoided the inadmissible condition that the defendant should go in person. He might either send an agent, or refer the government to any one of any six or more persons in the republic of Mexico, or furnish a particular description. After a delay of three days, the propositions were all rejected by the defendant; and others were submitted by him, of which the first was, that he should go in person to Mexico, and of course with the President's consent, but without any suggestion of acquiescence on the part of his bail. As this and other points of his offer assimilated it, in all material respects, to that which had been made by him in May, 1851, and which has been read to you, no attention was given to it.* The motive which had dissuaded the President from connecting himself with the proposed mission of the Senate committee having been removed by the refusal of Gardiner to go with it, there was no longer a necessity for separate action on the part of the President, and accordingly none was had.

In April, 1851, the counsel for the defendant had proposed, not, as it was erroneously stated in a newspaper, to "admit every kind of evidence that the government could produce; they would admit the written testimony the government had been so successful in procuring from Mexico, &c., &c.," but to try the case on some written testimony which, it was said, the defendant had recently obtained from that country, and on the affidavits which had been procured there by Mr. Slacum, the government agent. Now, they might not have seen our evidence. We, certainly, had never seen theirs. But we had seen certain documents which the defendant had presented to the board of commissioners, and they were not of a character to bespeak confidence in the integrity of his new testimony. The blindfold bargain was declined.

The offer of May, 1851, on which, in substance, the defendant fell back, proposed that a commission or special agent should "be appointed by the President of the United States, which said commission or special agent shall be such person as shall be approved by the defendant or his counsel; and who, when so appointed and approved, shall have the duties and powers in the premises which are hereinafter specified—that is to say:

"He shall proceed in company with the defendant, or such other person acquainted with the localities as may be designated by the defendant, to the place where the defendant's mines were located, or alleged to be. If it should manifestly appear that the defendant had such mines, and was expelled therefrom as alleged, the agent was to certify to that effect; no testimony was to be taken, but the prosecution was to be dismissed, and the funds detained to be released. If, however, it should not manifestly appear that the defendant had in fact

* The notice of 9th October, 1852, from the District Attorney to Gardiner, and his answer of 12th October, 1852, were read to the jury among the proceedings of April 4; and his proposition of May, 1851, among the proceedings of April 22.

such mines, &c., &c., the agent should proceed to take such testimony; and the testimony so taken, "together with such records and documentary evidence, certified according to the law of the place, as either party may think proper to procure, and all the records and files of the late board of commissioners in relation to the claim of the said Gardiner, shall be admitted and received as evidence on the trial of this prosecution, in like manner and to the same effect as if the same facts were testified to *viva voce* by the witnesses themselves before the jury." Now, considering that, on the theory of the prosecution, these same records and files, &c., were all false, perhaps forged papers, this part of the proposition was somewhat remarkable. I agree that it was afterwards waived. But there still remained the conditions that the defendant should leave the United States without any proposed consent on the part of his bail, and with the consent of the President, and the pretension of the defendant to "approve" the commission or special agent, or, in other words, to appoint him, and the anomalous restrictions on the course of the agent.

The defendant refused, I have said, to go to Mexico in any connexion with the Senate committee. He rejected all the propositions of the government, or of any of its branches or officers, but determined to go himself, as he had a right to do. He was on bail, and no one had the right to complain. But he made a representation of some sort, or in some way or other, to the Assistant Secretary of the Treasury, and that officer put at his disposal a revenue cutter, in the port of New Orleans, to convey him to Mexico. Well, now, if he had thus gone, what would have been the position of the executive branch of the government of the United States in the case of a suit against the bail, who had never consented to his going, when the President of the United States would not only have consented to his going, but would have sent him away in a public vessel? It was by the merest accident that we learnt the fact; but so soon as we did learn it, we suggested that the order should be countermanded. This was done.

Supposing that you are now prepared to define the share of your own government in the alleged conspiracy of nations against an individual, I now invite your attention to the Mexican branch of that conspiracy. You have been told that Mexico had a strong and powerful motive for entering into it, because she claimed the surplus of \$41,682 54, which remained after paying the awards out of the three and a quarter millions of dollars provided for by the treaty of Guadalupe Hidalgo; and that, on the same principle, she would claim the amount of any award which had been made, and which afterwards might be discovered to have been fraudulent. Now, we have read to you the correspondence between the Mexican minister, Mr. Rosa, and the then Secretary of State, Daniel Webster, on that subject. You recollect that Mr. Rosa was dissatisfied with the action of the board of commissioners in rejecting the claim of General Jarero, a citizen of Mexico, who had become the assignee of a claim held by a citizen of the United States in Mexico, and had presented it before the board of commissioners. The board rejected it on the ground that they were authorized to award money to American citizens only, and that General Jarero was not an American citizen. His view was, that the claim being

American in its origin, did not lose its American character by being assigned to him. The board of commissioners thought differently. Mr. Rosa, at the instance of General Jarero, on the 13th of February, 1851, addressed a letter to the Secretary of State setting forth his pretensions, and requesting that his remarks might be laid before the commissioners, with a recommendation in their favor. Mr. Webster, on the 3d of March, 1851, answered that the board of commissioners was a final tribunal, and that he had no revisory power over its action.

Mr. Rosa, on the 10th of May, 1851, claimed that the true construction of the treaty was, "that Mexico reserved to herself all the interest she would be entitled to in regard to any surplus sum which might not be appropriated in the payment of the claims." He urged that the government of the United States should "cause the balance to be applied, *pro tanto*, to the liquidation of General Jarero's claim."

Mr. Webster, on the 8th of July, 1851, described Mr. Rosa's application as being an appeal from a decision of the board of commissioners; reminded Mr. Rosa "that the 15th article of the treaty stipulates that the decision of the board of commissioners shall be final and conclusive;" and added: "Nevertheless, to avoid any misapprehension on the whole subject, the undersigned has the honor to say to Mr. de la Rosa that he is not prepared at present to admit that Mexico is entitled to the balance of the three and a quarter millions of dollars. This question, however, will be fully and candidly considered whenever a claim for that balance shall be presented by the Mexican government."

This shows that Mr. Webster's clear understanding was that no claim had been presented by Mexico for this balance. Mr. Rosa had tried to get General Jarero's claim settled on the principle that the United States were bound to pay over to Mexico the surplus remaining after the payment of the awards. But Mr. Rosa had never, as the minister of Mexico, presented a claim for that surplus. Mr. Webster so understood, and so told him, and so Mr. Rosa understood it. Mr. Webster was "not prepared at present" to admit that "Mexico is entitled to it." This is only a mild mode of denying any title in Mexico to the surplus. Mr. Webster, with the courtesy belonging to diplomatic intercourse, says that the question will be fully and candidly considered "whenever a claim for that balance shall be presented by the Mexican government."

[Mr. CARLISLE here remarked that Mr. Brodhead, who made the minority report of the Senate committee, admitted the title of Mexico to the surplus.]

Now, since the correspondence between Mr. Rosa and Mr. Webster, has Mexico ever made any such claim? Never. Two years have passed—almost the period of limitation for this indictment—and Mexico has not made any claim for the surplus. And what would be the result if she were to make it? We see plainly the opinion of Mr. Webster, one of the ablest constitutional lawyers we ever had in this country.

It so happens that among the manifold efforts of the gentlemen on the other side, on behalf of the defendant in this cause, was an attempt to get rid of the indictment by a demurrer; and one of the grounds of

the demurrer was that this was a claim not against the United States, but against Mexico, and that the surplus belonged to Mexico. You will observe, gentlemen, that under the law it must be a claim against the United States, or it would not be a matter for the jurisdiction of this court, and therefore the gentlemen argued with all their power that it was a claim against Mexico. On the 8th of June last this court delivered its opinion and decision overruling the demurrer. And as to this particular point, "What," asks the court, "is to become of the surplus of the three and a quarter millions of dollars which is in the treasury, or will be there after the awards of the commission are paid? *It belongs to the United States*, and they alone were interested in the fund."

It is, I suppose, quite clear to you, gentlemen, that no color is given by the surplus question to the allegation of conspiracy. Mexico had no claim in law, as this court has said, and in point of fact has never made any claim to this money. But because General Jarero had become the assignee of a claim which had once belonged to an American citizen, and thought he ought to have that paid by the board of commissioners, who were only authorized to pay claims then in the hands of American citizens, and failed to get it; and because Mr. Rosa, his countryman, desiring him to obtain this money, made application for it to the Department of State, and sought to induce the Secretary to interfere with the board of commissioners, and failed in the effort—because this, and nothing more, has been done, we are told that it is not only a sufficient reason for Mexico's becoming a party to the conspiracy, but it is offered as a fact to show that she is a conspirator. A good deal of the running argument and examination of evidence on the other side has been on that assumption. Nor is this all. Though Mexico has never made a claim, yet the mere possibility that she may at some time make one, however unfounded, is deemed sufficient to taint the testimony of every witness offered on the part of the prosecution who has conceived himself at any moment to be directly or indirectly concerned in any claim against Mexico. You recollect with what severity Togno, Wright, Atocha, and all the other witnesses, have been examined about what claims they had, in order to show that they might be under a bias, and therefore might not be able to tell the truth. It was stated that they had claims against Mexico which had not been paid, and that if this money should be recovered such claims might be paid. You will also recollect, when we had questions as to the admissibility of evidence here, that the gentlemen objected to testimony being given of what persons said in Mexico, on the ground that they might be influenced by the possibility of a recognition of some future claim for the surplus. This mere possibility was supposed to be so powerful as to affect the herdsmen and savages in the wild mountains of Mexico, many of whom perhaps never heard of the existence even of the government of the United States.

The first item of evidence against Mexico as a conspirator being thus disposed of, let us now look at her conduct, and see whether it is that of a conspirator. In the fall of 1852 the defendant went to Mexico, after he had been indicted here for forging the names of the governor and secretary of one of her States, and it was known in Mexico

that he was also charged with having forged or fabricated other papers, purporting to come from her citizens. Instead of arresting and trying him for these violations of her laws, they let him alone. The government of Mexico, you will recollect, is a large confederacy, embracing almost as many States as those of our own Union. Gardiner having gone again into her territory, and being in her power, all that was done by any Mexican functionary which can be tortured into evidence of hostility against this man, was, that the political head of one of the districts in one of the States, issued an order to prevent the defendant from entering his department. Does this look like a conspiracy on the part of the Mexican government, when she had the man in her power, when she could have punished him, as we have been told they do there, without trial? All that was done, according to the utmost showing of the defendant, was an order from the prefect of the department of Rio Verde, not for arresting the defendant, but merely prohibiting him from entering that department. Now, what proof have you of the genuineness of this document? All that you know about it from the evidence is, that Slocum and Abbott, witnesses for the defendant, testify that it was handed to them by the alcalde of Lagunillas; that he told them it had been sent to him by the prefect of Rio Verde, and that the name of the prefect was Francisco Fernandez. You will observe that this Francisco Fernandez is the same man whose signature to a paper presented by the defendant to the board of commissioners we have proved to be a forgery. The name purports to be signed to the certificate of the first mining title of the defendant, presented by him to the board of commissioners, on which, and other papers, he obtained his award. Now, that document, signature and all, we have conclusively proved to be a forgery. No proof has been offered of the genuineness of the present signature. As the signature of Fernandez has been forged once in support of this case, the probability is that it would be forged again if the fresh forgery would be serviceable. But it is quite immaterial to this branch of the argument whether the order is genuine or forged. A sufficient reason for the issuing of an order prohibiting the defendant from entering the department of Rio Verde would be found in the fact that he had before made that department the scene of crime; that he had forged the name of a public officer residing there, and was not, therefore, himself a person fit to be there. This order is set down as a proof of conspiracy on the part of the Mexican government. Now, gentlemen, looking at what has gone before it, was not the conduct of the Mexican government in merely issuing the order, and doing nothing else, the extreme of lenity?

What else have we seen? An *attaché* of the Mexican legation here, coming into court and giving testimony, and throwing out his whole strength (very little, I agree) for the purpose of breaking down an important witness on the part of the prosecution. He could not be compelled to come hither, because, being an *attaché* of the Mexican legation, he partook of the diplomatic privilege, and the process of the court could not reach him. He must have come, then, by the consent of the Mexican minister; and indeed it was, I think, so stated by the counsel for the defendant.

Mr. CARLISLE. Certainly.

The DISTRICT ATTORNEY. The Mexican minister agreed that Mr. Huici should waive his privilege and come into court—to do what? To give testimony against a witness for the United States.

Mr. CARLISLE. We applied to the minister to prove by Mr. Huici certain signatures of Mr. Rosa; and he was allowed to come here for that purpose.

The DISTRICT ATTORNEY. And after testifying to that purpose, he tried to break down Judge Aguilar. Some days intervened, and after all these proceedings had been published in the newspapers, we see this Huici appearing here again. The Mexican minister knew what he was here for. He knew he was here for the purpose of giving testimony to impeach and contradict an important and principal witness for the United States; and yet the minister does not wave his finger to prevent his subordinate from coming. Does this forbearance indicate a vindictive feeling on the part of the Mexican government? Does it show that she was acting as a conspirator? Surely not. This conspiracy charge gives occasion for one agreeable reflection: If there ever was any conspiracy between the government of Mexico and the government of the United States against this persecuted individual, I am sure, gentlemen, it must be a source of lively gratification to you to see that this most unholy alliance was in an essential respect defeated. Notwithstanding the great power of these two governments, and the fiendish purpose for which they were allied, they failed in one most important object. Although Francisco Fernandez had issued the order to prevent the defendant from going into Rio Verde and obtaining testimony about his mines, the scheme failed—most signally failed. David beat two Goliahs. He not only entered the department of Rio Verde, but he entered the mines—the very things in controversy—and his witness went with him, sounded the mines, and brought ores from them—at once as testimony and as trophies. Hereafter I may perhaps show to you that the testimony is worth about as much as the trophies. But, at all events, if there was a conspiracy, it was an abortive one, so far as that most essential particular was concerned. The great object of the defendant was accomplished in spite of the conspiracy. He went to the mines, took witnesses with him, and we are told that he has “demonstrated” that he had mines. So much for the conspiracy.

I shall dispose of the other persecution topics as briefly as I can. The next one is with reference to an act of alleged great oppression, which occurred last summer, in requiring the counsel for the defendant to take testimony in Alexandria. Now, permit me to give you a brief history of that matter.

This has been a frequent theme of comment with the counsel for the defendant; but it so happened that a reply was never in order, though often attempted. I use the present opportunity to state the principal facts bearing on this topic: The primary object of the prosecution was to bring the alleged criminal to justice. The next—and a very important one—was to get back as much as could be recovered of the money of which he had plundered the public treasury. With that view, injunctions were laid on the fund here and on the fund in

New York. Witnesses had come from a great distance, and at much inconvenience, to Washington, on the promise of being discharged within an assigned period, in order to testify in this case of false swearing; but the counsel for the defendant obtained a continuance, as they did of the case for forgery. The witnesses had been detained long beyond the expected time of discharge. They were to return to Mexico, attend to their long-neglected concerns, and come back again to give their testimony before you. This was late in August, and the criminal court was to meet on the first Monday in December. The depositions of these witnesses, eight or ten in number, were to be taken, to be used in evidence on the trial of the chancery cause here, and also on the trial of the chancery cause in New York. Two sets of depositions were, of course, necessary. All this was to be done in time to enable the witnesses to go to Mexico, and to return to Washington in time for the criminal trials. The act of Congress for regulating the proceedings required the depositions to be taken before "any justice or judge of any of the courts of the United States, or before any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States."* The criminal court had just closed an arduous session, and it was thought to be imposing too heavy a burden on the judge of that court to have the depositions taken before him. The state of the health of the chief judge of the circuit court made it impossible for him to attend. Both the other two judges of that court were absent from the District of Columbia; and the only other authority in the District competent to take the depositions was that of the mayor of Washington—Georgetown not being "a city." The mayor of Washington was applied to, and he agreed to perform the service; but owing to the official engagements of that gentleman, he was unable to afford the time which was necessary for taking the depositions. On some days he could not attend at all, and on others for only a small portion of the hours prescribed by the notice. The examination and cross-examination of one witness alone took up nearly three of the few weeks which remained to us; and only one other witness had then been examined. It was therefore found necessary that the unexamined witnesses should give their depositions before some other authority. The senior assistant judge of the circuit court expected to be engaged in trying patent law appeals, and the junior assistant judge was not in the District. I addressed a letter to the judge of the criminal court, stating the public exigency, and inquiring whether it would be convenient for him to take the depositions. To this communication a verbal answer was returned, to the effect that as indictments were to be tried before him, in which the same facts would be relied on as the depositions would probably bring out, he considered it indelicate and improper to take them, and therefore declined doing so. In this posture of affairs, the mayor of the city of Alexandria was the only convenient authority competent under the act of 1789, whom we could resort to. You know, gentlemen, that Alexandria is but a few miles distant from

* Act of 24th September, 1789, sec. 30.

Washington, and that steamboats at that season of the year plied between the two places every hour. The taking of the depositions was accordingly transferred to Alexandria, after notice to that effect to the defendant. His counsel, instead of attending, filed a protest against the transfer, as being "vexatious and oppressive." To this protest an answer on the part of the government was also filed with the mayor of Washington. Both these documents are among the papers in the chancery suit, and copies of them are before me.

[Mr. F. was proceeding to read extracts of the answer. In answer to inquiries from the defendant's counsel, he said he should read them as part of his speech.*]

The court knows that the gentlemen have, over and over again, referred to this Alexandria business; and when they did so, I have as often sought an opportunity of answering them, but have always been considered out of order, the court thinking that *then* the matter ought to stop. I am resolved that, at some time or other, the jury shall know the whole history of this part of the case; and, were it not for taking up their time, I would read the protest and the answer as a part of my speech.

Mr. BRADLEY. Publish it, so that the jury can see it.

The DISTRICT ATTORNEY. I am relieving the government and those concerned in the prosecution from the charge of oppressing this man. I do not object to his being acquitted upon the law and the evidence, but I do object to his escaping from justice under a cloud of smoke.

* The extracts are as follows:

Reasons for going to Alexandria, following the statement of facts in the answer to the protest.

1. *Because*, of the witnesses yet to be examined, most are residents of Mexico. Some are citizens of that republic; two hold public offices there requiring their attention, and of which the tenure may be endangered by their absence. All the witnesses from Mexico came to the United States under a promise that they should speedily return to their homes: Their absence had been protracted to a period entirely unexpected, and their anxiety to return could no longer be controlled: And in the event of a premature close of the examination, the recovery of the large amount of money of which the defendant was charged with despoiling the public treasury might be hopeless.

2. *Because* the residents of Mexico, examined in the civil suits, are also important witnesses in the prosecutions against the defendant and his brother, John Charles Gardiner, for trial in the criminal court of the District of Columbia, at the term beginning on the first Monday of December next; and unless these witnesses should leave Washington for Mexico in time to attend to their necessary and long-neglected affairs there, and return and testify in these prosecutions, parties whom the grand jury, on their high responsibility, had indicted for great crimes, might escape punishment.

3. *Because* a time of nearly three weeks was consumed before the mayor of Washington in taking the testimony of a single witness, as is shown by the mayor's certificate; and no end consistent with the objects of either the civil or criminal proceedings could be foreseen to a cross-examination, in the same vein, of the other witnesses during the time which the mayor could allow for taking their testimony.

4. *Because*, after the examination of the witness just referred to was concluded, the mayor of Washington informed the counsel for the United States that he could not take the testimony of the other witnesses daily during the hours appointed by the notices; that he could not be present at the taking of the same after three o'clock on any day, and could not promise to be present daily even till that hour.

5. *Because* the taking of the depositions before any judge of a court of record in the District had been ascertained to be impracticable; and because Georgetown not being "a city," the mayor of that place was or might be considered not competent to take them.

6. *Because* the city of Alexandria was the next most convenient place for taking the depositions under the act of Congress, and was readily accessible from Washington at every hour of the day; and the defendants were, therefore subjected to no hardship in being invoked thither.

Well, gentlemen, we went to Alexandria. The mayor was able to give us all the hours called for by the notice; and we got through, I think, in four days.

Another topic of the rhetoric of the gentlemen on the other side is the recent mission of "Edward Smith;" and this has been referred to as if there were something discreditable in it. Gentlemen, the mission was necessarily a secret one. During the cross-examination of a witness in the chancery suit, we had, we thought, seen a gleam of light as to the future purposes of the defendant respecting this dark and mysterious business. He was present every day, suggesting questions to his counsel; and it was apparent that he attached great importance to a certain cave spoken of by the witness. There seemed reason to fear that this "wonderful man," as Colonel Gates has since in your hearing described him to be, might, by some metamorphosis as wonderful as any in Ovid, transform this cave of dirt into a mine of silver. To head off such a process, and for other reasons, it was deemed advisable that some intelligent and reliable person should at once visit the premises, and at the same time attend to some other important subjects connected with the prosecution. The success of the mission would, of course, depend on its secrecy and promptitude. It was necessary that every precaution should be taken, and therefore proper means were adopted in order to prevent this "wonderful man," or his spies, from finding out what steps the government was taking to prevent or detect further frauds in support of the original fraud. It is at all times painful to an ingenuous mind to practise simulation; yet there are occasions on which the use of it is proper. Some of the purest men who ever adorned our species have found it necessary, in the discharge of public duty, to resort to simulation in order to effect an honest purpose. The great Alfred, whose name stands as a green spot in history amid its scenes of blood and crime, virtuous as he was, for the sake of his country played the part of a spy, and went in disguise into the enemy's camp. A purer and brighter name than even Alfred—Washington himself—practised simulation for a patriotic and honest purpose. One of the most interesting episodes of our revolutionary story is that of Sergeant Champe. This man, one of the noblest spirits that ever existed, was persuaded by Washington to play the part of a deserter from his own country, and to act as a spy in the British camp. His history did not come to light till after the war, when it was found that he had, for the sake of his country, submitted for years to bear the name of a traitor, while he was playing the part of a spy.

The government in this case found it necessary to send out not a spy, but a secret agent. Captain Edmund Barry was prevailed on to undertake the important trust—a man, gentlemen, as you well know, of spotless honor—not a "Camanche," as a distinguished citizen of Mexico has been called, but an American citizen, born under the canopy of your own star-spangled banner, born here in this good city of Washington, born among you, and living among you till he followed his country's eagles to the Mexican war. You know him as well as I do. You know his intelligence and energy; you know that while he had the sagacity to counteract the wiles which were expected,

he is utterly incapable of a dishonorable deed or thought. For the success of his mission it was necessary that he should depart in secrecy and silence; that he should travel with an assumed name and business. Yes, know this, gentlemen; and I may well say to you, in the language of our constitution, "full faith and credit are to be given to all" his proceedings.

You have been amused or annoyed by the efforts which have been made here, so constantly as to show that they are a main part of the tactics of the defence, to prejudice you against the witnesses for the United States, on the ground of their receiving a compensation alleged to be illegal and unconstitutional. That matter was fully explained in your hearing by my worthy colleague, and I will not now go over the ground again. There is certainly no law of the United States providing for the compensation of witnesses brought from a foreign country. The law which Señor Huici expounded to Judge Aguilar is applicable to the case only of witnesses summoned within the United States. The allowance which it provides for them, whatever might have been the fact at the date of the law, is now often so far below their actual and necessary expenses, that it has worked great injustice, and a disinclination to attend. We hear complaints from witnesses, brought some two or three hundred miles and kept several days, that they are paid by the government for their attendance only \$1 25 a day, and have to pay to the inn-keepers \$2 50 a day for their board. They are compelled by law to come, however severe the hardship may be: for disobedience to the subpoena they would be attached for contempt, and brought on in custody of the marshal. But this case is to be proved chiefly by witnesses brought from the theatre of the perpetration of the fraud—a foreign, a distant, and but lately a hostile land—a country where the process of our courts has no force, and where there has been no sympathy of her people with our own—no disposition to take trouble, or go out of the way, in order to forward the administration of justice in the United States—their recently triumphant foe. To be sure, the citizens of both countries are members of the same great human family; and the Mexican mind is not so degraded but that men can be found in Mexico with a sufficient sense of justice to be willing at least to lend their aid to the cause of justice when they can do so without injury to themselves. It was presumed that men might be found in Mexico who knew something that might contribute to unravel the fraud, and who might be willing to come to the United States and bear testimony, on an assurance that they should suffer no loss; for, as you are aware, it is only oral testimony which can be given to the jury in such a case, except by consent.

Now, gentlemen, let us suppose that an atrocious fraud had been committed against Mexico, or England, or France, or any other government, and you were told that your testimony would be material in order to bring out the truth, and punish the accused if guilty: I put the question, Would any of you, however strong might be your convictions of duty as to aiding the cause of justice—would any of you, I ask, agree to pay your own expenses, neglect your business, leave your wife and children to take care of themselves, and travel thousands of miles, for the benefit of another and a foreign government?

We knew there would be difficulty, however well disposed witnesses might be, in inducing them to leave their business on any terms fit for the government to offer; and such difficulty was experienced in many instances of individuals of high character in Mexico whom it was deemed important to have here. They could not have been induced on any terms to leave their business; and some of these were our own citizens residing in Mexico. If, in the case supposed, you could have been persuaded to abandon your business, you would at least demand an assurance that you should not be required to work and find yourselves; that you should be indemnified for your expenses—not fanciful or extravagant expenses, but fair and reasonable expenses—and that you should not suffer loss. This, you have been already informed, was the arrangement between our government and the witnesses from Mexico. Their expenses were to be paid, and any loss they might incur was to be the subject of future consideration. The terms of this arrangement could raise no expectation likely to bias the witnesses. From this peril they were freer than some of the defendant's witnesses; for these, it seems, have some expectation from his "generosity," if he succeeds in getting clear of this prosecution. They expect that if he be acquitted, he will be generous, and pay them some of the public money which, in that event, he hopes to hold. The necessary and proper expenses of witnesses, coming so far and remaining so long, are, of course, heavy. When their final accounts come to be settled, care will be taken that exaggerated charges, if there be any, shall not be allowed. But because the defendant, by his fraud, has placed the country under the necessity of spending a large amount of money in order to bring him to justice, is that necessity a just ground of complaint against the government? Why, gentlemen, it aggravates the crime of the culprit. If I had sought to appeal to your feelings instead of your judgments, I should have sought to inflame those expenses; for every dollar which the government has disbursed in its endeavors to punish him, increases the measure of his depredation on the public treasury. Not only has he robbed it of nearly half a million of dollars, but he has obliged the government to make an outlay of a considerable sum in addition, in order to have the fraud investigated. It would be trifling with your understandings to pursue this subject further. The investigation of such a fraud is not, and will not be so regarded by the American people, a question of dollars and cents. Yet I doubt not the payments to the witnesses for the government will form a prominent topic of the addresses which will be made to you by the counsel on the other side, as it has done of their examination of the testimony. It will be much easier to discuss tavern bills than it will be to meet the questions of the *alibi*, the forgeries, what were the defendant's means, where were his mines, &c., &c.

The next topic is one which seemed to be thought a matter of some force by the gentlemen on the other side. They took the trouble to bring before you the forgery indictment, and to read you the names of the witnesses who were before the grand jury, and on whose testimony the bill was found. They complain that of these witnesses two only have been before you; and that you must be satisfied, from what

they have said on the stand, that the indictment could not have been found on their evidence. Very well. Then, it must have been found on the testimony of the now absent witnesses. The grand jury are charged by the court at every term not to find a bill except on such testimony as, if uncontradicted by the defence, would produce a conviction; and the grand jury are entitled to the presumption of having acted according to law. Then it follows that, besides the evidence of the defendant's guilt which has been offered to this jury, there is evidence which we were not able to bring before you, which the grand jury, on the responsibility of their oath, declared to be sufficient to convict him.

Among the items of the alleged persecution was a notice given on the part of the United States to the defendant, during the progress of this trial, for taking depositions to be used in the chancery suits. They were to be made by witnesses who had been examined before you, and were anxious to go away. They had been fully and strictly cross-examined by the counsel for the defendant, who were thus apprized of all that they could prove. We did not expect that the counsel for the defendant could attend during the whole time of the chancery examination, and named such hours as would enable them, either before the meeting of the criminal court or after its adjournment for the day, to be present. The testimony was all to be taken in writing; each party might at its convenience attend; and the depositions were to be kept open till both parties were satisfied. Where was the hardship of this? If the gentlemen intended to ask any more questions of the witnesses than had been propounded before you, what would have become of the witnesses at the end of the operation? The only deposition taken under the notice was that of Mr. Navarro. They complained that this witness was writing his testimony when they were not looking at him. Now, however important this inspection may be to a jury in a trial before them, it has not heretofore been considered material in chancery proceedings. You will recollect that, on account of some misunderstanding between counsel as to a casual conversation on the subject, I offered that all which had been done should go for nothing, if the counsel would fix a time for its being done over again, when they could be present. They rejected this proposition, as they did an offer of the court to adjourn; preferring the position of martyrs. Some days after this they called up Mr. Navarro again, and asked him a few questions. You will recollect the amount of the new testimony of this witness.

We need not dwell on the Williamson episode. You recollect the full statements made when it was first introduced to your notice, and its remarkable reproduction in the form of a suggestion to the court, founded on some mysterious communication by telegraph, that efforts had been made to intimidate this witness, and invoking an opinion from the court to reassure him, which opinion was also to go by telegraph. The telegraphic opinion was given, and, I presume, despatched; for the intimidated witness came safely to Washington in spite of the two conspiring governments. But he was not put on the stand. He came, and — he went back again.

Mr. BRADLEY. Perhaps he was kidnapped before we had an opportunity of examining him.

The DISTRICT ATTORNEY. Well, let him pass.

“Oh, breathe not his name! let it sleep in the shade.”

There are several other points which I had designed to touch on, but I have detained you so much longer than I intended on preliminary topics, that I will now pass on to the main subject. These which I have spoken of are all outside questions; but still they had been the subjects of such frequent comment or allusion on the other side, that I thought it was due to you, gentlemen of the jury, to say something by way of explanation, to show that the criticisms which have been made upon the government of the United States are wholly unfounded. I repeat, that if I have failed in this—if even you should think, as I cannot fear that you will, that there is ground for complaining of any act or acts of the government, or of any of its agents—still I feel certain that you will not suffer that view to prejudice your mind in coming to a decision on the case which is before you. If these functionaries, or any of them, have acted improperly, they are not irresponsible. They cannot escape unpunished. If they have done any act against law, they will be held answerable to the law. If they have done any act which, though not rendering them amenable to the law, shows them to be unworthy of public confidence, they can be removed from office. No man can do anything wrong in this country, thank Heaven, who may not be punished in some way or other. And, knowing *that*, whatever you may think of this clamor of persecution, you will not suffer it to warp your judgment in determining the issue which you are trying. “Is the defendant guilty or not guilty” on the evidence before you? That is the issue.

I shall now address myself to the charge. What is it? It is that the defendant has taken a false oath, in violation of the following provision of the act of Congress of March 1, 1823, “in addition to the act entitled ‘An act for the prompt settlement of public accounts,’ and for the punishment of the crime of perjury.”—(3 Stat. L., 771 :)

“SEC. 3. *And be it further enacted*, That if any person shall swear or affirm falsely touching the expenditure of public money, or in support of any claim against the United States, he or she shall, upon conviction thereof, suffer as for wilful and corrupt perjury.”

The questions for your determination are, Did the accused take the oath set forth in the indictment? and if so, was that oath false? and did the defendant know it to be false when he swore it? The indictment is before you. You will have no trouble with the law, that having been settled by the court on a demurrer to the indictment; for the defendant, however clamorously asserting his innocence, and however solicitous it might be supposed that he would be to manifest that innocence to all mankind, was nevertheless desirous to get off, if he could, on a demurrer. But the court overruled the demurrer, and held that he must be tried on the facts by a jury of the country. Is he guilty or not guilty? The indictment sets out in substance most of the averments made in the defendant’s memorial, and goes on to negative them.

[Mr. F. here read several portions of the memorial and indictment.]

Now, it is not necessary for the United States to satisfy you that each and every of these averments is false. If they satisfy you that any material averment in the memorial is false, and that the defendant knew it to be false when he took the oath, he is guilty on this indictment. It is difficult to prove a negative, and yet that is the burden which the United States have taken upon themselves in this prosecution. They have undertaken to show to you that the oath sworn by this man is false; that he had not the mine which he swears he had; that he had not the money which he swears he invested in the mine; that the whole story of his memorial is wilfully false. If a man swear to a statement believing it to be true, and it turns out to be untrue, he does not necessarily swear falsely; but if he swear to a false statement, knowing it to be false, he does swear falsely. In this case, the very nature of the facts sworn to necessarily makes the oath, if a false one, knowingly and wilfully false.

Before going into the evidence on the subject, I invite your attention to the different accounts which this defendant gave of the extent of his claim. You will recollect that General Waddy Thompson, who was of counsel for the defendant before the board of commissioners, stated in his testimony before you that he draughted the memorial after consultation with the defendant, and after examining the papers in relation to the claim which the defendant placed in his hands; and that in the draught so prepared, the amount invested in the mines was stated at between two hundred and fifty and three hundred thousand dollars. The amount of investments is put down in the memorial, as filed, at \$330,392. This memorial was filed on the 30th November, 1849, and in the spring of that year the defendant had told Col. William O. Niles that the "amount was not less than sixty or a hundred thousand dollars;" but whether he meant his *loss* or the claim, the witness could not tell. Suppose it was the *loss* which he meant, and that it was one hundred thousand dollars: in the memorial he swears that he had invested \$330,392, and that he lost the whole of it. Shortly after the organization of the board, and in the presence of John Charles Gardiner—a fact to which I may call your attention hereafter—the defendant told Mr. Philip C. Johnson that the amount of the claim "was \$150,000 or \$170,000, and that 'we' could make it what we pleased." And he did so. So anxious was he for immediate action on the claim, that he also told Mr. Johnson that "we would give fifteen, twenty, or thirty thousand dollars to have the claim taken up at once." "The anxiety expressed for the taking up early the claim was that *their* business was such that *they* wanted to get away." This conversation was not casual, but deliberate; sought by the defendant for the purpose of enlisting the influence of Mr. Johnson with Mr. Evans. It is due to Mr. Evans that we should recollect that the witnesses never communicated to him the suggestion about the willingness of Gardiner to give \$15,000, &c., to have the claim taken up at once. But why such anxiety—why such a bonus for speedy action—if the claim was an honest one? I desire you to notice all the particulars, whatever may be your view of their separate materiality, which have the slightest bearing upon the question of what is called the guilty knowledge. And in looking at any particular item

of evidence, do not go upon the idea that if it is not conclusive, or if it may be explained away, it is therefore without weight; but reserve it for collation with the rest of the evidence in the cause. Regarding the evidence in the aggregate, you must have been struck with the peculiarity that there is hardly an incident in the conduct of the defendant which does not in some way or another call for explanation. In the fall, then, of 1849, and before the board was organized, he was willing to give fifteen or twenty thousand dollars for getting the claim through. "*They*" wanted to go away, and "*they*" made this proposition to Mr. Johnson, who, it should be observed, was not a lawyer. It was not professional aid which the defendant wanted from him. Now, what is the plain English of his proposition to Mr. Johnson? "You are from Maine; Mr. Evans, the President of the board, is from the same State, and you and he are personal friends. Use your influence to get the claim decided at once, and I am willing to give you fifteen or twenty or thirty thousand dollars. *We* want the money, and *we* want to go away."

On the 30th of November, 1849, the defendant filed with the board of commissioners an alleged copy of the order of 21st October, 1846, expelling American citizens from the State of San Luis Potosi; an alleged copy of his protest, 24th October, 1846, against that order; an alleged copy of his mining-book of accounts; a paper purporting to be an approval by the governor of the State of San Luis Potosi of the conduct of Manuel Verastegui, prefect of the department of Rio Verde, in authenticating the foregoing documents; the defendant's memorial; and six other documents, purporting to be affidavits of persons employed in, or connected with, his mines. Further evidence being required by the commissioners, the defendant went to Mexico in search of it; and according to the testimony of his counsel, General Thompson, the additional testimony was presented to the board in October or November, 1850. Among the additional papers were, a document purporting to be a copy of his mining title, taken from the book of registry of mines in the office of the prefect of Rio Verde, and annexed to that copy five other documents purporting to be the affidavits of Ochoa, chief miner of the defendant's mines; Gomez, the depositary of his funds; Espinosa, his refiner; Simpson, his superintendent of wood and surface works; and Arrellano, engineer and surveyor of mines.

Of the foregoing papers, the memorial, the order of expulsion, the protest, the mining title, the mining book, and the affidavits, are in evidence before you. The memorial is the foundation of the indictment; and the other papers have been submitted to you—some by the prosecution, and the residue by the defence—as acts of the defendant in relation to his claim, which may assist you in determining the question of his guilty knowledge in taking the oath.

Permit me now, gentlemen, to call your attention first to some passages in the memorial:

"The memorial of George A. Gardiner respectfully shows that he is a native-born citizen of the United States; was born in the State of New York, the 19th of March, 1818; that he is now a resident of Washington city; at the date of the transaction hereinafter stated he resided in the State of San Luis Potosi, in the republic of Mexico; that he has never in any manner renounced his allegiance to the United States of America, or sworn allegiance to any

other country; that early in the year 1844 he engaged in mining operations in the State of San Luis Potosi on a very large scale; that he employed five hundred hands as laborers in cleaning out said mines, extracting ores, building houses, erecting a large and complete refinery of metals, and the various other employments about such establishments, besides large investments in steam-engines and other machinery, horses, mules, provisions, &c., and men of science in the different departments of mining operations—in all of which your memorialist invested \$330,392. That from the month of June, 1846, your memorialist realized the principal fruits of his toil and immense outlay of capital. From that period to the 24th day of October, when he was driven from the country by the Mexican authorities, he received upwards of \$20,000 per month from his mines aforesaid, and that the expense of working them did not exceed ten or twelve thousand dollars per month. This being the very beginning of his operations, when he had to encounter all the inconveniences and losses of an incipient undertaking, cannot be regarded as a fair criterion of his future profits.

“At the time of his expulsion he had a large quantity of ores extracted from the mines, and would, beyond doubt, have realized in the next month not less than \$50,000; and at that rate, he confidently believes, for years afterwards, as his machinery was new, and his whole establishment in every way complete: all of which is verified by the book of accounts of his establishment and the depositions of numerous witnesses.

“On the 21st of October, 1846, an order was issued by the governor of San Luis Potosi expelling all citizens of the United States from that State within three days from its date, and on the twenty-fourth of said month your memorialist was compelled to abandon his immense establishment; and, after rifling it of everything of value, and which could be removed, a band of Mexican soldiers set fire to it, and everything was left a heap of ruins.

“Your memorialist confidently asserts that they [i. e. the mines] were at the time of his expulsion worth five hundred thousand dollars, (\$500,000.) The sum may seem large, but not as large as the profits derived; and let it be remembered that the condition to which these mines were brought was the result of the labor for two years, and upwards of five hundred laborers, and the outlay of upwards of three hundred thousand dollars. To fix the value at five hundred thousand would really have been less than the value of the use of that much money at the rate of interest usual in Mexico for two years; besides the risk incurred in such enterprises.

“Your memorialist further states that he was at the time of his expulsion *sole proprietor of those mines*, and that he is at this time *sole owner* of the claim now presented; and that no sum of money or other equivalent has ever been paid to him or to any other person having an interest in the claim above set forth, as in fact no other person has now or ever had any such interest.”

The location of the mines as given in the memorial is merely “the State of San Luis Potosi.” This, surely, is not very exact. A man, not knowing the precise locality of some coal mine which he had heard of, would not feel much wiser on being told that it was in the State of Maryland. The affidavits and the mining title are somewhat more particular on this head, though not enough so, as I may have occasion hereafter to remind you. The following is from the mining title:

“The citizen Francisco Fernandez, prefect of Rio Verde, State of San Luis Potosi:

“I certify that in the book of registry of mines of this office appertaining to the year 1844, at folio 15, over, is to be found an entry in the following words, to wit:

“‘July 12th, the American citizen, Mr. George A. Gardiner, by profession a physician, of twenty-six years of age, and a resident of this place, has denounced, on the date hereof, an old mining district of silver, having a number of shafts and excavations containing water and rubbish, entirely abandoned, without inhabitants, and not worked since the time of the independence, situated on a branch of the Sierra Madre, opposite of Serro Gordo, in the Sierra of La Huesteca, county of Lagunillas, in this department. * * *

“‘Granted and conceded as requested by the petitioner, subject to apply for possession within sixty days, as prescribed by the ordinance.

“‘September 3. On the day of the date hereof possession has been given to Mr. George A. Gardiner, in conformity to his above denouncement of said ancient mine,’” &c., &c.

Now, gentlemen, let us turn to the protest which the defendant says he made against the order of expulsion, and which is in evidence before you on the offer, not of the United States, but of himself. This paper purports to be dated “Hacienda de San Cristobal, October 24, 1846,” and to be addressed to “Manuel Verastegui, prefect of the

department of Rio Verde." After stating that he had received that morning, through "the *justice of the peace* of this district," the decree or order of expulsion of 21st October, 1846, and complaining that he had been notified positively "to leave before to-morrow's dawn, or subject [himself] to be maltreated and turned out by a body of troops that are hourly expected," &c., &c., he thus proceeds:

"It would be impossible for me to represent in its true light the surprise and astonishment that this arbitrary act has inspired me with.

"To see the person who has encouraged the industry of the country; who has raised this mining district from a state of oblivion to be one of the first in the republic; who supports upwards of five hundred families, and is the cause of the prosperity of the whole district; who has invested a capital of upwards of three hundred thousand dollars, and has never interfered in matters of politics, nor given any cause of complaint; who has always helped the government, whenever it has called on him, with copious sums: to behold, I again say, he who has all these recommendations, made the target of revenge of a government, cannot but inspire horror. Your honor is a witness, as are also all the authorities of the department, that I have worked two years, investing a capital of three hundred thousand dollars in raising and causing this mineral district to prosper, which was in a state of decay, and which is at present in a state of the most flourishing prosperity. It is also well known that my presence is absolutely requisite for its prosperity, and I cannot look with indifference on the arbitrary law that obliges me to abandon to the plunder and cupidity of evil-doers my extensive property, my brilliant and flattering future."

It must be quite clear to you, gentlemen of the jury, looking at the documentary evidence to which your attention has just been called, to say nothing of the other testimony in the cause, that if the oath sworn by the defendant be true, each and every of the following propositions must be true; and that if any one of them is false, the oath is false:

1st. That he had large pecuniary means.

2d. That he was personally present at his alleged mines in Lagunillas throughout the term of his mining operations.

3d. That the alleged mines existed, and were of great extent and value.

4th. That he was the owner of those mines.

If the falsity of any one of these propositions has been proved to your satisfaction, then the defendant is guilty. If we can satisfy you from the evidence that he had not the means, without which he could not have had the mines and mining establishment described in his memorial, then he has sworn falsely, and is guilty. If we can satisfy you from the evidence that, if his story be true, he must have been personally present at the mines continuously during the time of his mining operations, and that, in point of fact, he was at times within that term not at the mines, but at other places, transacting or projecting other business, wholly inconsistent with his personal presence at the Lagunillas mines, then he has sworn falsely, and is guilty. Again: if we can satisfy you from the evidence that no such mines existed as those described in his memorial, and documents supporting it, then he has sworn falsely, and is guilty. Once more: if we can satisfy you from the evidence that, even if the pretended mines existed, he had no interest in them, but that he committed forgery in order to make out a title to them, then he has sworn falsely, and is guilty.

Now, gentlemen, we say that the evidence which has been laid before you proves four things, the proof of any one of which requires a verdict of guilty. And these are—

I. That the defendant had no pecuniary means.

II. An *alibi*.

III. That the mines claimed by him do not, and never did, exist.

IV. That even if the alleged mines existed, he had no interest in nor title to them, and has committed forgery in order to show a title.

If we have established the third proposition, it would follow as a corollary from such proof, that the averment in the memorial that he was expelled from the mines is untrue. If there were no mines to be expelled from, he could not have been expelled. It is remarkable that the order of expulsion is dated at San Luis Potosi (the city of that name) on the 21st of October, 1846, and that, according to the defendant's protest, it was received by him on the morning of the 24th of October—the third day after—at his refinery of San Cristobal, which he says was in the district of Lagunillas. Now, that is a small district, about twenty-five or thirty of our miles from north to south, and about half that extent from east to west; and the city of San Luis Potosi is distant from the village of Lagunillas five or six days' journey. How the decree could have travelled so rapidly over such roads as you have heard described, it is for you to say. You will recollect the testimony which we gave on this subject.*

I shall now examine the foregoing propositions in their order.

I. WANT OF MEANS.

If the memorial be true, in July, 1844, the defendant had a fortune of \$330,392, which he invested in the Lagunillas mines; he employed *five hundred* hands as laborers in those mines, or, as he tells you in his protest, supported "upwards of *five hundred families*, and [was] the

* On the examination of Judge Aguilar, who resided in the State of San Luis Potosi from 1841 to 1848, Mr. May put the following question to the witness: "Whether he has ever heard that the public troops ever visited the district of Lagunillas for the purpose of expelling Dr. Gardiner or anybody else?"

MR. BRADLEY.—Don't ask him that question, if you please, sir.

MR. MAY.—Why? It is a matter of public history.

[After some discussion, the court decided that the question was proper.]

MR. CARLISLE.—Let us get the question accurately. I believe it is—'Has the witness known, or ever heard, whether troops were sent to or visited Langunillas for the purpose of expelling Dr. Gardiner?'

MR. BRADLEY.—We don't object to the "known," but to that part of the question which asks if he has "heard."

ANSWER.—He does not know, nor has he heard say, that troops might have been sent to Lagunillas with the object or purpose of expelling Dr. Gardiner from there.

The following is from the cross-examination of the same witness:

QUESTION.—During the late war with Mexico, were the Americans in that country permitted to settle up their affairs and carry away their property?

ANSWER.—He does not know what may have happened in other States than San Luis Potosi, which was where he resided; but there, although he remembers when the law of expulsion was published requiring the leaving of American citizens, he does not know that they may have been deprived of the free use of their property, nor of a perfect arrangement of their business; but rather, on the contrary, he knows that some American citizens who represented themselves as liable to be prejudiced, and the towns asking for their remaining there, permission was conceded that they should remain for an indefinite period. Among persons of this class was a *Mr. Mears*, who was established somewhere about Rio Verde or Guadalcazar, or some place thereabout.

QUESTION.—Were not these persons who were allowed to remain, exceptions to the law?

ANSWER.—He has said that he does not know the particulars of the law with respect to what might be done with their property, and he has said that he believes that they must have been left with liberty to arrange their affairs; and, in truth, he believes that he has stated these cases of exception.

cause of the prosperity of the whole district;" he extracted ores, built houses, erected a large refinery, made large investments in steam engines and other machinery, horses, mules, provisions, &c., and men of science in the different departments of mining operations; he received upwards of *twenty thousand* dollars a month from his mines from the month of June, 1846, till the 24th of October next following, when he was "compelled to abandon his *immense establishment*, and, after rifling it of everything of value and which could be removed, a band of Mexican soldiers set fire to it, and everything was left a heap of ruins."

Nor was this amount of \$330,392, invested in the mines, the whole of the defendant's fortune during these mining years; for, according to his protest, which he brought before you as a part of his evidence, he had other and ample treasure—sufficient to supply the wants of the government of San Luis Potosi: "he has always helped the government, whenever it has called on him, with *copious sums!*"

This is truly a magnificent picture. But, gentlemen, if we show you that the defendant, from the day when he first entered the republic of Mexico, till nearly up to the time when, as he swears, he invested \$330,392 in the Lagunillas mines, and while he was lending "copious sums" to a government, was without any apparent means except such as could be derived from his practice as a dentist; if we show him to you, changing his place of residence because his professional income was too small for his wants, or declaring it to be his purpose to go off to a distant region; if we show him to you engaged during part of the interval, as one of a numerous company of associates, in a small and ultimately abortive mining concern, hundreds of miles from the El Dorado of Lagunillas, and after the failure of that petty enterprise we show him to you, not as an owner of mines, but as a hunter after mines: if *we* show you all this, and then *he* suddenly shows himself to you swearing to be possessed of three hundred and thirty thousand three hundred and ninety-two dollars, before you can believe his oath you will call upon him to show how and when he acquired this vast amount of money. You will decide the question now presented for your consideration upon the probabilities of human experience. You well know that it is not the course of affairs for a man to be poor to-day and rich to-morrow. It does, indeed, sometimes happen that, besides the cases of hereditary wealth, there are other and occasional exceptions to the doom of fallen man to live by the sweat of his brow; but you know that such instances are not only rare, but that when they do occur, their whole history is generally notorious. At all events, the man whom fortune thus favors can tell how, and when, and from what source his sudden prosperity has sprung.

The defendant was travelling about, pursuing a laborious, however respectable, profession; changing his location because, where he was, there were not teeth enough to pull, or too many other people were pulling them; engaging in a small and finally disastrous project; declaring his intention of attending to other business equally insignificant when compared with that described in his memorial; and yet he expects you to believe, without a word of explanation, that all at once

he has become rich almost beyond the dreams of avarice; that he had vast sums to invest in mines; and was the munificent patron of a needy government! It is not impossible, however unfrequent, that in a moment of time a poor man may become rich—that the Lazarus of to-day may be the Croesus of to-morrow. He may have drawn a large prize in a lottery; but then the seller of the ticket knows the fact, and can tell—the friends or neighbors of the fortunate purchaser may know it, and can tell. Or he may be the unexpected heir or legatee of some wealthy relation; or he may have been more lucky than most of his countrymen who go on a wild-goose chase after English estates. But if so, the fact is readily susceptible of proof. The instant transition from indigence, or very moderate circumstances, to opulence, however possible, is out of the ordinary course of human affairs; and whenever it does occur, it can be easily explained. One would suppose that if any explanation could be given in the case of the defendant, it would have been given by his brother. Yet, though John Charles Gardiner was put on the witness stand by the defendant, and examined as to other points, not a question was put to him as to the acquisition of the means invested in the mines. This is a significant fact in the case. John Charles Gardiner, from his relations of blood and business to the defendant, was the man of all others to give you this most necessary information. No, gentlemen; the origin of the large means which the defendant pretends to have invested in mines has not been explained, because it cannot be explained: he never had the means. He was not at one moment a dentist, and at the next a splendid miner—a new Rothschild, dispensing prosperity to individuals, and helping indigent States out of his abundance. These are not the days of Aladdin, when rubbing the lamp would bring untold wealth. What the defendant asks you to believe is scarcely less marvellous than any story in the Arabian Nights. That book was written for the amusement of children—not for the instruction of grown men—not for the guidance of sworn jurors. This man, one day poor, tells you that on the next day he was revelling in wealth, but cannot tell you how the wonderful change was wrought. Even the magic of credit has not been invoked for explanation: nor could it be. One of the witnesses has informed you that in Mexico it is exceedingly difficult to obtain credit, and that the business done there is a cash business.

[Here the court adjourned; and the DISTRICT ATTORNEY resumed his argument the next day, as follows:]

Gentlemen of the jury, when the court adjourned on yesterday, I was engaged in explaining one of the grounds on which we consider the offence charged in the indictment to have been proved—namely, the defendant's want of the means necessary for conducting mining operations on the extensive establishment described in the memorial. Allow me again to call your attention to the principles of common sense and of human experience, on which, as intelligent and reasonable men, you will require the defendant to show how he obtained the means which enabled him to carry on this splendid enterprise. I desire you, gentlemen, to consult your own common sense, your own

observation, and to see the gross improbability, on any known rule of human action, that a man should be suddenly elevated from poverty to great wealth without being able to account for the change. An earnest effort was made, as you must have observed, in the course of the examination of the witnesses by the defendant's counsel, to show that he was a physician. They put this forward as a very important point in the case. Now, gentlemen, whether he was a physician or not in the year 1847, is a matter of no sort of consequence as regards the purpose for which we referred to his medical pretensions. He may have been in the year 1847 the most experienced, the most skilful, and the best rewarded physician in the world; but that would not advance him one inch towards explaining to you how he became possessed of the means which enabled him, in the year 1844, to invest \$330,392 in mines, or in any other enterprise. We have shown that he was, from the time he first went to the city of Mexico until the time when he professes to have commenced these mining operations, a dentist, and nothing else; that his means were entirely confined to the practice of that profession; which, however respectable in itself, you all know is not the road to sudden wealth—to the enormous wealth which was necessarily in the possession of the defendant, if his memorial be true.

I shall now call your attention to the evidence on that subject; and, first, to that given by *Mr. James Wright*:

“I became first acquainted with Dr. Gardiner in May, 1840, on the steamer *Argyle*, on the passage from New Orleans to Vera Cruz. That was the first I ever saw of him. He told me he was going to Mexico for the purpose of practising his profession as a dentist. We had a good deal of conversation respecting Mexico and the intervening places between Vera Cruz and the city of Mexico—as to the prospects of his practising his profession in those places; and he asked my opinion if he would be able to pay his expenses by stopping in those places and practising his business—that is, to pay his travelling expenses also from Vera Cruz to the city of Mexico.

“He did not appear to be possessed of much means—rather the contrary; he told me, in fact, he was rather short of means. I had some carriages in Vera Cruz, and I told him that if he would drive one, or take a seat in a buggy with me, I would in that way give him a passage up to Mexico without any expense, and I would like to have him for a companion. He did not accept my offer, he giving for a reason that a young man, a medical person, who was also a passenger on board the steamer, was in ill health, and he was under some obligation not to leave him. This young man was a physician who was going to Vera Cruz for a double purpose—to benefit his health and to practise his profession. He said he could not leave him; whether from friendship, or what, I do not know. I left Vera Cruz in a few days, and left Gardiner there. I next saw him in the city of Puebla; how long after I do not recollect, though I think it must have been in the beginning of 1841, or somewhere thereabout. I returned to New York the same fall. In October, 1840, I was in Vera Cruz on my way to New York, and attended the funeral of that same young man; Mr. Hargous buried him; Hargous was the American consul at that place, and he took charge of his funeral and effects. I do not recollect that I saw Gardiner there at that time, though he might have been there. This was in October, 1840, I think.

“Puebla is on the road from Vera Cruz to the city of Mexico—twenty-eight leagues from the city of Mexico. I was on my return from New York when I saw Dr. Gardiner there. He was practising his profession as a dentist. He told me he was practising as a dentist; and I was likewise at the house at which he stopped—Mr. Jewett's.

“I next met him in the city of Mexico—I think in the beginning of 1842. I saw him there at that time. He remained there till the beginning of 1844. From 1842 to 1844 his business was the same that he had practised in the other places before coming there—a practising dentist. I do not think or know he had any other occupation or business but that. I never knew he was a physician.

“MR. BRADLEY. Do you know he was not?

“WITNESS. I do not. I could not say I know either of you gentlemen not to be a physician. I never understood or heard he was a physician. I was intimate with him. I saw him frequently, very often, while he was in the city of Mexico.

"He first established himself on the corner of the second street of San Francisco and corner of the street of Esprit de Santo; it was called sometimes the Street of the Profession, from a church in that street. After a few months—I do not recollect the time—he went into partnership with Dr. Segur in the Calle Monterelia. Dr. Segur was a dentist. Dr. Gardiner remained in company with Dr. Segur till the beginning of 1844, when he left the city of Mexico.

"While in Mexico, at least, he always appeared to make a comfortable, genteel living by his business; he was always dressed genteelly, and appeared comfortable. I never heard he had any other business but dentistry, except that he had a share with Mr. Halsey in a mine in Tlalpan. I think I heard him say he had an interest in a share in the mine. I saw the books of Dr. Wright, who was president of the company. I lived in Dr. Wright's house at the time, and saw the books at that time.

"Dr. Gardiner and Dr. Segur had a share in the mine; I heard them both speak of it, particularly Dr. Segur. I have heard Dr. Gardiner speak of his having an interest in the mine. Each mine has twenty-four shares; that is fixed by law in Mexico. He and Segur had one share in the mines of Tlalpan, in the Real Doloros, in the State of Mexico.

"QUESTION. Do you know where he went when he left the city of Mexico?

"ANSWER. I don't know personally, but I have heard him say here in this city, at Willard's, last May, that he left Mexico in 1844, and went to Morelia; he said to me that no one in Mexico knew anything about him after he left in the beginning or middle of 1844, 'when I went,' as he said, 'as you know, as a director in the mine in Morelia'—a director of the mining company of the two Mr. Halseys, the two Quiros, who were Mexicans, and one Frenchman, M. De Costa. He mentioned their names; he said he was appointed by the two Halseys and De Costa. He did not mention the names of the others. Since my return to Mexico I have learned who the balance of the company were. I did not know then. He said he was appointed by the company generally, but mentioned the names of the Halseys and De Costa."

In a subsequent part of his examination, Mr. Wright says:

"During the conversation with Dr. Gardiner, in speaking of his being a director of the mine near Morelia, Curucapaseo, he said, that after the company was broken up or failed, in Morelia, or the mining company had broken up, he had started off to San Luis Potosi, near Lagunillas, where he had 'denounced' the mines on which he laid his claim. That is about all that passed between us at that time."

"QUESTION. At what stage of the conversation was this remark made?

"ANSWER. It was after he said no one in the city of Mexico knew where he went, because, he said, 'I went to those mines which I worked afterwards.' He told me he had an interest with Mr. Halsey. I was never at the place. He told me the mining company near Morelia had broken up.

"The last time I saw him in the city of Mexico was in the beginning of 1844. I did not see him again till I saw him in this city. I was engaged in mining, and was only occasionally in the city of Mexico."

So that in the month of May, 1840, he was dependent upon his profession not only for his means of support, but for his means of travelling. His purpose was to take up his residence in the city of Mexico, and practise his profession; but he would be without even the means of travelling thither, unless he could acquire them in payment for professional services that he might render on the way.

Then, gentlemen, you have the testimony of *Colonel Noah E. Smith*, covering about the same period of time:

"QUESTION. Did you know the accused, George A. Gardiner, in the city of Mexico?

"ANSWER. Yes.

"QUESTION. State when and where you knew him, and how long you knew him there; what his business was; and if you ever had any conversation with him, what he said; being careful to state what you know yourself, and not what somebody else told you.

"ANSWER. I knew him when he arrived in Mexico, and the time when he resided in Mexico; I think he arrived in 1842, and left in 1844. * * * *

"QUESTION. What was his occupation?

"ANSWER. He was a dentist.

"QUESTION. How do you know he was a dentist?

"ANSWER. I saw him repeatedly going out with his tools to perform operations, and he told me he was a dentist.

"QUESTION. Did you ever see him operating?

"ANSWER. I don't remember; very likely I have.

"QUESTION. Have you been to his room, and seen his instruments there?"

"ANSWER. Yes.

"QUESTION. Did you know anything about his being a physician?"

"ANSWER. No; I never knew him to practise medicine.

"QUESTION. Judging from what you saw, what were his means of living? What were his circumstances?"

"ANSWER. He made a very respectable appearance; dressed very well, and was making a very good living as a dentist. I know that I was sorry when he left, and remarked to him that I was sorry he was going away. He said he thought he could do better in the interior, because there were other dentists in the city.

"QUESTION. Did he say how he could do better in the interior? Do you know what he was going to do there?"

"ANSWER. He said he was going to practise dentistry. He thought he could do better there. There were too many dentists in the city.

"QUESTION. When was this conversation?"

"ANSWER. Just before he was leaving.

"QUESTION. It was in that conversation in which you expressed your regret at learning that he was about to leave the city?"

"ANSWER. Yes.

"QUESTION. You say he was doing a good business in Mexico as a dentist?"

"ANSWER. Yes, sir.

"QUESTION. Do you know of any other occupation, any other resources or means of living, that he had in Mexico?"

"ANSWER. No."

In 1844 Gardiner's means of living, so far as the witness could judge, were dependent exclusively on the practise of his profession, and he assigned as a reason why he was going to leave the city of Mexico, not that he was going to embark in any great mining operation, but to practise his profession elsewhere, and under more propitious circumstances. There were too many in the city of Mexico engaged in the same line of business to enable him to derive the profits necessary to his subsistence. *Mr. Atocha* testifies as follows:

"I resided in the city of Mexico from 1839 to 1845. I am a citizen of the United States. I know Dr. Gardiner. I knew him in Mexico as a dentist; he had an office as a dentist. I was there; occasionally passed his office, but never went into it to do business with him. This was in 1842-'43 that he was there as a dentist. I saw his name at the door as a dentist. When General W. Thompson came there as our minister he was offered a dinner. I saw Dr. Gardiner more specifically at that dinner than before; and asked if he were the same person whom I had known as a dentist.

"QUESTION. What was on the sign?"

"ANSWER. It was a plate on the door. He lived on the (name of the street not understood.) I did not pay any more attention than to the signs of other people. I saw at the office a young man who I was told was Dr. Gardiner's brother, and which fact I was afterwards confirmed in by meeting him during the war with the army, where he was acting as interpreter. He was then much changed, for he was five or six years older than when he was in the city of Mexico.

"I never knew Dr. Gardiner practise as a doctor other than a dentist. I knew nothing of his means. I never knew him to live in any high style. I don't know when he left Mexico."

Then we have *Mr. Angus*, who testifies as follows:

"I am a citizen of the United States. I was born in the city of New York. I reside in Elizabethtown, New Jersey. I was not summoned to come here; I came to Washington on my own business, and was summoned after I got here. I resided in the city of Mexico. I first went there in 1832; I returned to the United States in 1835, I think. I remained in the United States and went back to Mexico in 1842, and returned again to the United States in 1848, with the last division of the American army.

"QUESTION. Between 1842 and 1848, then, you were in the city of Mexico?"

"ANSWER. I was, except awhile when I was in the city of Puebla. I was in Puebla when General Worth's army was there. I am acquainted with George A. Gardiner, who sits here in court. I knew him in the city of Mexico from the time of my last visit in 1842 till the spring of 1844, or early in the summer of that year. I am not precise as to the time.

"QUESTION. State what was his occupation or business?"

"ANSWER. He pursued the business of a dentist; he had no other business, to my knowledge.

"QUESTION. State what were his means and resources?"

"ANSWER. I presumed he lived on his business; I knew nothing to the contrary. If he had been a man of wealth, I would in all probability have known it. I was in his rooms, and knew him to be a practical dentist. I saw his instruments in his room; they were lying on the table. I never was at his dwelling. His office was like other similar offices; it was well furnished as a dentist's office. I do not think he kept a horse or carriage. I never saw the Doctor in a carriage, though I have seen him on horseback; I do not know that he owned the horse; there are several livery stables there."

Mr. Benjamin E. Green's testimony is to the same effect:

"I was secretary of the American legation in Mexico; I went out in August, 1843; I reached there in the early part of October. I remained there about six months as secretary; afterwards I remained as acting chargé d'affaires in the absence of General Waddy Thompson. I left in the latter part of 1844, being there in all about eighteen months.

"QUESTION. Did you see George A. Gardiner, the accused, in Mexico at that time?"

"ANSWER. I saw George A. Gardiner in the city of Mexico frequently.

"QUESTION. What was his business or occupation?"

"ANSWER. That of a dentist. I never knew that he had any other.

"QUESTION. What were his means and resources, so far as you could tell from his appearance?"

"ANSWER. I can only tell you what were the appearances. They were those of a person dependent on his profession as a dentist for support; of course, I knew nothing of his private means.

"QUESTION. When did he leave the city of Mexico?"

"ANSWER. I cannot say when he left the city of Mexico, but I saw him there in 1844. I got home here myself in January, 1845; I left there in November or December of 1844.

"QUESTION. Do you know where he went?"

"ANSWER. I do not. I saw him just before he left. He said he was going away; I asked him where he was going, and he said into the interior. Interior means leaving the city of Mexico, no matter where you may intend to go—almost anywhere. He said he was going to the interior, and that *he might probably go to Mazatlan, or some other port on the Pacific*; from there he might go to South America, if he did not succeed in travelling through the country. I have no distinct recollection of the language he used." * * * "He said it would depend on his success whether he went to South America; and if he should decide upon going to South America, he wanted to secure a passage on a national vessel, in an American ship-of-war. He wished me to write him a letter to secure him a passage, but I am not sure whether I wrote it or not; it was a letter to the officers of some of our man-of-war ships on the Pacific. I did not see him after that time, which was in 1844, till I saw him here in this city. I may have seen him there after that conversation, and doubtless did, but he left a few days after."

So that in 1844, according to the testimony of Mr. Green, the defendant was practising dentistry in the city of Mexico, and he left that city with the declared purpose, not of going to Lagunillas to make this magnificent investment in mines, but to go to Mazatlan, or South America, according to circumstances; and he requested Mr. Green to write a letter for the purpose of securing him a passage in one of our national vessels, if he should determine to go to South America. Mr. Green did not recollect whether he wrote the letter or not; but General Thompson, a witness for the defendant, told you that he was applied to for a letter for him, and that he directed Mr. Green to write it. In addition to these witnesses, we have the testimony of *Mr. Tugno*:

"QUESTION. State whether you knew Dr. Gardiner, and when and where you first saw him.

"ANSWER. I knew Dr. Gardiner from 1842 to 1844.

"QUESTION. Where did you first see him? Go on and state the circumstances of your acquaintance with him.

"ANSWER. I first knew Dr. Gardiner when he was established at the corner of the street San Fran Potosi, in the city of Mexico. He worked alone there at his profession as a dentist.

"The COURT. He practised dentistry by himself?"

"ANSWER. Yes, alone at first; afterwards he had a partner by the name of Segur.

"The COURT. How long afterwards?"

"ANSWER. About a year, I suppose; I don't know precisely the dates.

"Mr. CARLISLE. About a year after you first knew him?"

"ANSWER. Yes.

"The DISTRICT ATTORNEY. How long did he continue with Segur?"

"ANSWER. He continued with Segur another year, which makes the two years that I knew Dr. Gardiner.

"QUESTION. State to the jury what were his circumstances at that time.

"Mr. BRADLEY. State whether you had any personal knowledge of his means or circumstances; not what other people said.

"The DISTRICT ATTORNEY. State his manner of living.

"Mr. BRADLEY. I object to that.

"The COURT. State what were his means.

"WITNESS. The knowledge of his means that I had was of his being a young man with no more than he could make by his profession."

Lieutenant Rowan, of the United States navy, had a conversation with the defendant at Mazatlan "in the spring of 1846, in the month of May or June."

"QUESTION. Do you remember any of his conversation?"

"ANSWER. Nothing that I distinctly recollect, except that he remarked to me that he was exploring the country in search of mines. That is what I understood him to say—that he had something to do with mines."

So Mr. Tognò's testimony is strictly concurrent with that of the other witnesses, that the defendant's means and style of living were those of a person practising dentistry. In the year 1846, two years afterwards, we find him in Mazatlan, whither he had told Mr. Green he was going, and where he told Lieutenant Rowan that he was "exploring the country in search of mines." This man, who represents himself in the memorial as having been engaged in most extensive mining operations at Lagunillas from the 12th of July, 1844, until the 24th of October, 1846, the time when he said he was expelled by the Mexican authorities, tells Lieutenant Rowan, in May or June, 1846, not that he was an owner of mines, and the conductor of a great mining establishment, but that he was a seeker after mines. I am now stating the evidence of his means at the time he said he began his mining operations at Lagunillas. Under the next head, I shall show you that he afterwards continued his practice of dentistry at Guanaajuato and Guadalajara. It is, then, clear from the evidence that, from the time when he entered the republic of Mexico until the time of his pretended investment of three hundred and thirty thousand three hundred and ninety-two dollars in mines at Lagunillas, he was a dentist, and nothing else. There is not a particle of evidence that there was any source of gain to him, except the practice of dentistry, and the Morelia experiment, which miscarried. There is no evidence that before the year 1847 he acted as a physician at all, except that General Thompson says, "in one or two instances he administered to me." General Thompson arrived in Mexico, as minister from the United States, on or about the 16th of April, 1842, and remained in the city of Mexico till about the 10th of March, 1844. On the 25th of April, 1842, General Thompson was invited to a public dinner by a committee of American citizens residing in Mexico, of which committee the defendant was chairman, and afterwards became well acquainted with him. The following is part of the testimony of this witness:

"Mr. CARLISLE. Will you state whether Dr. Gardiner, at any time, and when he called upon the American legation there in relation to his departure from Mexico, made any application; if so, what that application was, its date, and all the circumstances?"

"WITNESS. Dr. Gardiner applied to me for a letter—I don't remember the particular commander; I think it was to any commander or officer of an American ship there—directing him to give him a passage. I directed Mr. Green to write a letter, which he did, and I gave it to

Dr. Gardiner, which was a thing I frequently did. At Vera Cruz I sent home some five or six persons, who were men of fortune, but found a difficulty in getting a passage, owing to the scarcity of ships.

“QUESTION. Was it an application for charity or aid?”

“ANSWER. Not at all; it was simply a letter of introduction to an American naval officer.

“QUESTION. Is this fact fixed upon your memory in any way? Do you recollect any circumstance with regard to the framing of the letter?”

“ANSWER. I cannot say that I do.

“QUESTION. Do you recollect any corrections of the letter?”

“ANSWER. There is an impression on my mind about some alteration; but it is too indefinite for me to state. It would be too uncertain for the court to act upon.

“QUESTION. That was in the fall of 1843?”

“ANSWER. That was, to the best of my recollection, in the autumn of 1843. I left there in March, 1844. I never saw *Dr. Gardiner* after he called on me for the letter, and I passed every day—three or four times a day—by the house he occupied. He lived in the same street with me, as we should say. With regard to the streets in Mexico, there is a peculiarity. Every square has a name. Pennsylvania avenue, for instance, would have sixteen names.

“QUESTION. I understood that he took leave of you; that he took this letter with the apparent intention of going away?”

“ANSWER. I do not remember that he did; but it was my impression that he was going immediately. I saw him no more.

“QUESTION. State when you next saw him?”

“ANSWER. It was very late in December, 1848, or in January, 1849. I recollect it, because it was at *Mr. Gadsby's*, where I staid, and I arrived there on the 8th of December, 1849.

“*Cross-examination.*”

“QUESTION. I understand you were at his room more than once?”

“ANSWER. I was there once. I do not remember whether I was there more than once.

“QUESTION. What was his business at that time?”

“ANSWER. He was a dentist.

“QUESTION. Did he practise as a physician?”

“ANSWER. I can only speak from recollection. There was a difficulty about getting a license to practise medicine. I know that in one or two instances he administered to me, as he has done since I have returned to the United States, I having very great confidence in his skill as a physician.

“*Mr. May.* You do not know that he practised any other profession?”

“ANSWER. I do not know that he did.”

The testimony of *General Thompson* does not in the least help the effort to make a physician of the defendant before his princely investments at *Lagunillas*. So here are eight witnesses, and one of them a witness for the defence, who concur in proving, so far as the evidence in the cause goes, that the defendant's means were such as resulted exclusively and solely from the practice of dentistry.

Now, it is sought to impeach some of these witnesses. You are invited to hesitate about *Mr. Atocha's* testimony, because he had a claim against Mexico; but I shall not trouble you with repeating the answer which I made yesterday to that sort of objection. Because *Mr. Atocha* had a claim against Mexico, and there is a possibility that Mexico may one of these days take it into her head to put forward a pretension, already repudiated in advance by our government, to the surplus, or to the amount of any claim already paid, which may, on investigation, turn out to be fraudulent, *Mr. Atocha* is supposed to be speaking under such a bias as ought to discredit him with the jury. *Mr. Togno* is assailed on the same ground. Your attention has been directed very earnestly to the history of his claim—to his having asked for much and having got but little; and you are expected to suppose that his head is running on the hope that Mexico may reclaim the money paid to *Gardiner*; that the United States may admit the pretension, and may pay *Togno* out of the fund! It is sought to impeach

the testimony of this witness on another ground. He testified that in June, 1847, he saw the defendant in the city of Mexico, and this statement, it will be contended, is contradicted by several witnesses for the defendant. Let us look at the testimony :

“ *Examination of Mr. Togno.* ”

“ ANSWER. In 1847 a decree came out from the government of Mexico to expel us. We met—all the Americans residing in Mexico—in a public house, in order to devise some plan and see what we could do. We resolved there that we would apply to the government of Mexico in order to see if we could obtain any delay of the time which had been fixed for our expulsion, or any *carte*, &c., or a permit of arms to arm ourselves and defend our lives. Three persons be named—I be the first, Mr. Burry be the second, and another gentleman, I think Mr. Alsey. We went to the city government; we only had three hours to stay.

“ MR. BRADLEY. I don't know how far this is evidence.

“ THE COURT. It is only introductory, I suppose.

“ WITNESS proceeded: I went to the city government and came back to see my countrymen, and told them I could not obtain anything for them. I asked what we should do. The answer was, ‘Let every man take care of himself.’ I started and went to my establishment in order to shut the doors of my store. While I was shutting the doors of my store I saw Dr. Gardiner. I said, ‘What! Dr. Gardiner, are you here, and don't meet your countrymen?’ He said, ‘For pity's sake, don't mention that I am an American, for I am stopping here as a Habaneros.’

“ QUESTION. That was on the second of June?

“ ANSWER. Yes.

“ QUESTION. Was that all?

“ ANSWER. I observed to Dr. Gardiner then that if he was acting so then from want of means, I would supply him with the means necessary if he would follow my misfortune; and he thanked me, and said that he would go back.

“ MR. BRADLEY. Let us get that down, sir; let us get down the very words.

“ MR. CARLISLE. He said, if he was wanting in means, witness would supply him, if he would follow his misfortune, and he thanked him.

“ WITNESS. And he thanked me, and said he was going into the interior.

“ THE DISTRICT ATTORNEY repeated the answer as he had taken it down.

“ WITNESS again repeated it.

“ QUESTION. This conversation you had with Dr. Gardiner in 1847. Did he state to you where he had been in the interval?

“ ANSWER. He told me he had been in the interior—had been in the interior, and would return to the interior.”

Now, gentlemen, it is for you to say whether there is any direct contradiction between the testimony of Mr. Togno, who swears positively that he saw the defendant in the city of Mexico in June, 1847, and that of witnesses who saw him in Tampico frequently during the interval between March, 1847, and June, 1848, but who give, as to some particulars, only impressions; and one of whom, though positive in the opinion that the defendant could not have left Tampico even for a few days without the witness's knowing that fact, admits that the defendant had a three months' leave of absence.* This witness does

* The testimony of the defence as to this point is as follows :

Major John R. Kenley.—I saw the defendant in the city of Tampico in the month of March, 1847.

Colonel William Gates.—Dr. Gardiner came to Tampico between the 18th and 28th of March, 1847. I do not know the exact day.

* * * * *

QUESTION. How long did he remain there?

ANSWER. Dr. Gardiner remained, with the exception of leave of absence for three months, until the 24th of June, 1848, at which time he came away with the troops.

QUESTION. At what period was the leave of absence given?

ANSWER. I do not recollect the exact date, but I *think* it was in December, 1847, and he was absent until February 1, 1848.

QUESTION. It was not any time during the spring or summer of 1847?

not recollect the exact date of absence, but *thinks* it covered a period some months later than June, 1847. But as this witness, relying on

ANSWER. I *think* it was after the yellow fever and other epidemic diseases had passed away, and we could spare him. I think it was in December, 1847, and January and February, 1848, as well as I can remember. We came away in June, 1848. He came away with the army at that time.

Cross-examined.

By Mr. MAY. I understood you to say in your examination in chief that Dr. Gardiner remained in Tampico from the beginning of the year 1847 until you returned, with the exception of three months, when he had leave of absence?

ANSWER. I think he did. I am pretty certain he did; because the yellow fever raged there previously, and I would have given any sum of money for such a man as Dr. Gardiner.

QUESTION. Could he have gone away in the summer?

ANSWER. No; I would not have let him go, if I had to pay \$500 a month.

QUESTION. I ask you if he went away with your knowledge?

ANSWER. No; for my office was swept out twice by the yellow fever, and I would not let him go.

* * * * *

QUESTION. You are satisfied that from the time you made the contract until the autumn of 1847 he could not have left even for a few days without your knowing it?

ANSWER. Yes; I am pretty sure of that.

Re-examined.

Mr. BRADLEY. In the report of your testimony before the House of Representatives it is stated that you employed him in July.

ANSWER. Yes; I would like to explain that. Soon after I returned from Mexico the Secretary of War asked me to send all my Tampico letters and papers to his office. I did so, and therefore had nothing to trust to but my memory when I gave that testimony. I then believed he took the place of Dr. Hawkins, who was sick in July and died on the 25th of August following; but I have now assured myself, on looking at the paper, that Dr. Gardiner took the place of Dr. Shields, who was afflicted with a white swelling on his knee. Since I came here I have examined the books, and find I was mistaken also as to the date. It was not in the month of July, but in March.

Charles J. Learned.—I am by profession a lawyer; was in the city of Tampico from 5th September, 1847, to June, 1848, part of the time practising my profession, and part of the time judge of the court. Defendant was there when I arrived, and remained there, except one month or two, until June, 1848.

Captain Lewis Carr.—I was in Mexico during the war. I left New Orleans some time in April, in 1847, and landed in Brazos, and towards the close of May left the Brazos for Vera Cruz. We were drifting in the gulf for several days, and put into Tampico in distress. I was commandant of the detachment of troops on board. I recollect that it was in the early part of June, in 1847, that we got into Tampico.

QUESTION. Had you command of any company?

ANSWER. I had the command of three companies.

QUESTION. How long did you remain in Tampico?

ANSWER. In consequence of the order of Colonel Gates, I remained there five or six weeks.

QUESTION. At that time did you know George A. Gardiner in that place?

ANSWER. I did.

* * * * *

QUESTION. You remained there about six weeks?

ANSWER. I did.

QUESTION. Dr. Gardiner was there during the whole time?

ANSWER. He was there during the whole time I was there.

QUESTION. You left him there?

ANSWER. I left him as I found him—in charge of the hospital.

QUESTION. You saw him almost daily?

ANSWER. I did.

Captain Benjamin F. Owen.—QUESTION. State whether you saw Dr. Gardiner at Tampico?

ANSWER. I saw him, I think, about the time Colonel Gates sent Colonel Belton upon an expedition up the river.

Colonel Francis Belton.—QUESTION. Were you at Tampico during the winter of 1846 and 1847?

his memory, in his evidence before the House committee, mistook one date by several months, his memory may have been at fault also in his testimony before you as to another. Tampico is about three hundred miles from the city of Mexico, and it is for you to determine whether the defendant might not have been absent from Tampico for a few days without the knowledge of the Tampico witnesses. Mr. Togno is positive that he saw him in the city of Mexico in June, 1847, and refers to a remarkable historical fact, and to a remarkable conversation. In this conversation the defendant said he was passing as a Habanero.

You will recollect the strong impression made on the mind of Mr. Bowes by the defendant's declaration a year before, that "he did not travel as an American, but as a Spaniard." And against so much of the Tampico testimony as goes on impressions, may be set off Colonel Smith's impressions, confirmatory of Mr. Togno's statement:

"QUESTION. Can you state, with any distinctness at all, whether you saw Dr. Gardiner after June, 1844, till you saw him in the city of Washington?

"ANSWER. I think I saw him *at the time of the expulsion*, but I am not positive; if not then, I did not see him till I saw him here."

The probability is, that Mr. Togno's statement is correct—that the defendant was at the city of Mexico early in June, 1847. But suppose this is not so. You saw and heard Mr. Togno on the stand; you noticed his countenance and manner, and will not, I am sure, impute to him wilful error. Merely unintentional mistake in one particular ought not to affect other statements of the same witness, in which he is confirmed by other witnesses. But in the most unfavorable view which can be taken of his testimony, as showing infirmity of memory, the most that can be done is to throw it out. But what then becomes of the other witnesses? Do not they all concur in fixing the defendant in the city of Mexico from 1842 to 1844, practising dentistry and doing nothing else? An effort was made to get rid of one of them, Mr. Wright, in another way. I leave it for you to judge whether there was in the appearance or manner of this intelligent witness, anything calculated to create distrust of his veracity? It is said that he has

ANSWER. I was with my command there on its occupation in November, 1846.

QUESTION. Did you make any expedition up the Panuco; and if so, what was its object?

ANSWER. Uniting with Captain Tatnall, of the navy, with fifty men, I made an expedition up the Panuco river in the month of December. The object was to recover property alleged to be at the town of Panuco, or further up the river.

Captain James E. Stuart.—QUESTION. Were you at Tampico at any time during the war?

ANSWER. Yes.

QUESTION. At what time?

ANSWER. I think I arrived there about the latter part of February, 1847, and left the 30th day of May, 1847.

QUESTION. During the time you were in Tampico did you or not become acquainted with the defendant, Dr. Gardiner?

ANSWER. Yes, sir; I became acquainted with him almost immediately on my arrival. That was my impression.

QUESTION. Is there anything that fixes the time—the fact—in your mind?

ANSWER. I recollect meeting Dr. Gardiner on a fine gray horse that I was anxious to purchase, and he was introduced to me at that time.

QUESTION. Did your acquaintance continue during that time till you left?

ANSWER. Yes; during the whole time.

QUESTION. Do you remember whether you or he left first?

ANSWER. I do not. My impression is that he was there when I left—the 30th of May. However, I did not leave till the 2d or 3d day of June.

made a statement here inconsistent with a publication signed by Togno, Sayrs, and himself, in which they declare, of their "own personal knowledge," that certain statements which the publication mentions are untrue. But Mr. Wright told you on the stand that the contradiction of one of the statements was not on the ground of his actual observation—that he was not present at the meeting spoken of in the joint publication. This is said to be a contradiction. Whether it is so or not, you have the *exclusive* right to determine. We say that it is not a contradiction. What is the history of the publication? Mr. Robert Corwin, one of the counsel for the defendant, had made a speech in the State of Ohio, in which he gave an account of this Gardiner case, and of Gardiner himself, and made certain statements conflicting, in the opinion of Messrs. Togno, Wright, and Sayrs, with portions of their several depositions made and sworn to before committees of Congress, and relating to facts which, if they ever existed, took place while they were all in the city of Mexico. These gentlemen were American citizens, residing in the city of Mexico, whither they were about to return. They were on terms of intimate friendship, and of full confidence in each other. They were unwilling to go away in silence, under even a constructive imputation on their honor; and on the night before their departure they resolved to leave behind them the means of self-protection before their countrymen. No time remained for separate statements; and so a joint statement was made from their dictation and signed by them—a joint statement of which some facts were personally known to the first, others to the second, and others again to the third of the signers, and all personally known to the three collectively. Mr. Wright told you fairly which of the facts were within his separate personal knowledge, and which were represented by his cosigners respectively to be within theirs. This candor would have been avoided if it had been his purpose to deceive. Gentlemen, a very nice special pleader may think he can, in these facts, detect a contradiction as to the letter; but you, I feel sure, will say there is none in substance.

But, besides the imagined contradiction, Mr. Wright, it seems, was employed while in Mexico in certain occupations which have been industriously paraded before you. A miner at one time, he engaged at other times in other enterprises. He drove a stage; he had some concern with a circus, with a balloon, with a monte-table. Now, these things may be, perhaps, below the defendant's standard of taste, though you do not know from the evidence enough of his biography to enable you to determine that question. But what have they to do with Mr. Wright's credit as a witness? His history is that of many of his countrymen who leave home to push their fortunes abroad—his character, that of an adventurous, self-relying, and enterprising man, fearless of danger, patient of hardship, and ready to turn his hand to any honest business for a living. You will recollect that we desired to offer evidence to you that in Mexico the keeping of a monte-table is considered a reputable employment; but the evidence was excluded because Mr. Wright was not a native Mexican. Your common sense, your sense of justice, tell you at once that nothing can be more unfair than to judge of a man's acts according to the standard of morals and

manners existing not in the country where the acts were committed, but in the country of his judges. What is discreditable in one country is often reputable, sometimes even honorable, in another. Santa Anna, the present head of the Mexican government, is said to be a notorious cock-fighter; but, many as are the sins he has to answer for, nobody in Mexico thinks the worse of him for that. But suppose you were to hear that General Scott kept a cock-pit here, in the city of Washington: could you think as well of that illustrious citizen as you had done before? Would you not weep over his blighted laurels? Not a century ago, ladies moving in what are called the first circles in England—peeresses, perhaps wives of cabinet ministers—would keep faro tables at their houses, give large routs, and send their guests home penniless. If we can suppose it possible that a lady in our country would be guilty of such practices, with all our reverence for the sex, she would be forthwith put into Coventry. What can be more shocking to humanity than bull-baiting? But this is a favorite amusement in Spain. The beauty and fashion of her cities rush in crowds to witness the horrible exhibition. Young girls, in the first blossom of their loveliness, are among its most keenly-interested spectators:

“Yet are Spain’s maids no race of Amazons,
But formed for all the witching arts of love.”

Now, what should *we* think of an American maiden who even expressed a desire to witness such a scene? Only the other day we saw in the public prints that the Empress of France, a Spanish lady, was endeavoring to introduce bull-baiting into the city of Paris. The French people, though not disposed to gratify her in this particular, continue to regard her with undiminished respect. They give her credit for many virtues, and they make the proper allowance for her natural partiality to the fashions of her own country. This is the philosophy, the common sense of the matter. The true test for trying a man’s conduct is the social standard existing in the country where he lives. Though we were debarred from offering to you precise evidence of Mexican opinion on the subject of monte-tables, enough leaked out for the inference that in Mexico it is deemed quite creditable for a man to keep a monte-table. Mr. Wright resided there. He was, indeed, not a Mexican by birth. He was a native citizen of the United States; he had never abjured his country; he had never passed as a Habanero; but he was living in the city of Mexico, among Mexicans, and he did not feel called on to play the part of a purist—to set himself above the social standard which he found there. There is an old saying in reference to questions of manners or minor morals, that when one is at Rome he must do as the Romans do.

But even according to our higher American standard, the gentlemen on the other side ask too much at your hands, when they ask you to suspect Mr. Wright’s veracity because he once kept a monte-table for a short time. The keeping of a gaming house is here among us regarded as not being a very reputable employment; but who ever heard that the keeper of such an establishment was, because he did keep it, an incredible witness, and ought to be turned out of court?

It is said that Mr. Wright has a bias—that he has shown it in making the publication before referred to, and in going to Morelia for

the papers which have been produced in evidence here. The publication has been already so fully explained, that I need not add anything in regard to it. The objection comes rather strangely on the part of a defendant who expects to make out his defence by the testimony of two individuals who were sufficiently zealous in his cause to travel to Mexico for the purpose of qualifying themselves to be witnesses for him. Mr. Wright did render to the government the important service of going to Morelia, and there obtaining documents, which of themselves, as will presently be shown, prove the charge made in the indictment. And well is it for the cause of truth that so intelligent and trustworthy a man was found willing to undertake the mission. It ought to be his pride that, faithful to the duty of a good citizen, he has thus contributed to the exposure of an atrocious fraud. But you saw him subjected to a protracted, most searching, and, not to speak more strongly, most severe cross-examination; and I ask you whether you saw in any part of his testimony, or in his demeanor, the slightest indication of a hostile feeling towards the defendant?

There is nothing, gentlemen of the jury, in the position, the conduct, or the demeanor of any one of the three witnesses of whom I have been speaking, which gives the slightest ground of suspicion as to the truth of their statements. But suppose there is—suppose you even throw out the testimony of them all on this question of the defendant's means—throw out Atocha, Togno, and Wright—why, are there not left *five* other witnesses to the same point? And are not five witnesses enough, and more than enough? And do not four of these five witnesses—Mr. Green, Mr. Angus, Colonel Smith, and General Thompson, the last a witness put on the stand by the defendant—do they not concur in stating that the defendant was living in the city of Mexico from 1842 to 1844, practising dentistry there, and having no other known means of subsistence or of gain than such as he derived from the practice of his profession? And does not the remaining witness, Lieutenant Rowan, prove that as late as May or June, 1846, the defendant declared that he was then *hunting for* mines? There is nothing in the evidence to show that in Mexico the profession of a dentist leads more rapidly than in our own country to the accumulation of great wealth. And here we know that such is not its history; though perseverance through a long course of years, and a high reputation, may at last enable the practitioner to retire on a comfortable fortune.

But the case before you is that of a man who, in the year 1840, was an itinerant dentist, talking of paying his way from Vera Cruz to the city of Mexico by pulling and plugging teeth; who continued from that time till the year 1844 to be a dentist, and nothing but a dentist, except that in one or two instances he administered pills or something else; and who is found in 1844 suddenly starting up with \$330,392 in his pocket, investing it in a mine, and, besides that, lending money to the government of San Luis Potosi! The government of San Luis Potosi was in trouble; the resources of the country had failed, and it was obliged to resort to the defendant in its extremity! He helped it to “copious sums” of money! The laborious, painstaking dentist of yesterday is to-day investing *three hundred and thirty thousand three hundred and ninety-two dollars* in a single enterprise!—“supporting upwards of five

hundred families!" He erects large and costly buildings; buys steam-engines, and other expensive machinery! lays out large amounts in provisions, horses, mules, men of science, &c.! becomes the "cause of the prosperity of a whole district" of country! has "raised a whole district from a state of oblivion to be one of the first in the republic!" and helps the republic itself with "copious sums!" Now, gentlemen, where did this immense treasure all come from? Whence this golden shower? Must not the defendant explain this before you can believe his oath? Gentlemen, the necessity of explanation was felt by the board of commissioners. You recollect the testimony of Mr. Evans. There were some things which the commissioners thought needed explanation; and among them, the possession by the defendant of the large means necessary for his alleged mining establishment. "We could hardly understand," says Mr. Evans, "how, taking up an abandoned mine, involving the necessity of beginning anew, he should have had the necessary means of doing so much." His counsel having failed to satisfy the minds of the commissioners, the defendant himself appeared before them, and offered explanations which removed their difficulties, and his claim was allowed. The commissioners got what they thought light enough. But no light at all has been vouchsafed to you. It might have been expected from the defendant's brother; but not a ray was emitted from that quarter. A witness for the defendant, and yet the defendant did not venture a question to him on this vital point! Are we to be told that because the commissioners were satisfied; you also must be satisfied? Why, gentlemen, it is a ground of complaint among the people of the United States, that the commissioners were too easily satisfied; that, however pure may have been their motives, they did not give to this claim the searching investigation which it called for. Be this as it may, their action has nothing to do with yours. You to be satisfied because they were! No, surely. You are to decide this issue according to your own judgments and consciences, and not according to the judgments and consciences of Messrs. Evans, Smith, and Paine. You are to try the case on the evidence before you—not on the evidence before the commissioners, nor on their arguments. Are the defendant's declarations before the commissioners to have any effect on you? Why, if there be any difference in the relative value of those declarations and his statements in the memorial, the difference is in favor of the memorial, because it is sworn to, and the declarations were not sworn to. But the very question which you are trying is, whether the memorial is true or false, and you can scarcely be expected to consider the memorial as proving its own truth. If the defendant ever possessed the means without which he could not have had the mines, nor have conducted his vast operations there, it was in his power to submit to you evidence of the fact. His failure to do so forces the inference that he did not, because he could not, and that his whole story is false and fraudulent.

The defendant expects you to believe, against all human experience—against probability—against common sense—that he became the sudden possessor of enormous wealth, without telling you how he

acquired it. Why, surely he must indulge the fancy which the poet expressed when he exclaimed,

“Judgment, thou art fled to brutish beasts,
And men have lost their reason.”

I will not, gentlemen of the jury, trouble you further on this head. We have shown to you that the defendant had not the means to carry on his pretended mining operations; and having established that fact by testimony and considerations which address themselves to the common sense of every man, it follows that his oath is false—knowingly false—that he is a perjured man. The prosecution might be rested here. If there were no other evidence in the cause than that supporting the proposition just considered, I should expect a verdict of guilty. But the evidence on this branch is not all, nor anything like all, that belongs to the case; and as I go on you will see that it grows blacker and blacker.

Having established the defendant's guilt by showing his want of means for carrying on the pretended mining operations at Lagunillas, I shall now reach the same conclusion by exhibiting him to you as having been elsewhere, and engaged in business wholly inconsistent with such an enterprise. And this brings me to the second head of these observations:

II. THE ALIBI.

It is manifest on the face of the memorial that if the defendant was engaged from the 12th of July, 1844, to the 24th of October, 1846, in the magnificent mining establishment which it describes; if he had invested \$330,392; if he had erected extensive buildings; if he had employed five hundred men, who were there with their families; if he was carrying on operations which required constant attention and supervision on his part; if he was doing the various things stated in his memorial, he must have been personally present at his mines. It is against all experience to suppose that a man would embark his all in this enterprise, and leave it to the care of subordinates, go himself to a distant part of the country, hundreds of miles off, and there devote himself to a comparatively insignificant business. He had denounced, and was endeavoring to bring into activity, at an immense outlay of money, one of the old, abandoned mines; and his all was at stake on the result of the enterprise. The nature of it proves that if his memorial be true, he must have been at the Lagunillas mines all the time. But we are not left to inference or conjecture on this point. This man tells you himself that he was constantly at his mine. “It is also well known,” he says in his protest, “that my presence is absolutely requisite for its prosperity.”

Now, gentlemen, we shall show you, by evidence not to be escaped from, that from early in July, 1844, and until the month of April, 1845, he was in the State of Michoacan, engaged as a member of a mining company in working some little mines at Morelia, in that State. He became the supervisor, and was put in charge of the mines of San Jose Miraflores, at an allowance of fifty dollars a month for living and office expenses. Some of the persons lived at Morelia, (sometimes called Valladolid,) a city in the neighborhood of the mines. We shall exhibit to you letters written by him during the progress of the Morelia

business, on the subject of that business, and informing his associates of its details.

Mr. Wright was sent by the commission which went to Mexico by direction of the Senate committee, to Morelia to obtain those papers. With the exception of two or three, which Mr. MAY received from Mr. Halsey, these papers were obtained by Mr. Wright from Antonio Quiros, one of the partners in the concern, and to whom they were addressed. You will observe, gentlemen, that according to the mining title which the defendant filed with the board of commissioners, he denounced his mine on the 12th of July, 1844, and received possession on the 3d of September in the same year. In the other mining title, alleged to be at Lagunillas, it is said he got possession on the 4th September, but it is also stated in this latter document that he denounced the mine on the 12th of July, 1844. The first of these Morelia papers is dated on the 18th of July, 1844; the last on the 18th of April, 1845. They are all signed by the defendant, and two of them signed by himself and a number of other persons. One of them—marked A. J. H., No. 33—contains the regulations of the mining company of Curucupaseo, dated "*Morelia, November the ninth, eighteen hundred and forty-four.*" This is just two months after the defendant had received possession of the great mines in Lagunillas, and at which he admits that his personal presence was indispensable. I ask your attention particularly to the following articles:

"The attributes of the corresponding committee shall be to receive and fulfil all the commissions with which it may be encharged by the direction department.

"8. The department of the direction, and the corresponding committee, shall be renewed every six months, and any of the same individuals may be re-elected, if at a general meeting it be so ordered.

"10. They may be removed before this period on account of bad management, incapacity, or bad faith in the direction, the working of mines, reduction of ores, or in any other business of the company.

"11. In order that the foregoing article have effect, it is necessary it be decided upon at a general meeting by two-thirds of the partners, excepting the votes of the directors.

"12. If the resignation of the directors be of their own accord, and without notice, it cannot be admitted until a person be found in the company or out of it to replace them, the which shall be appointed by a majority at a general meeting.

"13. The directors are not to have any salary, and there shall be only allowed them, for their living and office expenses, one hundred dollars a month for the two, which sum shall be paid out of the common fund.

"14. The company names the partners and citizens, Bonifacia Gonzalez, George Gardiner, directors for the six months, beginning from to-day; and the citizens Antonio Quiros and Mariano Maldonado, as the corresponding committee.

"15. The members of the company shall meet at a general meeting, in person or by their representatives named simply by a letter, on the first day of May and first of November of every year, in order to revise the accounts and attend to all business that may be presented; but the days afore cited can be changed whenever any unforeseen circumstance may require it; but this must not prevent the meeting from taking place during all the month of May and November.

"16. Extraordinary meetings may be had whenever two individuals of the company require it, in order to take into consideration any subject that may [be] of interest to the company; and to obtain this meeting application shall be made to the directors, who shall take the necessary measures for it to take place."

* * * * *

"Signed by *B. Gonzalez, Andres J. Halsey, O. M. Da Costa, Antonio Quiros, Maro. Maldonado Neira, JORGE GARDINER, Isidoro Gillot, J. B. Halsey, Simon Rosales, Ignacio Camacho.*"

The signatures of George A. Gardiner and of the two Halseys are proved by Mr. Wright:

"I am acquainted with the handwriting of George A. Gardiner.

“QUESTION. Where, when, and how often, have you seen him write?”

“ANSWER. I have seen him write frequently, in the city of Mexico, when he lived there, at Mr. Halsey’s, and more frequently at Mr. Eddy’s. I do not know any other places at which I have seen him write, besides those I have named. I saw him write at those places at different times.

“A large number of letters and other papers were shown witness, which he examined.

“MR. BRADLEY. Have you not seen those papers before?”

“ANSWER. Some of them.

“MR. BRADLEY. There is no use in your looking them all over if you have seen them before.

“MR. MAY. It is his duty, acting here under his oath, to look at them all.

“MR. BRADLEY. Not if he has seen and examined them before.

“MR. MAY. He cannot tell if he has seen them before until he looks at them.

“WITNESS, (after completing his examination of the papers.) These papers are all signed by George A. Gardiner. The body of most of the papers are in his handwriting.

“QUESTION. Are you acquainted with the handwriting of A. J. Halsey?”

“ANSWER. I am. I have seen him write; have seen letters written by him. I know the handwriting of J. B. Halsey; his name is John; we always called him John Halsey. I have seen him write; he kept a writing-school in Mexico; I have seen him write at the school and at different places. I do not know the handwriting of La Costa.

“QUESTION. (Paper shown.) Say whose handwriting on this, that you can recognise from having seen him or them write?”

“ANSWER. I recognise but the two Halseys’, and Dr. Gardiner’s. He wrote his name in Spanish ‘Jorge Gardiner.’

“(Another paper shown.) I recognise but one signature to this; it is George Gardiner’s.

“(Another shown.) I recognise three of the signatures—George Gardiner’s and the two Halseys’.”

Mr. Wright also testified that, during a conversation he had with the defendant in this city in May, 1852, the latter said that the mining company near Morelia “had broken up;” “that after the company was broken up or failed in Morelia, or the mining company had broken up, he had started off to San Luis Potosi, near Lagunillas, where he had denounced the mines on which he laid his claim;” thus admitting that he had been a director of a mining company at Morelia, and corroborating the testimony which has been given to you. Dr. Mackie was examined as a witness in regard to the handwriting. This gentleman’s knowledge of the defendant’s handwriting was derived from correspondence with him. Dr. Mackie being an officer in the Department of State, had answered letters addressed by Gardiner to the department in the year 1851; had seen a reply to one of these answers and thought that in a personal conference with him Gardiner referred to the first letter. He was of opinion that the body of the writing of all the Morelia papers, except, perhaps, three or four, was in the handwriting of the defendant, according to the witness’s opportunity of judging; that the body of the writing of No. 29, (dated Morelia, August 25, 1844;) No. 30, (dated Morelia, August 31, 1844;) No. 33, (the regulations of the mining company of Curucupaseo, dated Morelia, November 9, 1844;) and No. 35, (bond No. 3, dated Morelia, November 10, 1844,) was not in the defendant’s handwriting, but that the signatures of his name to those four papers respectively were in his handwriting. In regard to No. 26, (dated Morelia, November 9, 1844,) Dr. Mackie said, “As to the fact of all these signatures being his, there is one that I should say was not his. The body of the document, I think, is in his handwriting, but the signature, if it is his, must have been written at a different time or with a different pen.”

[Reference was here made to alleged errors in the printed reports of some passages in Dr. Mackie’s testimony, given on the 8th of April, and some discussion followed.]

Dr. Mackie, after having stated his means of acquiring a knowledge of the handwriting of the defendant, said that he had to examine these letters before he could give an opinion whether they were in the handwriting of the defendant or not. He gave his opinion, with a few exceptions, that these papers were in the handwriting of Gardiner. The gentlemen on the other side sought to impair the force of his evidence, by presenting to him other documents, which he gave as his opinion were in the handwriting of Gardiner, but which turned out not to be in his handwriting. He said that there were points of resemblance, but did not give a positive opinion. I will here, gentlemen, mention that although we cannot offer evidence of comparison of handwriting, you may compare the handwriting of papers offered in evidence with any other paper already evidence in the cause. You may compare these papers with any of those which have been presented, and proved or admitted to be in the handwriting of the defendant, to assist your minds in coming to a conclusion whether they are in his handwriting or not. Mr. Wright saw the defendant write over and over again. He saw him write in Spanish, and that is an important consideration. If you will get a person who understands Spanish to write a sentence in that language, and then to translate it into English, you will find that there is but little resemblance in the handwriting. There are sequences of letters which seldom occur in some languages, but which do frequently in others. I was surprised when I saw the experiment made the other day. This shows the superior force of the testimony of the witness, who had seen this man write in Spanish, in which language these papers were written, over the testimony of witnesses who have seen him write in English only.

What is the evidence offered on the other side to show that these papers are not in the handwriting of George A. Gardiner? Many persons must have been familiar with his handwriting, and if these papers were not genuine, it was easy for him to show that fact by conclusive testimony. Yet the only witnesses he has brought are *Colonel Pickett* and *Captain Marriot*. The Morelia papers, you will recollect, were written in the years 1844 and 1845. Now what is *Captain Marriot's* testimony?

“QUESTION. Have you had opportunities of acquiring a knowledge of Dr. Gardiner's handwriting?

“ANSWER. I have corresponded with him.

“QUESTION. Have you seen him write?

“ANSWER. I have.

“QUESTION. Could you recognise his handwriting?

“ANSWER. I think I could.

“QUESTION. [Handing witness two letters inviting General Waddy Thompson and Mr. Mayer to a public dinner in 1842.] Is that the handwriting of Dr. Gardiner?

“ANSWER. I have seen those papers before. I recognise this as the handwriting of Dr. Gardiner.

“QUESTION. [Handing witness the Morelia papers.] Do you recognise that as his handwriting?

“ANSWER. I have examined these papers, and do not recognise this as the handwriting of Dr. Gardiner.

“QUESTION. Can you recognise the signature?

“ANSWER. I cannot. I see that some of the letters are like the handwriting of Dr. Gardiner, but I would not take the whole to be his handwriting.

Cross-examination.

"Mr. MAY. Were you acquainted With Dr. Gardiner's signature in 1844?

"ANSWER. I did not know him then. I did not become acquainted with him till 1849.

"QUESTION. You perceive that the signature is in Spanish; have you seen his handwriting in that language?

"ANSWER. I think I have seen more of his writing in Spanish than in English; but I am not thoroughly acquainted with the Spanish language.

"The COURT. I do not think there is any difference in the writing of the modern languages, as they nearly all use the Roman characters.

"Mr. MAY. I beg to differ with the court.

"Mr. CARLISLE. There is hardly any difference, with the exception of the German.

"Mr. MAY. Have you been in the city of Mexico?

"ANSWER. I was in the city of Mexico in a military capacity, but I had very little communication with the inhabitants. I went up to Toluca after my arrival in Mexico.

"QUESTION. Is it common in Mexico to make flourishes under signatures?

"ANSWER. I think it is common.

"QUESTION. Do you undertake to say, from your knowledge of his handwriting, these papers are not in the handwriting of George A. Gardiner, &c.

"ANSWER. I could not undertake to say anything of the kind. I do not recognise it as his handwriting with which I am acquainted. I would not suppose that it is his handwriting.

"Mr. BRADLEY. [Handing the witness some papers.] Do you recognise those letters, which are dated in 1842, as being in his handwriting?

"ANSWER. I think that I have five or six of his letters, and all of these bear a very strong resemblance to them. Those I received from him were written with a steel pen; these are evidently written with a quill pen."

Captain Marriot, you will observe, had no knowledge of the defendant's handwriting before 1849, and is not positive in his opinion. Strictly speaking, there is no positive proof of handwriting, except when the witness has actually seen the party write the particular paper which is in question. In the great majority of cases which come before a jury, the proof is matter of judgment; but then there is a wide difference between a decided and a hesitating opinion. Mr. Wright is positive, so far as opinion and judgment can go, that these papers are in the handwriting of George A. Gardiner; and his means of knowing the handwriting of the defendant are far superior to those of Captain Marriot.

The other witness called was Mr. Pickett, a gentleman of whom you were told by Mr. Slocum, "there was an arrangement made for Colonel Pickett to accompany us."

Colonel Pickett, after being examined and cross-examined at some length, came to this conclusion: "I do not say positively that I do not believe it to be his handwriting." So that there is no decided opinion about the handwriting of the Morelia papers, against that of Mr. Wright, who is clear that they are in the handwriting of George A. Gardiner. If they are not genuine, who forged them? Who could have had a motive for the forgery?

Beside the external evidence of the genuineness of these Morelia papers, which is decisive, there is the overwhelming internal evidence speaking out in every line of them. This has ever been regarded as the most persuasive species of proof, even in relation to the gravest and most awful of all subjects of human interest—the destiny of man as an immortal being. It will be no answer to the argument which we found on the internal evidence of these Morelia papers, to say that evidence in some respects equally strong appears on the face of the defendant's mining book of accounts, presented to the board of commissioners, tending to show the truth of that document, and yet that the

prosecution denounces it to be a forgery. The obvious reply is, that the internal evidence in the two cases is far from being equally strong; and that the internal evidence as to the truth of the Morelia papers is confirmed, while that in regard to the mining book is contradicted, by all the other evidence in the cause. And, moreover, there is this important difference: No motive, I repeat, can be, with any plausibility, assigned for forging the Morelia papers; while one of the strongest motives existed for forging the mining book. The man who forged the mining book had fixed his guilty eyes on the public treasury—he longed for half a million of dollars of the public money, and this mining book of accounts was a most serviceable implement for accomplishing his purpose. Its object and tendency were to satisfy the commissioners, by an exhibition of his current disbursements from entries seemingly made as they took place, that he had actually invested in mines the aggregate amount of \$330,392. And let it be remembered that the evidence in the cause proves that the man who presented this mining book of accounts committed twenty other forgeries in support of his fraud.

Let us now look more closely at the contents of these Morelia papers.

[Mr. F. here analyzed the Morelia papers and read extracts of them.]

Here, gentlemen, we see a partner and officer of this mining company engaged from the 18th of July, 1844, to the 18th of April, 1845, in the business of that association, holding the office of treasurer of the company, disbursing its weekly expenses, drawing drafts in favor of its creditors from \$5 up to \$300, noticing a small demand of \$2, and, in short, devoting his constant, undivided attention to the details of the business, and keeping his copartners regularly advised of his proceedings, of his purchases, his payments, his quarrels, &c., &c.

Gonzales and Gardiner were appointed directors of the mines at San José Miraflores, but the chief burden of the concern was thrown upon the defendant. Nothing has been offered in evidence to show that the seals of these papers have been forged. Some of the papers, as you will perceive by examination, are *printed*, with the name of George A. Gardiner also printed in them. Their general result is, that he was at Morelia, four or five hundred miles from Lagunillas, at different times between the 18th of July, 1844, and the 18th of April, 1845. He denounced, as he says, his mine at Lagunillas on the *twelfth* of July, and in six days afterwards we find him flying on the wings of the wind to Morelia; for he could not, by the ordinary modes of travel, have gone over rough roads a distance of four or five hundred miles, and have signed at Morelia, on the *eighteenth* of July, 1844, the following paper:

“[A. J. H. 27.]

“\$20.

MORELIA, July 18, 1844.

“Received of D. Antonio Quiros the sum of twenty dollars, as partner in the mines the ‘Union’ and ‘Genio’—ten dollars for tools, seven on account of expenses of denouncement, &c., and three dollars corresponding to the weekly expenditures for the first week, which commences next Monday, 22d instant.

“GEORGE GARDINER,
“Treasurer.”

Again: He was, on the 18th of July, 1844, treasurer of this mining company at Morelia. It cannot be presumed that this company was organized on the instant. There must have been previous negotiation, concert, and arrangement. The defendant, in his letter dated "San Jose Miraflores, December 16, 1844," and addressed to "Messrs. Maldonado, Camacho, Quiros, and Company," boasts of "having been the *originator* of these mining speculations." Is it at all likely—is it conceivable—that on the threshold of his magnificent enterprise at Lagunillas, he *there* devised on paper this petty Morelia scheme, transmitted the suggestion to Morelia, left it to Maldonado, Quiros, &c., to mature the plan and organize the company, and then rushed to Morelia to take any position which they might assign to him? No, surely. When we see the defendant, on the 18th of July, 1844, an officer of a mining company at Morelia, and absorbed in the details of his office, who can doubt that this position of his was the result of previous deliberation and negotiations to which the "originator" of the enterprise was personally a party? No, gentlemen. If the defendant was at Morelia on the 18th of July, 1844, and acting as treasurer and director of a mining company, he had been there long before—at the very time when he swears he was at Lagunillas. The members of the Morelia company must have met time and again to make their arrangements and appoint their officers, before the business was advanced to such a stage as to give occasion to the treasurer to draw a draft. Gardiner says that he denounced his Lagunillas mine on the 12th of July, 1844; but that is only the first step. By the requirements of the law of Mexico certain formalities are to follow the act of denouncement, before the party can be put in possession of the mine, which you find the defendant was on the 3d of September. There is not a particle of evidence to show that he left Morelia from the day when we first find him there until after the 18th day of September, 1845, except the paper which he brings hither, showing that he personally made a denouncement and got possession of the Lagunillas mine on the 3d of September. Now, one of the Morelia papers is dated on the 25th, and another on the 31st of August, 1844; that is, within four days of the time when he said he got possession of the mine at Lagunillas:

"[A. J. H. No. 29.]

"MORELIA, August 25, 1844.

"As treasurer of the company who work the mine Guadalupe and others that we have denounced, I received of the citizen D. Antonio Quiros, a partner of said company, two dollars ninety-four cents, being his share of the cost of the denouncement of the water of the reducing establishment of Rinson, for the smelting of the ores of said mines.

"GEORGE A. GARDINER."

"[A. J. H. No. 30.]

"MORELIA, August 31, 1844.

"As treasurer of the company who work the mine Guadalupe, &c., I received of D. Antonio Quiros eight dollars for two weekly payments of expenditures—one payment extraordinary of five dollars, and another of three—the week to commence the second day of the coming month; those who refuse to pay must continue to pay according to what was last agreed upon by all the partners.

"GEORGE GARDINER."

He is thus shown to have been at Morelia at times inconsistent with his personal presence at Lagunillas, when he pretends to have denounced the mine there, and to have received possession of it.

I beg you, gentlemen, not to suffer to escape from your minds what must be regarded as an indisputable fact, that if that memorial be true, this man must have been at Lagunillas. This is an inevitable necessity resulting from the nature of the business, and admitted by him in his protest to have been a fact—a protest grounded partly on that fact as a matter of complaint. Now, we have shown this is a false statement. He was not at Lagunillas, because he was at Morelia.

Where do we find him next? Further and further from these mines—these mines in which he had staked his all, and in which he had made so precious a venture. We find him at Guanajuato. Alfred A. Lewis, an English gentleman, who resides in the city of Guanajuato, and has resided there since May, 1840, testifies that he saw him at Guanajuato during the month of September, 1845; that he saw the defendant there, and knows him to be the same man. He ought to have been at Lagunillas superintending his grand mining operations; but instead of that, what do we find him doing? Practising dentistry—pulling and plugging teeth. The letter of April, 1845, shows that the small mining operations near Morelia had failed; herein supporting the evidence of Wright, who has told you that Gardiner, at Willard's Hotel, stated the same fact to him.

Mr. Lewis testifies as follows:

“I saw him there [at Guanajuato] in the month of September, 1845, &c. I was acquainted with George A. Gardiner in 1845. I knew him in the city of Guanajuato, and at the residence of my family, which was two miles from the city—at the hacienda San Xavia. I saw him there. It was in the month of September, 1845, I know. I see Dr. Gardiner now, and know him to be the same man. He professed to be a dentist.

“QUESTION. How do you know he professed to be a dentist?

“ANSWER. Because he performed upon the teeth of one of my sisters; Fanny Meade was her name. I saw him there while he was performing the operation.

“He resided in Guanajuato in a mazon, or hotel or public house. He represented himself to be a dentist, and resided in the mazon. He had a placard or sign on which was — (the witness repeated the words on the sign, which were in Spanish) which translated means “George Gardiner, Surgeon Dentist.” The placard was a sign; the words on it were in Spanish; I saw it several times; it was on the door, or in the window, or in the balcony of the mazon where he resided. I saw him several times at the house of my family. I have no doubt but he was the man whom I see now. I do not recollect conversing with him, but my family did. One remark made by him struck me forcibly. One of my sisters questioned him about the country he belonged to, and he said he was born at sea under the American flag, and he considered himself an American citizen. I do not remember particularly anything else said by him. I do not know that he said anything about mines, or being interested in them, except to speak lightly of them. I think he said something about mines in the State of Morelia; the city of Morelia is the capital of Morelia. I don't recollect that he said anything about having an interest in the mines in Morelia. This is all I recollect that he said about mines. He went with my brother-in-law to visit the mines. I did not see him go, but I know he went once, for it was spoken of afterwards. Gardiner was not present. (Evidence of this visit ruled out by the court, the witness having no personal knowledge of it.)

“MR. MAY. State what you know of his situation, his resources, &c., to show what were his means at that time.

“ANSWER. I knew him to have a horse; I don't think it was his own; he had a saddle.

“MR. CARLISLE. Perhaps that was not his either.

“WITNESS. And he rode about; don't know that he owned the saddle; he did not appear to cut a dash; he lived decently, but not in any great style, nor nothing like it. To my knowledge, he had no other business but that of a dentist. He did not practise as a physician. I am not certain how long he remained in Guanajuato. I think he went away in the beginning of October, as well as I can recollect. I heard him say he was going to the fair at

San Juan de los Lagos—St. John of the Lakes. That fair is one which is held annually; it is a great fair which is held there annually; the fair is a mercantile one entirely, of merchants who go to buy and sell their wares. It is held from the first to the eighth; it was afterwards extended to the twelfth of December. I never visited it, but my brother went. It was near where I lived, and I have seen persons frequently going there. I remember the time I first met Gardiner, because I left college at that time, which I remember.

“I met George A. Gardiner next on board the Trent, when on our way here from Mexico. I had not seen him since 1845. I recognised him at once. No one had told me who he was, or had called my attention to him before I recognised him; I am certain he is the person whom I saw in Guanajuato in September, 1845.”

Guanajuato is forty-eight leagues from the city of San Luis Potosi, which is sixty leagues from the municipality of Lagunillas, so that the distance from Lagunillas to Guanajuato is about two hundred and seventy miles. Where do we next find him? In the city of Guadalajara, in the State of Jalisco—a city of about 110,000 inhabitants. One would think that at that time he would be at his great mines, and in fine spirits, finding such rich fruit was to come out of his great outlay of money in them. But instead of that, at every step to which we trace him he is further and further away from them. Now we have him at Guadalajara, the capital of the State of Jalisco, about one hundred and eighty leagues from the city of Mexico, on the route to the Pacific coast; and in the beginning of September he told Mr. Lewis that he intended to go to the fair of San Juan de los Lagos; and he did go thither. Mr. Jones saw him at Guadalajara in the month of November, 1845. This witness testified as follows:

“My name is Richard Lancaster Jones. I reside in the city of Guadalajara, in Mexico; it is in the State of Tlasco. Guadalajara is the capital of that State; it is a large city, containing about 110,000 inhabitants. I was born there, but have not always resided there; I was sent when very young to England to be educated; my parents are English. I returned to Guadalajara from England in 1843. In April, 1845, I went to the city of Mexico, and returned from there to Guadalajara in the beginning of October, 1845. I have resided in that city ever since till 1848. I think the distance from the city of Mexico to Guadalajara is about one hundred and eighty leagues.

“QUESTION. I ask if you know George A. Gardiner?

“ANSWER. I do; I knew him in Guadalajara. I saw him there a month, more or less, after I came back from the city of Mexico—say in the month of November, 1845.

“QUESTION. After you first saw him, did you see him often?

“ANSWER. Almost every day. He lived in the house of a French gentleman named Mr. Pedro Aguerre, who lived in a corner house not twenty yards from where I lived; it was nearly opposite, rather a little oblique; it was just across the street.

“QUESTION. Do you know what his occupation or business was at Guadalajara while he was there?

“ANSWER. I knew it to be that of a dentist, because I saw his sign. The words on it were ‘Dr. George Gardiner, Surgeon Dentist.’ (Repeats in Spanish.) The sign was on the street door of the house in which he lived.

“QUESTION. In whose house was it?

“ANSWER. Mr. Aguerre’s.

“QUESTION. Were you acquainted with Mr. Aguerre?

“ANSWER. I was.

“QUESTION. You say that you saw Dr. Gardiner almost daily; do you know how long he remained at Guadalajara after you first saw him?

“ANSWER. He remained to the latter part of November or to the beginning of December, and then went to the fair of San Juan de los Lagos.

“QUESTION. How do you know he was there?

“ANSWER. I know that he was at the fair because I saw him there in December, 1845. The fair at San Juan de los Lagos is an annual fair; it is held from the 1st to the 12th of December.

“QUESTION. What day in December do you think it was you saw Dr. Gardiner at the fair?

“ANSWER. I cannot tell the precise date that I saw him there. I left Guadalajara on the 28th of November and arrived the next day, the 29th, at San Juan de los Lagos.

“QUESTION. How far distant is it from Guadalajara?

"ANSWER. About forty leagues. It is a day's travel; a diligence runs there. A diligence in Mexico answers to our or an English stage.

"QUESTION. When did you leave the fair?

"ANSWER. I left the 18th of December. It was between the 1st and the 18th that I saw Dr. Gardiner. I saw him there.

"QUESTION. Where did you go then?

"ANSWER. I returned to my home in Guadalajara.

"QUESTION. Did you meet George A. Gardiner again?

"ANSWER. I met him again in Guadalajara. I saw him there the latter part of the same month, (December.)

"QUESTION. How long did he remain there?

"ANSWER. He remained there until about the middle of February, 1846.

"QUESTION. Did his sign as a dentist remain there during the time he remained?

"ANSWER. Yes, sir.

"QUESTION. I will ask you if you became acquainted with him intimately?

"ANSWER. I only spoke with him once, a few days before he left the last time.

"QUESTION. Had you an interview with Dr. Gardiner after he returned, before he left in the middle of February, 1846; if so, where did you see him?

"ANSWER. I met him under the portico of Mr. Agueré's house; it was after his return from the fair. Mr. Agueré stopped me and asked my commands for the port of Mazatlan. Dr. Gardiner was present. He mentioned to me that Dr. Gardiner was going with him. Dr. Gardiner then said, I am tired of this place, and am going up to the northern part of the country, I think he said, but do not know whether he said northern part or Mazatlan.

"MR. BRADLEY. You don't know whether he said Mazatlan, Durango, or the northern part of the country?

"ANSWER. He said Mazatlan, or the northern part, but I don't know which. He said I don't like to interfere with my friend Dr. Skinner. Dr. Skinner was practising dentistry in Guadalajara. And he said he was going up to Mazatlan, or the northern part of the country, I don't know which, to try his fortune.

"QUESTION. Is this the same person you knew in Guadalajara, and with whom you had this conversation?

"ANSWER. It is. I am not mistaken. I saw him after that in the latter part of August, or in September, 1846. I had no conversation with him then.

"QUESTION. Is your memory clear as to the dates you have mentioned?

"ANSWER. It is as to the months, but I am not certain as to the dates. I saw him in November, 1845. I returned to Guadalajara in the beginning of October, and saw him there about a month after I saw this person. I saw his sign; and he remained there till about the beginning of December. I saw him almost daily. He went to the fair of San Juan de los Lagos. I saw him there between the 1st and the 18th of December. Subsequently he returned to Guadalajara, and he remained there till February, when I had this conversation. I saw him next in August, 1846, in Guadalajara.

"QUESTION. Are there any circumstances by which you can fix the day?

"ANSWER. I fix the day because a revolution took place in Guadalajara on the 20th of May, and ended on the 12th of August, 1846; and it was after the revolution that I saw him. I saw him next on the English packet Trent, at Vera Cruz, in January last. We left on the 5th of January.

"QUESTION. Did you know him when you saw him?

"ANSWER. I immediately recognised him. No one pointed him out to me. I knew him at once when I saw him on the British packet."

In the beginning of December he left Guadalajara and went to the fair of San Juan de los Lagos. Mr. Jones saw him there. On leaving Guadalajara, after his return to that place, he said that he was going to Mazatlan. He did go to Mazatlan, which you know is on the Pacific.

Charles E. Bowes, a citizen of the United States, born in the State of New York, residing for about eleven years last past in the republic of Mexico, and a portrait painter by profession, testifies as follows:

"QUESTION. Have you ever met with George A. Gardiner, the accused at the bar of this court? If so, where and when did you meet him?

"ANSWER. I met him in the port of Mazatlan in 1846. I remember it perfectly well. I met him at a restaurant; we took our meals together and met there about the same time every day, because the hour of dining was about the same always.

"THE DISTRICT ATTORNEY. It was a public table, I suppose?

"ANSWER. A public table, sir. He generally came accompanied by two or three friends.

We sat down at the same table—a common table, which is called a round table there—*mase rodonda*, in Spanish. He spoke very freely with his friends, and they spoke very freely with him. He spoke of having just then returned from a trip up the Gulf of California. I think he mentioned that he was at the port of Guayamas. I will not be very positive about that, however; but the port of Guayamas was frequently mentioned in their conversations.

“QUESTION. You are not sure whether he said he had been there?”

“ANSWER. No; I think he did say so.

“THE DISTRICT ATTORNEY. That port was frequently mentioned in conversation between his friends?”

“ANSWER. Yes. He spoke of having taken up a small quantity of goods, and of having sold them. He spoke of them as being only a small amount, and said he had sold them to advantage. He spoke of having been pleased with his trip. They were very lively and talkative on the subject. He also, during one of these conversations, on one of these occasions of our meeting there, manifested a desire or an intention that he had of going from the port of Mazatlan to some port in South America, for the purpose of going into some kind of coasting trade. His opinion was that a business might be done by purchasing goods in South America and bringing them from there and selling them in the Mexican ports, and so continuing and establishing himself in the trade. He said, also, and I remember it perfectly well—he said that he had spoken of this project to some persons in the port of Mazatlan; I will not be very certain, but I think he mentioned the house of Mott, Talbot, & Co. He said, also, that in order to carry on the business profitably, it might be necessary to have more funds than he then possessed. He said that he was going to Tepic, at which place he intended to speak with some merchant there on the subject, to see if some arrangements could not be made to carry out the project he had conceived. There he manifested his intention of embarking from San Blas and going to some port in South America. On the occasion of his speaking of going to Tepic, one of his friends said to him, ‘Gardiner, are you not afraid, you being an American, of travelling about in this republic, these being troublous times?’—the war being then about breaking out. I remember these words distinctly. He answered, that he was not afraid; that he did not travel as an American, but as a Spaniard; that his knowledge of the language was such that no person could know possibly from his speaking that he was of any other country than of Spain, and he did not tell them that he was. I mentioned this fact, and also the fact of Mr. Gardiner’s being at the restaurant, to an intimate friend of mine, a few moments after I had this conversation—

“ANSWER. This remark of Dr. Gardiner’s, his travelling as a Spaniard, his being an American, (for I understood him as such,) made a very strong impression upon my mind, and I often have thought of it since. I have travelled throughout a greater part of the republic as an American—

“MR. BRADLEY. If you please, that won’t do.

“MR. MAY. He is stating a fact. (To the witness.) Go on.

“MR. BRADLEY. He is going on and arguing now.

“MR. MAY. We don’t want you to argue; state the reason why you remember.

“WITNESS. These things made a strong impression upon my mind, because I had never before known of an American travelling in Mexico as a foreigner: I thought of it frequently. That is about all that I know of Dr. Gardiner. After seeing him there for some time—I do not remember how long—he left the port of Mazatlan, and I never met him again until I met him on board the steamer Trent, at Vera Cruz.

“By the COURT. When was that?”

“ANSWER. It was the 5th of January last.

“By the DISTRICT ATTORNEY. When did he leave the port of Mazatlan?—how long after this conversation?”

“ANSWER. It was a short time after. I cannot remember how many days—a few days. He went away before I did.

“By Mr. MAY. Can you fix the time of these interviews?”

“ANSWER. They took place in the month of May or June of the year 1846.

“QUESTION. You are positive about that?”

“ANSWER. I feel very confident, *very* confident, because I know why it was.

“QUESTION. How can you fix the dates?”

“ANSWER. When I first went to the port of Mazatlan I went to a French restaurant to board. I remained at that restaurant a little over two months. From there I removed and went to an Italian restaurant, or a restaurant kept by an Italian. There was where I met this Dr. Gardiner, in the month of May or June, 1846.

“QUESTION. You are not mistaken about the year?”

“ANSWER. No; I know the year very well.

“QUESTION. Are you able to refer to any letters or papers to show it?”

“ANSWER. I have a copy of a letter; a rough draught of a letter.

“MR. BRADLEY. If you have any paper let us see it.

“(Witness shows a paper and proceeds.) I went to Mazatlan in the latter part of Febru-

ary, 1846. I remained there two months, which I recollect from the circumstance of having had a dispute with a man with whom I boarded about charging me board for two months.

“QUESTION. You say you never met him afterwards until you met him on the British packet Trent?”

“ANSWER. Until that time I never met him.

“By Mr. MAY. Are you able to recognise him from your own unaided recollection?”

“ANSWER. I am. I recollected his face the moment I saw him.

“QUESTION. I understood you to say you were a portrait painter?”

“ANSWER. I am, sir, a portrait and miniature painter by profession.

“QUESTION. Are you able to remember faces particularly well?”

“ANSWER. I have a very strong recollection of faces, indeed. I have often recognised friends whom I had not seen for ten or eleven years; and have often been surprised and amused at the surprise manifested by persons on my addressing them familiarly when they supposed me a perfect stranger.

“QUESTION. Do artists remember faces particularly well?”

“ANSWER. It is well understood that as a profession we remember faces well; and I never saw an artist that had not a good memory of faces.”

On being recalled at a subsequent stage of the trial, Mr. Bowes made the following additional statement:

“Dr. Gardiner stayed at the house where I boarded (in Mazatlan) some eight or ten days. I also knew his brother Charles, in Mexico.”

After the examination of Mr. Bowes, by an accidental circumstance we were enabled to lay before you the testimony of Captain Maddox. When summoned to testify in another case before the grand jury he was addressed and recognised by Gardiner. On being questioned by a friend who had noticed the act of recognition, he stated what he knew of the defendant; and this statement led to his being summoned as a witness for the government in this case. *Captain Maddox* testifies as follows:

“ANSWER. I met Dr. Gardiner at Mazatlan in the year 1846, between the 29th of April and the 18th of May of 1846.

“QUESTION. Are you precise about that?”

“ANSWER. Yes, sir. I visited that port in the United States ship *Cyane*; was an officer of the ship; I know that was the time I was at the place by an abstract of the journal I kept myself, a copy of which was made by one of my men.

“QUESTION. How do you fix the time so as to know for certain that it was between the dates mentioned?”

“ANSWER. I fix that by the arrival and departure of the ship.

* * * * *

“QUESTION. How do you know that this is the same person you met in Mazatlan?”

“ANSWER. I met with him subsequently in Washington city, and talked with him about having met him in Mazatlan.

“QUESTION. State what he said?”

“ANSWER. I said that I had met him there on such an occasion; he said he recollected me, but there was some change in my appearance.

“QUESTION. Did he not admit that he had met you?”

“ANSWER. He did.

“QUESTION. What was the occasion of your meeting him in 1846, and the place in Mazatlan where you met him?”

“ANSWER. It was at the dinner table of Mott, Talbot, & Co., American merchants.

“QUESTION. Did he admit, in your conversation with him, having met you at that table?”

“ANSWER. He did.

“QUESTION. Did you meet him afterwards in Mazatlan?”

“ANSWER. I met on the next day.

“QUESTION. Where is Mazatlan?”

“ANSWER. On the Pacific side of Mexico.

“QUESTION. What was the occasion of your conversation with him in this city?”

“ANSWER. On an occasion at night: we were walking from a private house in this city. I mentioned to him that I had met him before, and the occasion. He said he recollected the occasion and me, but thought that I had changed some. That was in the year 1849.”

In addition to all this strong proof, we have the testimony of *Lieutenant Rowan*, of the navy; which is as follows:

“QUESTION. Did you, while on board of that vessel, [the *Cyane*,] visit the port of Mazatlan?

“ANSWER. I did.

“QUESTION. Did you ever meet Dr. Gardiner there?

“ANSWER. I did, to the best of my recollection.

“QUESTION. At what time?

“ANSWER. It was in the spring of 1846, in the month of May or June.

“QUESTION. Did you form his acquaintance?

“ANSWER. I did; but I do not recollect how. I met him there with some American gentlemen. I met him on one or two occasions; he invited me to ride out with him.

“QUESTION. Did you ride out with him?

“ANSWER. I did.

“QUESTION. Is this the same gentleman?

“ANSWER. I believe so.

“QUESTION. Are there any marks by which you can recollect him?

“ANSWER. There is a little defect about the eyes; but whether I observed it since, or at the time, I cannot say; but his features are known to me. I have occasionally seen him since I came here; but I cannot say whether I noticed the defect in his eye at the time I saw him on the Pacific or since I saw him here. If I saw him in June, it must have been very early in the month.

“QUESTION. Do you remember any of his conversation?

“ANSWER. Nothing that I distinctly recollect, except that he remarked to me that he was *exploring the country in search of mines*. That is what I understood him to say—that he had something to do with searching for or locating mines.

“QUESTION. At what time was it that you saw him at Mazatlan—on what occasion?

“ANSWER. It was on the occasion of my second visit.

“QUESTION. You were there twice, then?

“ANSWER. Yes. The first time we got there was in January, and we left in February.

“THE COURT. How long did you stay the second time?

“ANSWER. I do not think we were there more than a month in all. I believe we got there about the middle of May, and left some time in June.

“MR. BRADLEY. I believe the log-book will show that you arrived there in April, and left on the 18th of May?

“WITNESS. Perhaps so. I am not certain in my recollection.

“MR. MAY. You have occasionally met the defendant here?

“ANSWER. I have; but did not make myself known to him.”

Now, gentlemen, you have witnessed the preposterous attempt to show that these witnesses, Messrs. Lewis, Jones, Bowes, Maddox, and Rowan, mistook the defendant for another man. The effort was to show that it was not George A. Gardiner, but that it was John Charles Gardiner, whom Mr. Lewis saw in Guanajuato in September, 1845; whom Mr. Jones saw at Guadalajara in November or December, 1845; at the fair of San Juan de los Lagos in December, 1845, and again at Guadalajara at the close of that year; and whom Messrs. Bowes, Maddox, and Rowan saw on the Pacific coast, nearly 1,800 miles from Lagunillas, in May or June, 1846. You observed the signal failure of this effort. It so happened that at the time these witnesses gave their testimony John Charles Gardiner was not in court. We took care, however, that he should be in court before the evidence in this case was closed. Our witnesses were recalled, and John Charles Gardiner being in court, they looked at him and the traverser, and all at once declared that he was not the man they saw at Mazatlan at the times to which they testified, but that the accused, George A. Gardiner, was the man.

Mr. Lewis recalled, 6th May:

“MR. MAY. Look at John Charles Gardiner, and say whether he is the gentleman that you saw at Guanajuato?

“ANSWER. It is not the same person; I am positive of it.”

Mr. Jones recalled, 6th May :

“MR. MAY. Look at George A. Gardiner and John Charles Gardiner, and say which of them it was you saw in Guadalajara in 1845 and 1846?”

“ANSWER. The person I saw there at that time was George A. Gardiner.

“QUESTION. Are you positive of that, having seen them together?”

“ANSWER. I am.”

Mr. Bowes recalled, 6th May :

“THE DISTRICT ATTORNEY. Look at George and John Charles Gardiner, and say which of them it was you saw at Mazatlan?”

“ANSWER. The person I saw at Mazatlan was the defendant, George A. Gardiner. I am fully convinced of it.”

Captain Maddox recalled, 6th May :

“MR. MAY. Look upon the Gardiner brothers, and say which of them it was you saw at Mazatlan?”

“ANSWER. The accused is the man, without doubt. It would be idle to think otherwise.

“QUESTION. You mean George A. Gardiner?”

“ANSWER. Dr. George Gardiner, the accused, is the man whom I saw at the place. I never knew the other one.”

Lieut. Rowan recalled, 6th May :

“MR. MAY. Look at the brothers, John Charles and George A. Gardiner, and say which of them it was that you saw at Mazatlan?”

“ANSWER. The one sitting on the left of Mr. Carlisle, [George A. Gardiner.]

“QUESTION. Are you positive that John Charles is not the man?”

“ANSWER. I am.”

We thus show the defendant to you in September, 1845, practising dentistry at Guanajuato; in November and December, 1845, engaged in the same business at Guadalajara; and declaring his intention of leaving the field of teeth there to his friend, Dr. Skinner, and going up to Mazatlan, or the northern part of the country, “*to try his fortune.*” Then you find him at Mazatlan, further and further off from the scene of his great enterprise at Lagunillas, and holding conversations inconsistent with the possibility of his being engaged in it, but entirely consistent with his previous occupation of a dentist, and with the little intervening experiments of his being overseer of the Morelia mines, and a petty merchant up the Gulf of California. Mr. Bowes boarded with him for eight or ten days, sat daily at the same table, and heard the familiar conversation between him and his friends, in which they spoke freely of all their concerns. The defendant said that he had been up the Gulf of California engaged in a small business, which had turned out well, but which was still a small business. His object, he said, was to enlarge it. This miner, money-lender, this patron of the government of San Luis Potosi, this investor of more than \$330,000 in the great mines of Lagunillas, wished to enlarge his operations as a pedler! They were too contracted, and he wanted to get the assistance of some merchant to join him for the purpose of supplying the deficiency in his small capital.

You saw Mr. Bowes on the stand, and you noticed his intelligence and fairness. You saw that he would not state anything which he did not believe to be entirely true. He was not likely to mistake; he spoke positively as to the identity of this man. The counsel on the

other side saw that if Bowes was believed by you—and they felt that you could not disbelieve him—there was an end of this case. Hence the effort to show that it was John Charles, and not George A. Gardiner, he had seen. Lieutenant Rowan, however, puts an end to the doubt, had it been possible to create one. He tells you that he knew the accused by the blemish in his eye, and most positively states that it was not John Charles, and that it most certainly *was* George A. Gardiner whom he had seen at Mazatlan in May or June, 1846.

Here, then, are Bowes, Maddox, and Rowan, all intelligent and honorable persons, concurring in saying that they had seen George A. Gardiner at Mazatlan in the month of May or June, 1846. These respectable witnesses have been examined before you; and you have not only heard but seen them, and can therefore judge how far their accuracy is to be relied on; for no one in the least questions, or can question, their integrity.

Suppose it is a possible thing—if we are to go into the wilds of conjecture—that these gentlemen mistake in their recollection of having seen this man there; what is to be said of Captain Maddox's testimony, in which he tells you that when he met the defendant here in Washington in 1849, he—this very George A. Gardiner—admitted that they had dined together at the house of Mott, Talbott, & Co.? To suppose that the witness not only mistook what occurred in 1846, but mistook what occurred so recently as in 1849, is to ascribe to him a degree of ignorance or error such as must challenge your credulity to the uttermost.

If the defendant's memorial be true, in the months of May and June, 1846, he was receiving in Lagunillas the fruits of his outlay of time, capital, and labor, and was receiving from \$20,000 to \$50,000 per month; and yet we have shown him at that time to have been in the port of Mazatlan, (whither he had come, according to his own declaration to Mr. Jones, "to try his fortune,") on the Pacific ocean, eighteen hundred miles off, laying plans for small adventures on the coast of South America, and endeavoring to bring the capital of others to help out his own little means. He was, gentlemen, an adventurer with no fixed purposes in view; talking, to be sure, about engaging in these mercantile enterprises; but, at the same time, telling Lieutenant Rowan that he was hunting for mines. What! this great proprietor of mines—this "most wonderful man," who had made an immense outlay of money and was just beginning to receive returns from it—is found eighteen hundred miles away from his "El Dorado," on an indefinite adventure, hunting for pecuniary aid, or mines, whichever you please! What did he want with more mines? One would think that his establishment at Lagunillas would have engrossed all his attention, even if his mining avarice were so insatiable as to make him discontented with the vast mining domain which he already possessed, and made him desirous of acquiring more. In his protest he charges it as an outrage on the part of the government in sending him away from his mines; that they could be worked only by means of his "personal attention" to them. And, without such an admission, is it not manifest, as I have before urged you to consider, from the very nature of the

mining establishment at Lagunillas, if it had ever existed except in the fraudulent fancy of the defendant, that he must have been continuously present there? If Lieutenant Rowan, or Captain Maddox, or Mr. Bowes is to be believed, he was not there, but elsewhere, and meditating very different things. Now, you have seen all these witnesses on the stand. Have you any reason to doubt that they are in full possession of their senses? Two of them are high in the public service, and enjoying the full confidence of the government and the country as faithful and intelligent officers. Can you say that either of these gentlemen must not believe his own eyes?—that he may be under a mistake? Can you say that Mr. Bowes, too, has stultified himself? Is he a man with eyes which are of no use to him—a man whom you are not to believe on the evidence of his senses? He has been examined before you day after day—I might say week after week—on various points, and you have seen him uniformly self-possessed; a man of excellent memory, quick perception, and accurate observation; a painter by profession—a profession that accustoms men to look at faces, and gives them an artificial memory, just as a lawyer has an artificial memory of cases in law-books. He tells you that he hardly ever forgot a face—that the accused is the man that he saw at Mazatlan. The conversation to which Mr. Bowes refers was not with himself, but between this defendant and his friends, at the table of which Mr. Bowes and they were the common occupants for several days. At one time, though the defendant was not introduced to him or known to him, he made an observation which impressed itself indelibly on his memory, to the effect that he “was passing himself off as a Spaniard.” And as soon as Mr. Bowes heard that remark, so forcibly was he struck with it that he began to look at him to see what sort of a man he was. He never knew before of an American citizen having passed himself off as a Spaniard in that country. He heard the unguarded, spontaneous conversation of the defendant with his friends, and heard the defendant telling them, in the month of June, 1846, that he had been up to the Gulf of California, on a small enterprise, but that he had not the means to enlarge it, and wanted aid from some wealthy merchants. He thinks that the names of Mott, Talbott, & Co. were mentioned—the very merchants at whose house Captain Maddox met the defendant. These merchants are American citizens residing at Mazatlan, and, like most American merchants in a distant port, when any of their countrymen come thither they like to revive old affections, invite their countrymen to their table, and dispense a generous hospitality.

You have the statements of these three witnesses, all concurring that George A. Gardiner was the man whom they saw in Mazatlan, and relating minutely various circumstances under which they saw him. Do they *mistake*? If they do, can you ever put trust in human testimony again? Whose accuracy can you confide in, if you cannot trust that of men like these?

If they do not mistake, and the facts stated by them are not true, they are perjured. This is the only alternative. I am sure that such a suggestion would shock you. If they are neither perjured nor mistaken, then this man in the month of June, 1846, was at the port of Mazatlan, eighteen hundred miles off from Lagunillas, where his mines

are said to have been, with the intention of going to South America to engage in the selling of merchandise on a small scale. If you believe this proof, then there is an end to the case, and the memorial of Gardiner is not true. If this *alibi* is proved, his memorial is false from beginning to end. If on the 18th of July, 1844, he was signing a warrant as the treasurer of a mining company in Michoacan, before which there must have been previous concert and preparation, what becomes of his sworn assertion that he was in person at Rio Verde denouncing this mine on the 12th day of the same month! I call it a sworn assertion, because that mining deed is filed in support of the memorial, which is on oath. Now, we show, under his own hand, that he was on the 18th of July four or five hundred miles off, and a most rough and difficult road to be travelled, engaged in a business totally inconsistent with the possibility of his denouncing a mine in Lagunillas. We show that he was a treasurer and practical director or overseer of a small mining company near Morelia, drawing little orders, and personally conducting the various details of the business.

The establishment at Morelia was broken up, it having proved a failure. So far as these papers show, he was at that place from the 18th of July, 1844, to the 18th of April, 1845. He denounced the mines on the 12th of July, and, according to the first in order of these mining titles, got possession of them on the 3d of September, 1844. Now we have shown you a letter from Morelia dated the 31st of August, 1844, about some details of the business which he was there carrying on, and the future details of the same business, showing that his mind was fixed upon what was occurring and to occur near Morelia. Yet *three days* after that, if he swears truly, he was at Lagunillas, five or six hundred miles distant, receiving *in person* possession of his mines there. He could not possibly have travelled the distance between these places under ten days. After the Morelia speculation had failed, what did he fall back on? Not on the business of a physician, but on his old business of dentist. We find him first at Guanajuato, next at Guadalajara, and pulling teeth at both these places; and next at Mazatlan, on the Pacific coast. At last we find this Rothschild, to whom the government of San Luis Potosi resorted in its extremity of want, and which he helped to "copious sums" of money, engaged as a small trader, and projecting an expedition to South America—if he could succeed in obtaining the needful means. Is this not the height, nay the most ridiculous, of improbabilities? As I have said, if the testimony be true about the *alibi*, there is an end of this case. If the *alibi* be true, the man had not the mines. The two things are wholly and radically inconsistent. This at once, and alone, convicts him—he is guilty.

III. NO MINE.

I stated in the beginning of this argument, that we had established four propositions to support this indictment, and that on proof of any one of them, the defendant must be found to be a perjured man. I have endeavored to substantiate that statement so far as regards the first two propositions—first, the want of means; second, the *alibi*.

I will now come to the third proposition; and that is, that there are

not, and never have been, any mines in Lagunillas district. You are aware of the inherent difficulties in proving a negative. It is a conclusion to be arrived at by a combination of facts and circumstances. It is one, however, the error of which it is in the power of the defendant to make palpable to a jury, if his case be a true one, by showing that these mines did exist. I shall in a subsequent part of this argument examine the testimony which he has offered on that subject. The plan of the observations I am addressing to you, is first to present the case as made out by the government, and then to go into an inquiry as to how far anything has been adduced to repel that case by evidence brought forward by the defence. At present, then, looking at the testimony which has been adduced by the government, I undertake to show that there is no mine. I will show you that there could not be, under the law of Mexico, such a mine there as the defendant has described; and this by the law itself, produced and proved by us, and also by the evidence of a witness skilled in the laws of that country. The mines of Mexico, you are aware, were originally a part of the eminent domain of Spain. The government of Mexico, is a confederation of States fashioned after our own; and there are certain laws established there making regulations for the denouncement of mines, and the recording and giving possession of them to individuals.

Before I go into the law on the subject, allow me to say a word about the witness who has been brought forward in exposition of that law; and whose testimony in regard to the practice, forms, and usages existing in the republic of Mexico under the law, is a part of the evidence of the prosecution. Judge Aguilar has been assailed by a fierce cross-examination, and in another way—feebly enough, to be sure, but with a good will. Should it be deemed expedient to assail him again, I hope that gentlemen will give some better answer to his testimony than a commentary on his tavern bill. That is a matter between himself and the inn-keeper, and has nothing to do with his evidence. He has been sneered at as a “Mexican judge.” Now, I submit that neither his nation nor his office is a fit subject for a sneer. Years ago, when it was the custom for Englishmen in and out of Parliament to disparage Scotland, one of the greatest of Englishmen denounced national reflections as being “illiberal and unmanly.” Is there anything to recommend them when applied to Mexico? However unhappy may be her political and social condition; however dark it must appear in contrast with our own; however lamentable have been her short-comings in the effort to imitate the “model republic;” yet what friend of freedom can feel contempt for Mexico? Who can be insensible to the glories of her history? Who can forget her brave, protracted, and, after many vicissitudes, finally successful, struggle against Spain?—a struggle to which Mexico was incited, and in which she was sustained, by the same spirit of liberty that achieved our own independence? Whatever may be her present depression, her renown in the past ought to shield her against contumely.

But the witness, it seems, is not only a Mexican, but he is a Mexican judge. Surely there is nothing in the nature of the judicial office to provoke a sneer. To dispense justice among men is among the highest and most sacred of all human duties, involving property, lib-

erty, and life; and he who discharges such a trust with intelligence and fidelity deserves the highest rank among public benefactors. The office, in itself, is one of the noblest that can be conferred on man. Accidental causes may, indeed, sometimes place in this exalted position persons neither morally nor intellectually fit for it; who degrade the judgment-seat by frivolity, petulance, and morbid self-esteem, by insolence of office and vulgar spite; who, instead of the dignity becoming to the oracles of justice, exhibit in turn the freaks of the petty tyrant, the compliances of the sycophant, and the clumsy arts of the kennel demagogue, until every honest man who comes near them feels that he breathes a tainted air. But "peace to all such!" You, gentlemen, who have seen and heard "THAT MAN" Aguilar on the stand, will be slow to believe that he is one of these judicial zanies—of these weasels in ermine. On the contrary, his demeanor as a witness has, I suppose, inclined you to give him credit for impartiality, dignity, and intelligence as a judge.

Now, gentlemen, what is the law? The following, from the 4th and 8th sections of the public law in relation to the denouncement of mines, is found in Rockwell's Spanish and Mexican Laws—a book of admitted authority, and which, we have seen, is a faithful translation from the printed volume of "Mining Ordinances:"

"ARTICLE 4. The contents of the foregoing articles have to be presented with a petition before the mining deputation of that Territory, or the nearest one if there should be none there, expressing in it their names and the name of the company, or partners, if they should have any; the place of their birth, their residence, and profession or occupation; and the particular signs of the situation, mountain, or vein; at whose adjudication they claim; all of which circumstances, and the time at which the discoverer presents himself, are registered in a book of registry possessed by the mining deputation and mining notary, if there be one; and this done, there shall be returned to the discoverer his writing, furnished with all provisions for his security; and bills shall be posted on the doors of the churches, the public buildings, and in the towns, for due notice. And, further, that within ninety days an examination must be made in the vein or veins, and a shaft of a vara and a half wide and ten varas deep must be made or opened," &c., &c.

I will now read to you the provisions of section 8:

"SECTION 8. Whoever shall denounce, in the terms hereafter expressed, any mine that has been deserted and abandoned, shall have his denouncement received, if he therein sets forth the circumstances already declared in section 4 of this chapter, the actual existence of the mine in question, the name of its last possessor, if he is acquainted with the same, and those of the neighboring miners; all of whom shall be lawfully summoned; and if within ten days they do not appear, the denouncement shall be publicly declared on the three following Sundays." * * * * *

There are in the State of San Luis Potosi five mining deputations, established by a decree of the government of San Luis of the 11th of September, 1843, which is in compliance with the title 4th of article 24th of the decree of the 2d December, 1842.

The counsel then read from the printed laws as follows:

"Title first of the board for the advancement and government of the Mining Department, of its formation, renewal, and attributes.

"Art. 1st. There shall be a board denominated *for the advancement and government of the Mining Department*. It shall be composed of one representative of the miners, one of the creditors of the mining dotal fund, and one commissioner on the part of the supreme government."

Title Fourth.

“Art. 24th. The governors of the departments, in accord with the departmental boards, and with the previous approbation of the supreme government, shall establish in each one of them the number of tribunals of the 1st instance that there are to be within their limits.”

[Translation.]

“Manuel Romero, general of brigade, governor and commander general *ad interim* of the Department of San Luis Potosi, to the inhabitants of the same :

“Know ye that in compliance with the title 4th, article 24th, of the decree of the 2d December of last year, conjointly with the most excellent Departmental Council, (*junta*,) and with the approbation of the supreme government, I have decreed the following :

“1st. Tribunals of the first instance shall be established for matters appertaining to the Mining Department, which shall exercise the functions detailed in the decree of the 2d of December last, in this capital, in Catorce, Charcas, Guadalcazar, and Ojocaliente.

“2d. In the places where territorial deputations (*diputaciones*) for mining purposes exist, these deputations shall proceed immediately to the election of individuals of which the respective tribunals of first instance must be composed, conformably to what is stipulated in the decree of 2d of December last, and in the 2d title of the mining ordinances, (*del ramo*.)

“3d. In the places where, in consequence of any reason, and notwithstanding what is ordered by the decree of this government of the 11th of June of last year, the territorial mining deputations should not have been re-established, the respective political authorities shall dictate the necessary measures for the installation of the mining courts of the first instance in the manner (terms) prescribed by the first article of the aforesaid decree of the 11th of June of last year.

“4th. As soon as the mining tribunals of the first instance be installed, they shall advise the government of it, sending (also) the respective acts, (proceedings.)

“And in order that it come to the notice of all, and have the most exact fulfilment, I order that it be printed, (published,) and sent to whomsoever it may correspond. Given at San Luis Potosi 11th September, 1843.

“MANUEL ROMERO, (printed.)

“A rubric, (made with a pen.)

“DARIO REYES, *Chief Clerk*.

(printed.)

“A rubric, (made with a pen.)”

There is not a mining deputation, then, in the whole department of Rio Verde, and a man had no more authority to denounce a mine anywhere in that department than at the clerk's office in the city of Washington. The law provides that a party wishing to denounce a mine in any part of the State of San Luis Potosi in which there is no mining deputation, must go—whither? Not to the prefect's office; not to the alcalde's office; but to the “nearest mining deputation.” It has been proved to you by Mr. Aguilar that the nearest mining deputation to the department of Rio Verde, where the defendant claims to have these mines, was Guadalcazar. It follows, therefore, that his title, according to the plain law, must issue from, and be found of record at, Guadalcazar only.

The defendant has produced before you three mining titles, not one of which comes from the right place. We will call them two mining titles, because the two last are pretended copies of the same original. The first one they now say is not a mining title, but a mere “*abstract of a mining title*.” We will see what it is. You will recollect that this man put forward his claim here on the 30th of November, 1849, and swore to the memorial which has been read to you. He was not content with getting compensation as the mere possessor of these mines, but his pretensions became greater as his chances for success appeared to be more probable. He wanted not only to be compensated as possessor, but as proprietor. “That will not do, gentlemen;

I am going to make a swindle, and it shall be a big one. I am not only possessor, but I am the proprietor." The commissioners replied that they had not evidence of his title, and postponed the award until he should get it. He went to Mexico, and returned with what he presented to the board as his title, and on that they made their official award. This is what Mr. Evans tells you. Now, what is that title? It purports to be a certificate of Francisco Fernandez, prefect of Rio Verde, in the State of San Luis Potosi, as follows:

[A No. 1.—Translation.]

"The citizen Francisco Fernandez, prefect of Rio Verde, State of San Luis Potosi:

"I certify that in the book of registry of mines of this office, appertaining to the year 1844, at folio 15, over, is to be found an entry in the following words, to wit:

"July 12th, the American citizen, Mr. George A. Gardiner, by profession a physician, of twenty-six years of age, and a resident of this place, has denounced, on the date hereof, an old mining district of silver, having a number of shafts and excavations, containing water and rubbish, entirely abandoned, without inhabitants, and not worked since the time of the independence, situated on a branch of the Sierra Madre, opposite of Serro Gordo, in the Sierra of La Huasteca, county of Lagunillas, in this department.

"The vein runs N. and S., with a slight inclination to the westward, and dips to the westward about forty-five degrees, and is upwards of eight yards in width; its ores are the red sulphuret of silver; and he claims the rights and privileges conceded to restorers of abandoned mineral districts.'

"Granted and conceded as requested by the petitioner, subject to apply for possession within sixty days, as prescribed by the ordinance.

"September 3.—On the day of the date hereof possession has been given to Mr. George A. Gardiner, in conformity to his above denouncement of said ancient mine, granting him three appendages on the course of the vein, with the limits and measurements, as marked out on the grounds and prescribed by the ordinance, with all the privileges of restorer of an abandoned mineral district, having nominated the shafts, 'La Trinidad, Dolores, and San Jose, and conjointly the mines of La Sierra,' and he has been furnished with the appropriate deeds and titles constituting him the legitimate and sole owner thereof, with full power and right to sell and dispose of the same as he may see fit, being hereby constituted his property, subject to the mining ordinance.

"And at the request of the party, I give this in the city of Rio Verde, on the 3d of July, 1850.

"FRANCISCO FERNANDEZ.

"J. PIO GUTIERREZ, *Secretary.*"

"SAN LUIS POTOSI, *July 15, 1850.*

"The governor of the free State of San Luis Potosi authenticates the signature of Don Francisco Fernandez, prefect of Rio Verde, which attests the above document.

"JULIAN DE LOS REYES.

"LUIS GUSMAN."

[Seal of the State of San Luis Potosi.]

We are now told that this is only "an abstract" of the mining title, and that his counsel here never said it was a mining title. But Gardiner said it was; his counsel before the board of commissioners said it was; the commissioners received and acted on it as such; and Gardiner got his award on it. You are now told that the true title was in Lagunillas; but that does not better the matter, because, according to the law, it could not be at that place. The title to it could be recorded at Guadalcazar, and nowhere else. If, however, the title was at Lagunillas:—why did he not go thither to get it when the commissioners sent him out for it? Let me have that question answered, but do not put "a bottle of wine" before me as an answer. Why did the defendant go to Rio Verde, a place where it is admitted there could not have been a title? Was the object to deceive the commissioners, and prac-

tise a cheat upon them, by producing a title from a place where there could not be a title under the law, and which, though he palmed it off on the board of commissioners as a title, he is now compelled to say is not so? Such is the title which he starts with before an honest jury.

He tells you that it was an abstract of a title, and that he never intended it to be a title, and never said it was. Did not Mr. Evans tell you that the commissioners had postponed their decision until they got the title? and did he not speak of this paper over and over again as a mining title? Did not Colonel Paine, when he was first examined, speak of it as a mining title? When he was afterwards re-examined and called it "an abstract of title," Mr. May put the question to him, he being a lawyer: whether, if he had been deciding as a judge on a land title, as between A and B, he would have been content with a mere abstract. Colonel Paine said he would have required the whole title; and, in answer to a further question, said he would do as commissioner what he would do as judge; adding that, in this case, he got all he wanted in the form of title. The defendant, then, did present this as his title, and the commissioners received it, and made their award upon it as such. Now we are told that it was only an abstract. What is it, then? Not a mining title, but only a little piece of paper, got up to cheat the commissioners? Next we come to what we are told is a mining title, the paper which the witnesses Abbott and Slocum got from the alcalde of Lagunillas on the 27th of November, 1852. It is not my present purpose to call your attention to the appearance of the original of the copy. I desire to show you that this is no better mining title, because found in the alcalde's office at Lagunillas, than the one found at Rio Verde, and for the reason that neither the alcalde nor the prefect had anything in the world to do with the subject. Judge Aguilar was asked whether there was any law to prevent a prefect from recording a mining title. The witness said that there was no specific law, saying, in so many terms, that a prefect shall not record a mining title; but that the organic law, distributing the different branches of power in the government of Mexico, and that of San Luis Potosi, (imitating the model of our institutions,) into legislative, executive, and judicial, made the business relating to mining deputations a judicial one in its character; and that, besides, there were laws imposing penalties and fines upon officers who go out of their own particular walk to use a power which has not been intrusted to them. It is in proof that the prefect is a political officer, and nothing else, and that he has no authority under the law to receive records of mining titles. The defendant's counsel ask whether, if the prefect were asked to take a copy, he would not do so? But is that the way of doing business? Is the prefect's office the place to which you would go, expecting to find title-deeds there? The only connexion the prefect has with mines is, that it is a part of his political duty to collect statistical information, and to communicate it to the governor, in order that the governor may make it a basis of a communication on his part to the legislature of the general government, or of a particular State government, as the case might be. In the exercise of his duty it is the business of the prefect to know how many mines there are in the State, just as it is to know how many

horses, how many mules, how many houses, and how many acres of land there are, to enable the legislature to know what are the resources of the government. He does not say to A or B, I am going to make a statement of how many proprietors, how many acres of land, &c., are in my department, and I cannot possibly get on without a copy of your deed. If he did, the man would say, All you want to know is, that I have got 500 acres of land; will not that do? The prefect would not say, I must read your title to know whether it be a good one or not. Such a thing has never been heard of. We have in the United States census agents who go about collecting statistical information, which is communicated to Congress through the Department of the Interior. Suppose a matter of individual interest were to arise in a court in France, in which it was important for a party to show that he owned so many acres of land in the city of Washington; you would suppose that his course in coming over here to get the deed would be a plain one. He would go to the clerk's office where deeds are recorded. There is a book of registry there, like that which Francisco Fernandez is said to have had at Rio Verde. The law of Maryland, which is in force here, requires deeds of lands to be recorded in the clerk's office; but, according to the theory of the defence, we are told that is not a right way to go to work. Go to the Census Office; the Superintendent will give you your title. Do not trouble Mr. Smith, the clerk, about it. The prefect of Rio Verde had just as much to do with this matter as the man who prepared the census returns had to do with the deed in the case which I have supposed. I have shown you that the law of Mexico requires the record of mining titles to be made at Guadalcazar. That is the place which the defendant would have gone to, had there been any mine. There is an extraordinary thing on the face of these two deeds. In the copy of the record in Francisco Fernandez's office, it is said the mine was denounced in his office on the 12th of July, 1844; in the copy of the record in the office of the alcalde at Lagunillas, it appears that the mine was denounced there at the same time. Observe that this denouncement is a personal act, and one not to be done by attorney. It is to be done by the man himself. The distance from Rio Verde to Lagunillas is some sixty or seventy miles, and we are told that the road between the two places is a very rugged one. He could not have been, I take it, on every ground of human probability, at Rio Verde and Lagunillas on the same day. Yet, if these papers be true, such would be the case.

You will further observe that, in the Rio Verde title, possession of the mines is delivered personally to Gardiner on the 3d of September, while, in the Lagunillas title the possession is delivered to him there on the 4th of September. Besides this discrepancy, the description in the two titles is different.

I shall not now call your attention particularly to the evidences of forgery presented by the original mining title, a copy of which the witnesses for the defence said they got at Lagunillas. But we have another copy of the mining title which Abbott and Slocum found at Lagunillas. It appears, though the learned gentlemen thought it necessary to send for the copy which they first offered in evidence, that another copy, both

of the same alleged original, had been placed in their possession as far back as January or February, 1852, which the witness, John Charles Gardiner, testifies that he obtained from the office of the alcalde on the 10th of November, 1851. When Abbott and Slocum's copy was assailed, then, for the first time, the senior copy was introduced to the notice of the jury. I am speaking of this as a part of the history of the case, and not as reflecting in any degree on the counsel on the other side. I say, then, that this man, George A. Gardiner, on the assumption that he knew the copy was here, thought it necessary to send for another; and when that other was found not to hold water, or to have had too much of water or of something else put on it, then, for the first time, John Charles's copy is introduced before the jury. I have shown you that, under the law of Mexico, there could have been no original; and where there is no original there can be no copy. The copies which this defendant has brought hither are a part and parcel of the scheme of fraud with which he started, and in which he "lives, moves, and has his being."

Before I leave the point of the legal impossibility of the pretended title, I will call attention to the following law which has been proved by Mr. Aguilar.

[Here the counsel read the printed law of San Luis Potosi, providing the several kinds of stamped paper on which copies of all recorded documents are to be written, and showed, by the stamped papers used for Gardiner's copies, that the law was violated in all; and that no two of the copies of the same instrument contained the same stamps.]

This paper is stamped with the fourth or twenty-five cent seal. The law requires a higher seal where the business is worth more than \$2,000. Now, here the business was worth more than \$2,000. Though this fact is not expressed on the face of the mining title, it fully appears from the depositions attached to that document. Now, it may be safely assumed that when a public functionary is to fix the price of a seal or a stamp on paper, on which a title is to be framed, and as the revenue of the State is in part raised from these stamps, he would take care to inform himself what sort of a stamp ought to be used, especially as you see that a penalty would be inflicted on him if he did not. If he could not get exactly the measure, as it is his business that the public interest shall not suffer, he would take care not to put it at the lowest stamp. In this case he has used almost the lowest stamp that he could. If he exercised any capricious authority, it would be to obtain more money. But I take it that he had some proper foundation of facts on which he acted. Therefore, as we see these depositions attached to the mining title, showing that the property was worth more than \$2,000, and there appearing nothing else to show the value of the business, we must infer that they were attached to it at the time the copy was taken. The defendant knew this was the law, and saw the necessity of meeting the objection. This is sought to be done in John Charles Gardiner's copy, by making the alcalde say that there was, at that time, none of the legal paper at Lagunillas, and that, therefore, he granted permission that inferior paper might be used. The resort to such an explanation corroborates, where corroboration needed, Judge Aguilar's testimony as to the stamp laws. But no authority has been shown in the alcalde to

dispense with the grade of paper required by law ; and it is clear that if he possessed such authority, the law would be worthless. When John Charles Gardiner got his copy it had the four-dollar stamp on it. He seems to have thought he had been quite astute about the whole of this business, to say the least ; and yet this has not the right stamp on it, which should be the stamp of eight dollars, and which the other one would have had upon it had it been a true copy. His, however, is a false paper, and the four-dollar stamp on it cannot make it a true one. It only shows that he was a little sharper and better learned in the laws than his predecessors in this business. The paper which Abbott and Slocum brought has no stamp to it at all.

MR. BRADLEY. Where is the law for that year ?

THE DISTRICT ATTORNEY. We have shown the law of a previous year, and it is for the defence to show that it has been changed. This is the state of the matter in regard to the seals.

[Here the court adjourned.]

THURSDAY, *May 19.*—At the adjournment on yesterday I was engaged in the consideration of the third branch of this subject. I was endeavoring to show you that according to the laws of Mexico, and the various regulations which have been adopted in furtherance of those laws, there could be no such mining titles, and consequently no such mines, in the district of Lagunillas, as are claimed by the defendant in his memorial. I shall dispose of that part of the subject as quickly as I can. You will observe that the title on which this defendant got his money is the one which was filed before the commissioners—the Rio Verde title. The counsel on the other side object to its being called a title—they say that it is only an abstract. But, call it by what name you please, it is the paper on which the commissioners thought fit to make him any allowance as the owner of the mines. It was sufficient evidence to them that he was the owner of the mines. The following is the testimony of Mr. Partridge on the subject :

“QUESTION. Will you say whether you went into the office of the clerk at Rio Verde ?

“ANSWER. I did every day while there, except one, which was a feast day.

“QUESTION. Did you search there for records of mines ?

“ANSWER. I did, and found none. The office was the prefect's office.

“QUESTION. Who was the prefect ?

“ANSWER. Francisco Fernandez. I visited the office often. I looked for records of mines, and found none, &c., &c.”

Now, gentlemen, here is a witness whose testimony is not obnoxious to the doubt which has been attempted to be thrown on that of Capt. Barry. He is intimately acquainted with the Spanish language, and he tells you that he not only found no book of registry of mines, which would have been there if such had ever existed, but that he searched the records, and found no mining title there. He went with Mr. May, chief of the Senate commission. Both of them were lawyers—both were informed of the facts of the case, and knew to what point their inquiries should be addressed ; and these gentlemen, thus armed with the necessary information, made a thorough search of this office, and not only found no book of registry of mines, but no mining title. These witnesses, thus competent at all points to conduct this examination, performed it with a strong desire that the troubles they had endured should not be unavailing—that they should not have undergone all the

privations and hardships of travelling in that rude and savage country without having accomplished their purpose; but do what they could, they could find no evidence of mines in that place. I have said that a negative is difficult to be proved; but when it is proved, under certain circumstances it becomes the strongest of all possible evidence. These gentlemen went to the place where the defendant said his mining title was, and searched for it in the presence of the man who occupied the office—the same Francisco Fernandez whose name we have shown you is forged on the paper—and found no such document there. The inference of common sense and law is, that there never was any such paper there. Seeing this difficulty, what does the defendant do? He abandons the title on which he got the money, and resorts to Lagunillas for a fresh mining title. Now, Captain Barry had been there on the 2d or 3d of November, *and before* the defendant and his party reached that place, and he said that he found no such paper there, after a most diligent search—after having searched the office in company with Mr. McCormick, an American citizen, who had been in the country twenty years, and who was perfectly familiar with the Spanish language, and the law and practice of mining. According to the view which I have presented to you before, it would have made no difference if he had found a title there, as it could not be a valid one. When the commissioners went to Lagunillas they saw a paper there which was represented to be the one of which a copy has been presented here. You have heard the testimony of Captains Doubleday and Hunter and Mr. Partridge on this subject. Captains Doubleday and Hunter are distinct in telling you that the paper they saw contained nothing about the “Huasteca mountains.” Mr. Partridge is not quite so certain, but he has a strong impression that those mountains were not mentioned in it.

Captain Doubleday testifies as follows:

“QUESTION. Did you read the paper [Lagunillas title] through?”

“ANSWER. Yes, sir; two or three times.

“QUESTION. Was the Huasteca range of mountains or Cerro Gordo mentioned?”

“ANSWER. Neither was mentioned in it.

“QUESTION. Are you clear upon that point?”

“ANSWER. Yes, sir; my attention was called to the fact, and I went back and made a special examination, to see whether they were mentioned or not. It struck me as an extraordinary circumstance that they were not mentioned; I am certain that they were not.”

Besides this “extraordinary circumstance,” as Captain Doubleday well terms it, you will recollect that all the commissioners who were examined about the appearance and contents of the Lagunillas title agree as to its fraudulent character. “The fresh, clean thread with which it was sewed in;” “the stains of acids to give it the appearance of age;” the stains on the papers before and behind this document, so exactly fitting as to prove that the title had been lately inserted; the torn corners of the same surrounding and enclosing papers, and which precisely fitted each other, while the title between was untorn and its corners square; “the clean, new white paper” on which it was written, as seen by turning over the back part, where it was stitched together; all these things prove conclusively its fraudulent contrivance, to deceive the Senate commissioners, but which signally failed to do so;—they were not to be deceived by so bungling a cheat. You see how minutely these gentlemen scrutinized the paper. There is no possible

ground for supposing a defect of memory on the part of the witnesses for the prosecution in regard to the document they saw at the alcalde's office at Lagunillas. The very concurrence of the whole three in the description of the paper forbids anything of that sort; but they tell you they do not depend entirely on their memory—that they took memoranda at the time, a minute and careful description, with which they have refreshed their memory here in your presence. Supposing Captain Slocum's testimony to be accurate; what does it prove? It proves that there were two papers there, as neither he nor Abbott saw these signs and marks upon it; which fact goes to corroborate Captain Barry. The paper which this witness on the part of the defendant saw, was not the paper which had been seen by the commissioners, and confirms the theory that there never was an original in that office; and that this paper was put there by the traverser, and had been copied from the pretended copy which John Charles Gardiner swore he got on the 10th of November, 1851.

You recollect, gentlemen, the testimony given on the part of the government as to the *alibi*, and the effort which was made to rebut that *alibi* by showing that *all the witnesses* who had seen the defendant at places different from the scene of his extensive mining operations, and engaged in a business entirely incompatible with the truth of his memorial, had mistaken George A. Gardiner for his brother John Charles. The effect of this testimony of *alibi* was felt to be crushing, and it was found necessary to get rid of it in some way or other. In the first place, an effort was made to break it down through the instrumentality of some postmarks of letters purporting to be addressed to John Charles Gardiner at those various places. The court determined they were not legal evidence, and it became necessary to prove in some other way his presence at those places. Gentlemen deprecated being compelled to put him on the stand. They did, however, at last put him there. The immediate occasion of his taking that memorable position was in order to prove the copy of the 10th of November, 1851, as being the copy of the paper found by him in the alcalde's office at Lagunillas. In the course of his testimony, he stated that he had been at his brother's mines three times—in 1844, 1845, and 1846—and when those mines were in full operation. He stated that he had no interest in those mines. He also stated, in regard to the copy of the 10th of November, that he compared it with the original at that time, and that he saw the alcalde sign it on the same day—the 10th of November—in his office at Lagunillas. He also stated that he did not think he was in Rio Verde on the 10th of October, 1851; and on being asked, "Do you know Domingo Chaves, the principal alcalde in Rio Verde?" he answered, "I do not remember him at all." A paper was handed to him, the signature to which he admitted to be his own. This paper turned out to be his own petition, dated "Rio Verde, October 10, 1851," to the same Domingo Chaves, who was alcalde at that time, to take testimony in support of the title in this very case. While he was on the stand, certain letters, &c., were produced, and he was asked whether they were in his handwriting or not. It was only necessary for the prosecution, for the accomplishment of the object they had in view, to show him certain parts, and ask him whether those parts were in

his handwriting or not; but they gave him full opportunity of reading every word and every line which those letters, &c., contained. He examined them in your presence, and what he said in reference to them was in your hearing. You recollect the great effort that was made to exclude their being brought before you as evidence in the cause:—but that effort did not wholly succeed. The court decided that we had a right to offer a certain portion of two of the letters to you, and the dates of four of them—and that was enough for the purpose of utterly discrediting and annihilating this witness, John Charles Gardiner, who was first brought on the stand to prove that the mining title, of which Slocum and Abbott had produced a copy, was in the alcalde's office at Lagunillas on the 10th of November, 1851. It became manifest that this witness was a false witness, not worthy of being believed in any one statement. The small portions of the letters which have been admitted, are sufficient to inform you that their general character was such that it would be utterly impossible for any man who had written them to have forgotten the fact that he had done so. A young man, in the prime and vigor of his life, and in all the freshness of his faculties—could he forget the most important and interesting transaction in his life, if what is referred to in these letters did occur? and if it did not occur, he could not possibly be in doubt about the matter. Why, gentlemen, I am certain, when the witness, in answer to questions which were put to him in regard to the handwriting of these letters, replied, in substance, that he would *neither admit nor deny them*; that he could not say whether *they were* in his handwriting *or not*; and after the portions allowed to be given in evidence by the court had been read to you, you must have set him down at once as a witness wholly destitute of truth.

[Some discussion here arose as to the right of the counsel, and to what extent, to refer to the letters, they having, with the exception of a few passages, been excluded by the court from the consideration of the jury. He read from the report in the Republic of May 11th, the following extracts of the opinion of the court:

“The letter of the 12th December, 1844, is collateral, and cannot be read. All the others are dated on and after the 8th May, 1851, and excluded, except the date of L. T. No. 6, as evidence that the witness was at San Luis Potosi on the 9th and 10th of November, 1851. The date of L. T. No. 11, dated 13th November, 1851, and the passage in it, ‘Tell me the exact position of my brother's mines;’ and the passage in the letter of the 8th May, 1851, L. T. No. 4, ‘My brother and I have bought a claim,’—these particulars of the three letters named are admitted.”

It is unnecessary to say how far this evidence ought to be excluded as not rebutting.

The letters (in Spanish) bearing dates 6th November, 9th and 10th November, and 13th November, (all) 1851, were shown to the jury for the purpose of seeing the dates; and a passage from one of them in the following words: “Tell me the exact position of my brother's mines—their distance from Rio Verde, and from Lagunillas,” &c., &c., was read.

Another letter, of the 8th May, 1851, was admitted so far as related to the following passage:

“I have already told you that my brother has, in his *own name*, a great business, composed of many others, that we (he and I) have bought between us. These, when I left, were about to be decided upon, and now doubtless the sum for which they have been acknowledged has been named.”]

You see, gentlemen, the interesting character of these letters, and the critical position in which they placed the witness. They appeal at once to his knowledge and consciousness that he was in the position of having taken a false oath. He had sworn here before this jury that he had been at these mines three times; and here was a letter alleged

on the part of the government to be in his handwriting, and afterward proved to be so, in which he confesses ignorance of the situation of these mines, and their distances from Rio Verde and Lagunillas. He swore he had no interest in the claim; but here is a letter, proved to be in his handwriting, in which he announces himself as the co-partner with his brother in "a great business"—that is, this claim. I say, then, gentlemen, that the character of these letters is such, that if he had been a truthful witness, he would not have given the answers which he gave to interrogatories whether those letters were written by him or not—that he would not merely say as to one of them, "it looks like my handwriting, but I do not believe that it is;" nor would he be content with neither admitting nor denying any of them, except one, which he admitted, and another, of which he gave a *quasi* denial. He is undoubtedly an astute witness, and he had heard enough in this trial to know the advantageous position of a witness who neither admits nor denies what he is questioned about. According to a technical rule of evidence, if he neither admitted nor denied *verbal* statements, it would have been incompetent for the prosecution to prove that he had made them. He looked to the prospective advantage of his neither admitting nor denying these letters; but the court held the rule as to *written* statements to be different, and it happened to be in the power of the government to prove that every one of these letters was in his handwriting. He admitted that No. 5 was in his handwriting. It was one of the same family, obtained at the same time, from the same person, and by the same person. We have proved every one of these letters to have been written by him, on the most incontestable testimony which was ever offered in a court of justice, and beyond suspicion as to its integrity. We proved them by the testimony of Colonel Thomas, to whom this witness had stood in the relation of an interpreter, sitting at the same table with him, and translating, as Colonel T. directed, from the Spanish to the English, or from the English to the Spanish, through a course of many months. Colonel Thomas knew perfectly his handwriting, and proved to you that every word and every line of these letters were in the handwriting of this witness, John Charles Gardiner. Then, what was the position in which he stood in connexion with the previous testimony in this cause? He had sworn that on the 10th of November, 1851, he had gone to the office of the alcalde at Lagunillas, and had got the copy of the mining title which was produced to you. One of these very letters shows that on *that* VERY DAY he was 160 miles off, at the least, at the city of San Luis Potosi—on the very day on which he had sworn that he was in the alcalde's office at Lagunillas. There could be no mistake about that, because he said he saw the alcalde sign this paper on the 10th of November, 1851, at his office in Lagunillas; and a certificate to the copy which he obtained bears date of the *tenth of November*. The dates of the letters of the 9th, 10th, and 13th of November were allowed by the court to come in as evidence. They are all dated at the city of San Luis Potosi.

I will now call your attention to a most extraordinary feature of this case. The defendant put this witness on the stand; and although he said that he had been to his brother's mines three times while they

were in full operation, not a question was asked him in relation to them! In one of the letters, which is proved to be in his handwriting, he says to his accomplice, Verastegui: "Tell me the exact position (or situation) of my brother's mines, and their distance from Rio Verde and Lagunillas." He had been there three times previously; yet, in 1851, he inquires of Verastegui where the mines were, and how far from Rio Verde and from Lagunillas!

Now, why he wanted this information you are enabled to judge somewhat from his petition to Domingo Chaves, who was the alcalde of Rio Verde. His petition is as follows:

"Fourth seal, L. S., for the years 1850 and 1851. 12 cents.

"To the First Constitutional Alcalde of this city:

"I, J. Charles Gardiner, a citizen of the United States, and temporarily in this city, appear before you, in the most legal manner, and say: that my brother, Dr. George A. Gardiner, worked mines in the point (or place) called Lagunillas, in the Huasteca range of mountains, (*Sierra de la Huasteca*,) and known by the name of 'Trinidad,' 'Dolores,' and 'San Jose;' he spent in them a large capital, which he had to abandon on account of having been expelled by virtue of the first article of the decree of the 24th of October, 1846, which was issued by the government of this State. As is to be supposed, not only was the capital invested lost, but also were the profits which must have resulted therefrom; and now, in order to make his rights prevail in our republic, it is necessary that the witness who may be presented shall be examined upon everything relative to the said mines, their workings, reducing establishment, drag-mills, (*arrestres*,) mule-yards, &c., &c.; they must depose if they be relations of my brother; whether they be or not interested in this claim, either directly or indirectly, and whether they be agents or directors of the business; and the said depositions being taken, return me their original for the purposes which may suit my brother. I therefore request you to order what I ask, because it is just.

"RIO VERDE, October 10, 1851.

"J. CHARLES GARDINER. "(*Rubric.*)"

He makes application for testimony to support his brother's claim, and also, as we contend, to support his own interest in that claim. You recollect that he testified before that he could not say whether he was in Rio Verde on the 10th of October, 1851, and that he did "not remember Domingo Chaves at all." This paper was presented to him, and he acknowledged the signature to be his; but could not be positive about the handwriting of the body of it. The following is the noble answer of this alcalde to the petition. And observe, this order is written before any communication from our government had reached the State of San Luis. It is the spontaneous act of an upright, incorruptible Mexican official:

"RIO VERDE, October 10, 1851.

"What the petitioner asks cannot be done, because what is contained in his petition is not true, because neither in the municipality of Lagunillas nor in all this department is there, nor has there ever been, any mines, much less (has there been any) of the importance and magnitude that is intended to be represented; neither has Mr. George A. Gardiner ever been known as a miner in this jurisdiction, but as a surgeon and doctor, in the few days that he resided here. The expulsion that he alleges is also false.

"In consequence, let this writing be returned to him with the present decree, and warn him, too, in future to have more respect for the judicial authority that I exercise than to attempt to surprise it and make me an accomplice in a fraud such as is now attempted to be made.

"DOMINGO CHAVES. "(*A rubric.*)"

"[Seal.]

["First Juzgado of Rio Verde.]

"Assistant witness: J. BLAS URIBE. "(*A rubric.*)"

Now, this witness, John C. Gardiner, who did not remember anything about Domingo Chaves, when confronted with the paper, has to admit that it is his act! He did know Domingo Chaves, and did make this application to him for evidence in this cause. Domingo Chaves was an honest man; and knowing that this was a fraud, refused to lend the instrumentality of the Mexican laws, or the sanction of *his judicial office*, to any such foul and nefarious purpose.

You have witnessed great expense of ingeniousness and labor in order to show that this decree of Domingo Chaves is a forgery. You have heard a good deal said about the manner of writing "tenth;" and that the date on the decree is not the "tenth," but the "first" of October. It is said that this is an inconsistency not to be got over; that the petition is dated on the 10th of October, and the decree on the 1st of the same month. But though John Charles Gardiner admitted that the signature was his, he was not sure about the handwriting of the body of the petition. There is no dispute that the "tenth" is the true date of the petition. Whatever may be your opinion, gentlemen, as Spanish scholars or grammarians, about the proper way of writing "tenth"—whether the "0" must necessarily be as long as the "1," or whether it may be at the top or bottom—I conceive that to be a wholly immaterial question. The petition is genuine, and John Charles Gardiner does not deny it. What motive had Domingo Chaves, or any one else, to commit a forgery in the answer? If you can find in the furthest corner of your fancy a reason for the forgery, explain why it was not done in a less bungling manner. Why was not the answer or decree put on a separate piece of paper? In writing it where it is written, just below the date and signature of the petition, on the same page, the eye of the writer would be directed to what went immediately before. When he was writing the decree his eyes were looking at the date "tenth" on the petition. There is not over half an inch between the two dates. I do not think it necessary to trouble you about the discussion which occupied about a day in regard to the word "primero." We had nearly all the Spanish scholars in the city on the stand. Dr. Davis and Mr. Partridge were examined; and Mr. Meiere's learning was almost exhausted in order to show that the date of the decree was the "first," not the "tenth." Suppose it was "first;" would it not be one of the most palpable *non sequiturs* in the world to say that the paper was a forgery, though written just at the bottom of the petition? Evidence has been produced that there are different modes of writing the date of the month in Mexico. This petition, of which the genuineness is both proved and admitted, is a part of the evidence in the cause. And it shows that John Charles Gardiner was engaged in obtaining evidence for his brother at the time he swore he got the copy of the mining title at the Lagunillas office. Although he swore he was not interested in his brother's claim, we show by his own letter that he was. Mr. Corcoran, you will recollect, testified that the accused had given his brother John Charles a letter of credit to the amount of \$10,000, and that the accused had deposited with him \$15,000, the proceeds of the sale of one-fourth of the claim. What matter does it make how much he spent? It was a letter of credit to him, granted out of the proceeds of the claim, and shows that he was interested in a pecuniary way. You

looked at him when he was sworn, and observed his countenance when his letters were unexpectedly produced. One might then naturally suppose that we would hear no more of him as a witness; that the moral feelings of the jury would not be outraged by his appearing in court again. But what happened? A little more than a fortnight had passed when he came before you again, at his own instance it would seem, to remember what he could not remember when these letters were shown to him. On being placed on the stand a second time he thought the handwriting of the letters was like that of one José Vincent Verastegui, a nephew of Manuel Verastegui, a man never heard of before, and a new actor in this strange drama. This witness was brought hither, as if there was to be no limit to the impudence of guilt, for the purpose of discrediting Colonel Thomas!—that man of high and irreproachable character, who had every means of knowing the handwriting, and who had sworn that these damning letters were in the handwriting of John Charles Gardiner! You are expected to disbelieve Colonel Thomas, and to believe John Charles Gardiner! Was ever anything in the wildest pages of romance equal to this expectation? I recollect reading some years ago of a party who, in some trial in England, had shown an effrontery far short of this, but which provoked the judge to exclaim, “There is something in the impudence of the defendant which is almost AWFUL.” This witness—this John Charles Gardiner—after the exposure he had been subjected to before you, and when one would have thought his emotion would have been to ask the earth to open and swallow him, comes back at his own instance, and asks to be put upon the stand for the purpose of impressing on the jury the preposterous notion that one Vincent Verastegui writ these letters, and to discredit Colonel Thomas so far as his opinion goes. Proof of handwriting is necessarily a matter of opinion, except where the witness saw the party in the act of writing the particular paper. John Charles Gardiner—a witness so utterly disgraced that no human power can ever restore him to credibility, so black that he never can be whitewashed—this is the man on whose statements you are to disbelieve Jones and Lewis, respectable young men, who have been before you, and whose countenances bear the impress of honesty! On his testimony, too, Captain Maddox is to be disbelieved—a man who is one of our own townsmen, and whom you all know to be honorable and high-minded. The testimony of Lieutenant Rowan, Mr. Bowes, Mr. Jones, Mr. Lewis, Captain Maddox, Mr. Wright, Colonel Thomas, and Dr. Davis—all, all are to be discredited and go for nothing, when weighed in the scale against John Charles Gardiner! Are we living in the days of reality or not? Is it possible that even this witness could have supposed for a moment that his absurd audacity could impose on the minds of any jury? It is, however, an illustration of the case. He came before you in the same spirit in which this project of public spoliation was started—a determination to see it out to the bitter end.

Without going into all the details in relation to the non-existence of the pretended mine, I will call your attention to a few only of them. You have heard something about a steam-engine, and there is a charge for it in the mining book, which is supported by statements in one or two of the false depositions filed with the commissioners, of \$29,500,

including the cost of transportation. In the translation of the defendant's mining account-book, presented by him to the board of commissioners, under date of 26th August, 1844, you find the following entry of payment :

"To bill on Liverpool on account of a steam-engine..... \$5,000."

In the same book, under date of 10th March, 1845, are the two following entries of payments :

"To D. Santiago Gomez, balance of account for steam-engine from Liverpool.... \$15,000
"To charges and transportation of the same, as per contract..... 5,000."

The first of these payments, you will observe, purports to have been made on the 26th of August, 1844;—the next day after that, as we have proved, on which the defendant, at Morelia, in the State of Michoacan, wrote a receipt, as treasurer of the mining company there, to Antonio Quiros, for *two dollars and ninety-four cents!* The second and third payments, for *nineteen thousand five hundred dollars*, and for *five thousand dollars*, are dated on the 10th of March, 1845; and we have shown the defendant to you on the day before—on the 9th of March, 1845—at Morelia, drawing an order on Quiros for *seventeen dollars!* The defendant brought no witnesses before you who had ever seen or heard of his steam-engine, though he did offer the testimony of some of our own machinists as to some hypothetical points. You heard the evidence of our witnesses as to the impracticability of conveying such a steam-engine as the defendant pretends to have had, to the rugged region which he had selected as the site of his mine. But let us suppose this difficulty to be got over; what can be said of the enormous exaggeration of price, which of itself not only fixes the stamp of falsehood on the particular charges, but throws suspicion of falsehood on everything else contained in the mining book? Mr. Daniel B. Martin, a witness for the defendant, could understand how the steam-engine might have cost \$5,000, but could not understand how it cost \$24,000 in Liverpool. Mr. William M. Ellis, an experienced engineer and machinist, who was put on the stand by the defendant, told you, on his cross-examination, that, in his opinion, the cost of such an engine as was described to him would be from \$2,500 to \$2,800 in Liverpool.* If there had been

* Since the trial, Mr. Jonas B. Ellis, engineer and machinist, another witness for the defendant, addressed the following letter to the District Attorney :

WASHINGTON, June, 1853.

SIR: By the report of the evidence in the Republic on the Gardiner trial, I observe that I am reported as having said that the cost of a thirty-horse power steam-engine would be about \$12,000. If I said so, I meant very differently, as I certainly understood the question to relate to the weight. What I intended to say was, that an engine, such as described, would weigh about 12,000 pounds. As this is a matter of no consequence to any but myself, I thought proper to call your attention at the time to the error, but in the press of business I was not called. I had, therefore, no other way to make the correction than the present one, which I most respectfully submit.

With the highest respect, your obedient servant,

J. B. ELLIS.

P. R. FENDALL, Esq.,
United States District Attorney.

any steam-engine, would there not have been some trace of it found in these mines, which it was said were found and explored by Abbott and Slocum? It was said that everything had been burnt up:—but surely the iron could not have been burnt up. If the steam-engine had been purchased, would there not have been some evidence of that fact? It was said to have been bought in Liverpool. If that be true, it could not have been got into the country without the payment of duties; and could not some evidence be obtained at Liverpool that it had been sent, or at Tampico of its having been brought thither? The defendant's own witnesses discredit the statement in the mining book, and show that he has put the cost of the steam-engine down at an amount ridiculously exaggerated beyond what it possibly could have been. There is not a particle of evidence of its having been purchased or carried to Lagunillas; and, gentlemen, you know all the defendant's statements in regard to it could be proved if they were true.

The accused has sworn that he had five hundred men employed at his mines; and in his protest he lauds himself as a patron "who supports upwards of five hundred families." Many of those five hundred men must have had families; so that, according to the usual statistics of population, there must have been a sort of mining town there, containing about two thousand people; which would be a population larger than that of any town in the neighborhood.

Mr. MAY. Three times as large.

The DISTRICT ATTORNEY. We were not allowed to give the evidence we desired to give on this subject; but enough came out, though of a negative character, to show you that the statement of the defendant could not be true. If there had been five hundred men there, somebody or other would have known of the aggregation of so many persons and so many families. Here were the commissioners who went to Lagunillas—men employed on a high and responsible duty—who underwent every species of hardship and privation in order to discharge faithfully the trust which had been confided to them—can you suppose that they left any effort untried to get at the truth in this matter? that, if there were any evidence that five hundred families had been congregated there, they would not have found it? The evidence offered by us of inquiries by the commissioners, and of the answers to those inquiries, was excluded by the court. But we were allowed to question the witnesses as to mining towns; and you found that not one of the commissioners was ever able to hear of any such mining town in all that country; though it seems, by Abbott and Slocum's evidence, the commissioners passed within five or six miles of the place! Why has not a single one of these 500 men been here? Why has not one of the persons who signed those depositions been here? Why is it that there is nobody here who can say he ever saw the mines when in operation? It was, of course, expected that this thing would strike the minds of the jury—that they would say to the defendant: "You will not let the United States prove anything by hearsay, and why do you not bring before us somebody who ever saw your mines in operation to testify to that fact?" He does not bring a solitary witness of that description. We know of one witness in court, and of one only, who can be supposed to have seen the mines

in operation, if they existed; but they do not ask him a question about them. Why are none of those "men of science" here? Why are they not here to tell the jury that they have seen the mines in operation to which they have sworn in their depositions? What is the answer to this? Why, that the Mexican government is in a conspiracy with the government of the United States to punish this man, and to prevent him from making out his innocence here; and that they induced the prefect of Rio Verde to issue an order to prevent him from entering that department and procuring testimony. That, they say, is the reason why they could not bring their witnesses hither. Presidents Fillmore and Arista put their heads together and made Francisco Fernandez issue an order which prevented the defendant from bringing any of those people before you! You recollect that the order was never executed, even supposing it to have been genuine, of which we have no proof. The witnesses for the defendant say that the alcalde showed it to them, but we have not a particle of proof that Francisco Fernandez ever signed it. There are two reasons which might lead one to infer that he did not sign it. We have seen his name forged by the defendant to the mining title; and it may be supposed that if the prefect had signed the order, he would have seen that it was executed. Nothing practical, however, came from the order, true or false. It was shown to the defendant, and that was the end of it: he did as much afterwards as he had done before; he went to the department and, he says, into his mines. At all events, that is the only thing done on the part of the Mexican government to prevent his bringing some one of his five hundred laborers or "men of science" hither. Why did he not bring the New Leon witnesses? Where is William Penn Johnson? where William Jackson? where James Boswell Smith? They are not Mexicans, but foreigners—the two first Englishmen, and the last a Scotchman. The defendant has an assortment of deponents from many countries—England, Scotland, Ireland, Spain, Mexico, &c. Why are none of them here in proper person? Are they men of flesh and blood, or men of straw? Why did not the New Leon witnesses come before you? Fernandez had no power over them. It does not appear that the authorities of New Leon issued any order to stop them from coming, or the defendant from going after them. And such an effort, if made, would have been ineffectual; for these New Leon witnesses were foreigners, not amenable to the Mexican government. And, besides, they reside nearer to the United States. There is no evidence of any attempt made to bring them, or any one of them even, here. Now, gentlemen, let us look at the order of Francisco Fernandez.

[The DISTRICT ATTORNEY read the order, and proceeded:]

This order stops Gardiner on the supposition that he would not obtain the necessary requisite to enter the department—a letter of security, or something of that sort. Messrs. Abbott and Slocum might have got a letter of that character on application to our minister, and have brought some of these witnesses here for Gardiner, even if the Mexican government were unwilling to let a man charged with the crimes imputed to the defendant enter its territories. One of the offers on the part of our government to the defendant was to procure for him a safe conduct through the Mexican territory. The application of a man for a pass-

port to travel anywhere in the State, in order to procure testimony to be used in a court of justice, would have been favorably received by the minister of the United States, who would have applied to the Mexican government and obtained the passport. There is not the slightest evidence that any effort was made on the part of Gardiner to procure the attendance of these witnesses. New Leon is the location assigned in the depositions to Boswell Smith, Jackson, and Johnson, three of the principal "men of science" concerned in these great mining operations, and in whose names the depositions had been filed before the board of commissioners. Francisco Fernandez had no power in New Leon. His order had no efficacy there. The plain matter of fact is, gentlemen, that no such persons ever existed. Why was it that no man in all the republic of Mexico responded to the handbill offering a reward of five hundred dollars? Had there been a mine there, would not this temptation of \$500 have induced some poor Mexican to tell what he knew in order to enable him to get what perhaps would be a sum of money beyond the wildest dream of his avarice? We know, notwithstanding the efforts of the commissioners who were sent out by the Senate, and all of whom visited the alleged location of the mines, and of Captain Barry, who tells you that he explored the country in all directions, in the neighborhood of where these mines are alleged to be, that they could neither find mines nor vestiges of any.

You will find in the translation of the mining book which has been shown to you, under the date of 16th December, 1844, the following:

"For settlement of taxes and damages on the lands where the mines are located, as agreed to with Mr. Manuel Saldierna, \$400."

Under the date of 15th of April, 1845, is the following:

"Agreement made with Don José Jaurequi for the lands on which the refinery is building, and the water privilege for the same, \$2,500."

The commissioners examined, before they left Washington, all these papers, and carried them along. They thought that here they had got on the right track. They said: "These are the names of the men from whom the land was obtained; and if the mines are there, we will find out something about them from these men." Each and every one of the five commissioners made inquiries in all parts of the country, as Captain Barry had done before them, but they could find no one that had ever heard of Manuel Saldierna or José Jaurequi. They were not citizens of Mexico, or of any country that we have ever heard of. They belonged to the unknown land inhabited by Jackson, Johnson, and Smith, and the other deponents. Saldierna and Jaurequi, like the "men of science," the "mules," the five hundred laborers, the solid masonry, &c., &c., are each returned *non est*. They could not be found, and they never will be. The commissioners then thought they would try to find some person who had seen the mines in operation; and they turned their attention to Señors Espinosa, Simpson, Arrellano, &c., and other deponents before the board of commissioners on Mexican claims, who had sworn to every fact necessary to support the memorial, and had also sworn to their own residence, business, &c. The commissioners and Captain Barry searched high and

low, far and near; but not a human being could be found who had ever heard of these "men of science!" Their names were utterly unknown to every one at the places where they purport to have resided. If they ever lived there, some one certainly could have been found to tell of them; yet we cannot hear anything of them, or of any of them. Where, ask Captain Barry and the Senate commissioners—where, where is, or ever was, Jaurequi? where Saldierna? where Espinosa? where Simpson? where Arrellano? where, oh, where? And echo answers, where?

The commissioners and Captain Barry took all the means in their power to find these mines, and they come back and tell you that they could not do so. These were the efforts made on the part of the government to ascertain the true state of the matter. The commissioners, of course, had more difficulties than the defendant to contend with. He only took witnesses to Mexico to look at his mines. It was as easy for him to get people to come from Mexico hither as to get persons to go hence to Mexico.

I have now got through with this part of the case as made out on the part of the United States, and shall hereafter speak of the evidence offered on the part of the defence. Look at the case on the part of the United States. A negative touching the existence of the mine has been proved as clearly as a negative ever was proved in a court of justice. If the mine upon which the defendant got his award ever existed, the title must have been obtained according to the laws of Mexico. The titles he has produced are no titles at all—they all come from the wrong place. If he had a mine in Lagunillas, the mining title would have been at Guadalcazar. As no mining title is to be found there, and no mine in all Lagunillas, it is evident the mine did not exist. Nothing can be clearer than this.

IV. FORGERY.

The next head to which I shall call your attention is the forgeries committed by the defendant in support of his oath. If the oath which the defendant made to the memorial were true, he would not have resorted to false papers to sustain it. It is on that principle of common sense, derived from common experience, that the court, in conformity with legal principle, has allowed the papers which we have alleged and proved to be forged, to go to you as evidence of the guilty knowledge of the defendant when he took the oath. The use of those forged papers raise a presumption against the party; and the rule of law is, that the presumption stands in place of proof until rebutted. Until the defendant gets rid of that presumption, it is as strong and as valid as a thousand direct proofs.

I shall now proceed to show you more than twenty distinct and separate acts of forgery, committed in order to get this claim allowed, and in order to make the oath, for which the defendant had forsworn his soul, instrumental to the gratification of his avarice. The board of commissioners told him there was no evidence of his ownership of the mines; and that if he were allowed anything, it would only be on the ground of damages to his possession. General Thompson, one of his counsel, told you that he went away from Washington shortly after Gardiner

did; and that when he returned he found that Gardiner had before got back from Mexico, and that the papers to which I will now direct your attention were already filed. The first one is the certificate to the mining title which has been so often brought to your notice in the previous parts of this discussion.

[Mr. FENDALL here read the Rio Verde title, and the depositions annexed to it, with the certificates of Fernandez, the prefect, and the governor and secretary of state of San Luis Potosi; all of which had been filed before the commissioners on Mexican claims, and on which the award was made in favor of Gardiner.]

Every one of these depositions is authenticated by the signatures of Julian de los Reyes as governor, and Luis Guzman as secretary of the State of San Luis Potosi, and by the seal of that State. Judge Aguilar, you will recollect, was an officer of the government of San Luis, and is intimately acquainted with the handwriting of the governor, the secretary of state, and the prefect. Here is his testimony:

“QUESTION. Ask him if he was personally acquainted with Don Julian de los Reyes, governor of that State: and if so, how long he has known him?

“ANSWER. He knows him very well, and has known him for a long time.

“QUESTION. Ask him if he is acquainted with Luis Guzman, the secretary of the State of San Luis Potosi?

“ANSWER. He knows him personally.

“QUESTION. How long has he known these two gentlemen?

“ANSWER. He has known them since the year 1841, when he went to establish himself in San Luis Potosi.

“QUESTION. Ask him if he has ever seen the governor write his name?

“ANSWER. He has.

“QUESTION. Prior to the year 1850?

“ANSWER. Yes, sir.

[The Rio Verde mining title, and the depositions presented with it to the board of commissioners, were shown to the witness, and he was requested to examine the signatures.]

“QUESTION. Ask him whether, from his own knowledge of the handwriting of Governor Reyes, he believes these signatures to be true, or false?

“ANSWER. From the knowledge he possesses of the handwriting of Governor Reyes, he believes that every one of the signatures signed ‘Julian de los Reyes’ is not his.

“QUESTION. Ask him the same question touching the signatures of Secretary Guzman?

“ANSWER. From his knowledge of the handwriting of Luis Guzman, and the examination he has made of the signatures, he believes also that they are false.

“QUESTION. Ask him if he is acquainted with the seal of San Luis Potosi as it existed in the month of July, 1850?

“ANSWER. He is.

“MR. BRADLEY. The seals used in the month of July?

“ANSWER. He says he knows the seals used in the month of July.

“MR. MAY. Ask him if the seals on that paper, and the other papers representing the seal of San Luis Potosi, are true, or false?

“ANSWER. The seals stamped through this book containing the words ‘Government of the free State of San Luis Potosi,’ are false, because they are not such as are used in the dates contained in this document; nor has he ever seen them authorizing or legalizing any document.

“QUESTION. Ask him if he is acquainted with the signature of Francisco Fernandez, prefect of Rio Verde?

“ANSWER. He knows his signature. He was prefect of that place in the year 1850.

“QUESTION. How did he obtain his knowledge?

“ANSWER. By means of various communications he has had in his hands written by him, and signed ‘Francisco Fernandez.’

“QUESTION. Prior to the month of July, 1850?

“ANSWER. Yes, sir.

“QUESTION. Were they official documents?

“ANSWER. He remembers that when Francisco Fernandez was first or second alcalde of Rio Verde, at the time when he was secretary of the prefecture of San Luis Potosi, commu-

nications were received there from Francisco Fernandez, as first or second alcalde, which were signed with his signature and name; and besides this, he has seen it in judicial documents, such as reports, proceedings, &c. He has seen the signature of Francisco Fernandez, and consequently knows it.

“QUESTION. Ask him if the signature of Francisco Fernandez, there signed, is true, or false?”

“ANSWER. He believes that the signature here signed is not that of Francisco Fernandez, of Rio Verde, but that it is imitated.

“QUESTION. Ask him if the *rubrica* is not a usual and indispensable part of the signature of a person in Mexico?”

“ANSWER. In Mexico the Spanish customs prevail—consequently it results that the *rubrica* or flourish underneath the name is an integral part of the signature; so that if the signature of an individual appears upon a document without a flourish, the document would not be good, nor would it be believed.

“QUESTION. Ask him in what part of the signatures of Governor Reyes, affixed to these papers, he notices the most apparent defects?”

“ANSWER. The signatures are imitated in such a clumsy manner, that there is not room to believe for a moment that it is his signature, nor can any one say which of them is the worst done. The writing of the letters is tremulous and crooked, and the *rubrica* is incomplete and also tremulous. That is what he can say.

“QUESTION. Ask him if he saw him write in 1851?”

“ANSWER. He has seen his writing in 1850, but he did not see him write in 1850, because he was not in San Luis Potosi.

“QUESTION. How was that writing done, tremulously or with freedom?”

“ANSWER. It was done with freedom; he wrote with a firm hand; and besides that, he says that the writing here has not the tremulousness of an old man, but that of the insecurity of a man who is forging.

“QUESTION. Ask him if the same observation will apply to the signature of Luis Guzman?”

“ANSWER. Exactly the same, with these two differences: the first of these signatures is better imitated; and the second difference is, that whoever wrote here wrote it with an “s” instead of a “z,” and neither Guzman nor any other Spaniard would write it with an “s.”

“QUESTION. Ask him if the same observation will apply to the signature of Francisco Fernandez without the misspelling?”

“ANSWER. That the signature of Francisco Fernandez is false may be seen at first sight; but he who made it had a firmer hand than he who wrote that of Governor Reyes. For the rest, the flourish is badly imitated.”

Mr. *Sanchez Navarro* confirms this evidence. The mining title, &c., were shown to him.

“QUESTION. Mr. Bowes, ask him if, from his knowledge of the handwriting of Don Julian de los Reyes, that is his signature to that paper?”

“ANSWER. It appears to him it is not his signature.

* * * * *

“QUESTION. Ask him to state what opportunity he has had to know the handwriting and signature of Julian de los Reyes?”

“ANSWER. He had opportunities since his youth, while living in San Luis Potosi, of having friendly relations with him and his family; for that reason, and on account of it, he has visited his house; and afterwards some business of his (witness) has caused him to have business relations with him, as well verbally as in writing, and on account of this has visited him at his house, and has seen him write and sign various documents belonging to him, (the witness.)

“QUESTION. Ask him, did or did not Julian de los Reyes instruct him to write?”

“ANSWER. He received various instructions in writing from him.

“QUESTION. Ask him if this is the same Julian de los Reyes who was governor of San Luis Potosi on the 15th of July, 1850?”

“ANSWER. It is the same.

* * * * *

“QUESTION. Is he acquainted with the signature of Luis Guzman?”

“ANSWER. He has seen it on various official documents as secretary to the governor.

“QUESTION. What sort of documents?”

“ANSWER. Upon various official documents of the governor of San Luis Potosi.

“QUESTION. Describe them—the documents?”

“ANSWER. He cannot now state what they were.

“QUESTION. Did these documents contain the genuine signature of the governor?”

“ANSWER. He says he is speaking of Guzman’s signature.

“QUESTION. Were these signatures of Guzman on the same documents signed by the governor?”

“ANSWER. On various documents which the governor signed, and the secretary also; and on some signed by the secretary only.

“QUESTION. Was Guzman secretary in July, 1850?”

“ANSWER. He does not remember.

“QUESTION. Was he secretary at any time?”

“ANSWER. He has been secretary at various times to the governor of San Luis Potosi, but witness cannot state any particular time.

“QUESTION. Does he know how to spell Guzman's name?”

“ANSWER. He does.

[The witness proceeded to state that the surname “Guzman” is spelled in Spanish with a “z,” and that on the paper before him it was spelled with an “s.”]

“QUESTION. Did Guzman spell his name with z or s on the documents which he (witness) saw?”

“ANSWER. He always wrote it with a z, because it was spelled with a z; and that Mr. Guzman was an educated man and wrote it properly.

“QUESTION. Does he know it as a fact that Guzman spelled it with a z?”

“ANSWER. There is no doubt of it. Every Spaniard who has a middling education knows how to write and spell Spanish; and Guzman being an educated man, it is to be supposed he knew how to spell his name.

“QUESTION. On those official documents he has seen with Guzman's name to them, was it spelled with a z or an s?”

“ANSWER. It always had a z.

“QUESTION. Where was it you saw the official documents with Guzman's name to them?”

“ANSWER. He has seen them in San Luis Potosi, and in Saltillo, where he resides.

“QUESTION. Did he ever see them in the State Department in San Luis Potosi?”

“ANSWER. In the city of San Luis.

“QUESTION. But did he see them on the archives of the department in San Luis, in the State Department?”

“ANSWER. He has seen them there.

“QUESTION. Among the archives?”

“ANSWER. Yes, he has.

“QUESTION. With Guzman's name to them?”

“ANSWER. With Guzman's name.

“QUESTION. Is that signature to this paper (the mining title, &c.) in the handwriting of Guzman?”

“ANSWER. No; it appears to him to be not.

“QUESTION. Is it his belief that it is not?”

“ANSWER. It is not, (i. e., the handwriting of Guzman.)

“QUESTION. Ask him, is he acquainted with the seal of the State of San Luis Potosi?”

“ANSWER. He knows it.

“QUESTION. How long has he known it?”

“ANSWER. For more than twenty years, certainly, he has known it.

“QUESTION. Has he seen it often?”

“ANSWER. He has very often, and has documents sealed with it—the seal of that State.

“QUESTION. Has he those documents with him?”

“ANSWER. No; he has received documents with that seal.

“QUESTION. Does he know the seal of the State as it was in July, 1850?”

“ANSWER. He cannot exactly give the size of the seal at the date named in the question, but he remembers the seal which was lastly used in San Luis Potosi has not this (pointing to the seal on the papers) line around it.

“QUESTION. Let him examine this, (the seal on the papers,) and ask him if that was ever the seal of San Luis Potosi?”

“ANSWER. He does not remember having seen this seal. If it was ever used there, it must have been many years ago.

“QUESTION. Was it the seal used there in July, 1850?”

“ANSWER. He says he can say it was not used as the seal in 1850?”

Mr. *Arrangoiz*, consul general of Mexico, residing at New York, also testifies to these forgeries:

“I knew de los Reyes in 1832, and have known him from that time down: I know his handwriting; in 1833 he was a poor man, and wrote for me under my dictation; we have since

corresponded. In 1849 he wrote to me, informing me of my election to the Mexican Congress; I was then residing in the city of Mexico; I have received many communications from him; he was accused by some members of Congress of having dissolved the Legislature of the State.

“*Cross-examined.*—Governor Reyes’s writing in 1833 embraced his signature and rubric. I do not recollect noticing his signature and rubric before 1849.

“*Direct examination resumed.*—Governor Reyes wrote fast—wrote a bold hand.

“The paper called the mining title was here shown to the witness.

“The signature ‘Julian de los Reyes’ is not his writing at all, I am positive. The rubric is made with a trembling hand; Reyes wrote in a firm hand.

“The signatures to the five depositions annexed to the mining title, and purporting to be the signatures of Governor Reyes, were now examined by the witness, and pronounced by him not to be genuine; they are not at all like his.

“The seals of the State of San Luis Potosi and of the secretary of state of that State are the same, except the words over the head of the eagle. In the first they are ‘Gobierno del;’ in the second they are ‘Secretario del,’ &c.

“I have never known the seal now shown to me, [that affixed to the mining title.] The eagle does not clutch the snake. In the Mexican seal and the seal of San Luis Potosi, the eagle holds the snake in his mouth and his claw. The Mexican arms are like those on the Mexican dollar. I have seen the seal a thousand times. I was in the Mexican Congress from January to April, 1850. In the last named month I came to the United States—went to Missouri on the 15th of January following. The seal which I have described is that used by the State of San Luis Potosi in 1850.”

Here are three most intelligent and respectable gentlemen, all familiar with the subject, who prove in the clearest way that these signatures and seals are *forgeries*; and, strange to say, not *one single* witness has appeared on the other side to support their genuineness! The forgery is thus, in effect, confessed, not being disputed by a particle of evidence, as, indeed, it could not be.

The Senate commissioners were not permitted to testify about the signatures of all these papers, or the seals, although they were all fully prepared to do so from actual personal observation made during their investigations in Mexico.

I have already stated that each one of the depositions has attached to it the signatures of Julian de los Reyes as governor, and Luis Guzman as secretary of state of the State of San Luis Potosi. Each one, you will observe, has a rubric to it. You are told that a rubric is in Mexico an integral and essential part of a man’s signature; and some papers have been shown to you where the name is printed, and where the rubric is the only part of the signature which is written. A rubric to a man’s signature is just as requisite in Mexico as a seal to a title deed is here. If there be no seal, there is no deed. If there be no rubric, there is no signature.

The signature of Bruno Olavide, the alcalde before whom the pretended depositions of Ochoa and Gomez, filed with the Rio Verde mining title, purport to have been taken, is also a forgery. The testimony of Judge Aguilar on this point is as follows:

“MR. MAY. Tell him to look at the mining title and the deposition, and ask him if he is acquainted with the signature of Bruno Olavide?”

“ANSWER. He knows the signature.

* * * * *

“MR. MAY. What means has the witness of knowing the handwriting of Bruno Olavide?”

“ANSWER. Because Bruno Olavide is a person well and publicly known in Guadalcazar; because he is a writer in the courts of that place and authenticates proceedings as an assistant witness; and because he, (witness,) on account of his profession of a lawyer, has every once in a while had in his hands proceedings in which the signature of Bruno Olavide figures more or less.

“MR. MAY. I submit to the court that that qualifies the witness to testify to the handwriting of Olavide.

"Mr. BRADLEY. I do not see how it does at all.

"Mr. MAY. Ask him if the signatures which he saw were acknowledged to be authentic by the court in which they were made ?

"ANSWER. Evidently they were, because they were made to causes in progress; and, although he says there was not a positive decision of any judge which said, 'This is the signature of Bruno Olavide,' neither did anybody raise any question about it.

"QUESTION. Were these, or were they not, papers containing signatures that were acted upon ?

"ANSWER. He has said that they were cases that were in the progress of investigation, and necessarily they were acted upon.

"QUESTION. Ask him to look at the signature of Bruno Olavide, and say whether or not, in his opinion, it is true or false ?

"ANSWER. In his opinion it is not true, but false."

In regard to Santiago Gomez, the banker of the defendant's immense funds, the evidence that his pretended deposition filed with the Rio Verde mining title is a forgery, though less conclusive than that in the other instances, is cogent. Judge Aguilar knew Santiago Gomez, of Guadalcazar, but had not means of knowing his handwriting, enabling the witness to testify as to his signature. But, so far as negative testimony can go, this witness proves there was no such deponent. The deposition represents Santiago Gomez as residing at San Luis Potosi during the period of the mining operations at Lagunillas; and Judge Aguilar, who resided there during that period, and, indeed, from 1841 to the beginning of 1850, never knew or heard of a man named Santiago Gomez as residing there. Had there been any Santiago Gomez residing at the same time with Judge Aguilar at San Luis Potosi, the witness must have known the fact. No such man resided there. No such man is before you.

[Here the DISTRICT ATTORNEY exhibited to the jury pieces of tissue paper, on which were accurately traced the signatures of Julian de los Reyes and Luis Guzman, authenticating the signature of Francisco Fernandez to the mining title, which would be found, on being placed over the successive signatures of the same persons, authenticating the official certificates to the depositions accompanying the mining title, to correspond to a hair's breadth in every particular. He handed to the jury a piece of blank tissue paper, on which he suggested to them to trace the signatures of Reyes and Guzman on the mining title, and then apply it to their signatures on the depositions. Before the jury retired they made the experiment.]

The DISTRICT ATTORNEY. All these signatures are made in precisely the same way. There is not a hair's breadth of difference in any part of the names or rubrics. This test demonstrates, beyond the possibility of doubt, that these papers are forgeries. If any of you, gentlemen, will make the experiment, you will find that you cannot make a flourish, such as any of these, any two times alike. Here all the flourishes are exactly alike. If you look to the rubric on the original, you will observe that there is a tremulous appearance about it, which attracted the attention of the witnesses. It is not the tremulousness of an old or infirm hand, but that sort of irregularity which arises from tracing any writing. Besides, the persons whose names purport to be signed to them are all men in the prime of life. As to the forgery of the seals, all three of these witnesses testified clearly to that, and declared that these forged seals do not in the least resem-

ble the genuine seal. You will recollect how Mr. Arrangoiz pointed out the radical faults of these clumsy imitations, as to the eagle and the snake—"the latter being always clutched by the claw of the former, as on a Mexican dollar," &c.; and these witnesses are all as familiar with the seal as with the signatures, and even more so.

It is thus in proof that in the mining title, and depositions accompanying it, the signature of Francisco Fernandez was forged once; the signature of Governor Reyes six times; the signature of Secretary Guzman six times; the signature of Bruno Olavide twice; and the seal of the State of San Luis Potosi six times.

We have here twenty-one acts of forgery proved, beyond all dispute, on the defendant, by three as respectable witnesses as were ever brought into court. Can you believe, for one moment, that a man who swore to what is true, would, in support of his oath, even commit one forgery, much less wade in a sea of forgeries? He has committed forgery after forgery, and yet you are asked to believe that his oath to the memorial was a true oath! The defendant has brought Mr. Mather into court, who tells you the mining title and depositions, the official signatures to which purport to be authenticated by Governor Reyes and Secretary Guzman, were brought to him at Monterey, by George A. Gardiner, this accused man, and Dr. Mears. These papers are thus shown to have been in the possession of Gardiner on the 26th of August, 1850, in the republic of Mexico, whither he had gone in order to get additional testimony for the purpose of supporting and increasing his claim. They were brought to Washington, filed with the board of commissioners, and acted upon by them. The award by which he got his money was founded on them. You know that the crime of forgery is not confined to the mere manual act of forging a paper. It would not be necessary, even if the defendant were on trial before you on the indictment for forgery, to prove on him the manual act of forgery. If he procured the forgery to be committed by another, he is a principal. If he *uttered* the papers—that is, made use of them—if he published them in any way, he would be guilty on the forgery indictment.

There is a singular circumstance connected with these papers. On looking at them, you will perceive that they are not only authenticated by Governor Reyes, of the State of San Luis Potosi, but also by Pedro José Garcia, governor of New Leon. Mr. Mather, our consul in the State of New Leon, testified as follows:

"MR. MAY. Who brought the paper to you?"

"ANSWER. I think Dr. Gardiner was one of the parties.

"QUESTION. Who was the other?"

"ANSWER. Dr. Mears. Dr. Mears introduced me to the gentleman whom he called Dr. Gardiner, at the time that this paper was presented to me.

"QUESTION. You did not see the governor or secretary sign that paper?"

"ANSWER. No, sir; it was brought to me with their signatures attached to it.

"QUESTION. You believed it to be their signatures, and therefore put the consulate seal upon it?"

"ANSWER. Yes, sir; I had no doubt of its being genuine when I gave the certificate.

"QUESTION. Do you know anything about the seals and signatures of the authorities of San Luis Potosi?"

"ANSWER. No, sir, I do not.

"QUESTION. Did you read the papers at the time?"

"ANSWER. I read so far as the certificate was concerned. That was all that I was called upon to authenticate."

The defendant, then, had these forged papers in his possession on the 26th of August, 1850, in Mexico, whither he had gone in order to obtain the additional evidence to be filed before the board of commissioners. In the absence of any other evidence, we must conclude that Gardiner himself forged them; but whether he forged them or not, he made use of them—he published them—which is precisely the same thing. This, if there were no other reason, would remove all doubt of his guilt.

I will now call your attention to the want of compliance with the various laws of Mexico in the authentications of these papers. The first set of depositions were authenticated in a different way from the second set. The latter depositions, which we are now looking at, are authenticated by Reyes, and then by Garcia. Here the signature of one governor is certified to by another. Would you not, gentlemen, consider it a most extraordinary thing to see a paper signed by the governor of Maryland carried over into Virginia to be authenticated by the governor of Virginia? That is analogous to what has been done here. We could throw some light on that subject, but are not allowed to do so by the rules of evidence applied here. I have already called your attention to other indications of forgery, rather anticipating this branch of the case, arising from the sort of paper which was used—paper which could not be used for this transaction under the laws of Mexico. Paper appropriated by law to one officer, and his office designated upon it in print, as you have seen, is, by a clumsy blunder, made use of by quite a different officer. It is only necessary, once for all, to refer you to the evidence of handwriting which has been given, and then to the test of apposition, which, when applied, would close this branch, and every other branch of the case.

We think that we had, before coming to this head of Forgery, shown you, by evidence as powerful and irresistible as was ever brought before a jury, that on either one of the three previous propositions this is a false and an atrocious claim; that the defendant had no means, though he has sworn he invested \$333,392 in a magnificent scheme of mining operations at Lagunillas, and, besides, lent copious sums of money to the government of San Luis Potosi. We had, I think, proved—I do not like to use the word “demonstrated,” for when the gentleman told us he thought “the innocence of the defendant demonstrated,” I began to think we should all have to learn English over again—but I think we had proved, by the most conclusive evidence, clearly to the satisfaction of every intelligent mind, that he had no means, and that he has sworn falsely. If he had means, he could have shown them; but having failed to show them, that failure proves his guilt. At the time when he says his personal presence was necessary at those mines, we had proved, by his own handwriting, by his own words, and by witnesses who saw him—we had clearly proved that he was at other places, engaged in other business, and declaring other purposes. We had proved that he had no mines. We have now shown that twenty-one forged papers were presented by him to the board of commissioners in order to get his claim through. Then I ask you, as men of intelligence, did ever a man attempt to carry out a just claim by forged papers? The very act of forgery, when proved, shows

the claim was a false one, and that all connected with it was false, oath and all.

I have heretofore confined myself to the case as made out by the government. Before closing my observations, let me notice the testimony which has been brought forward by the defendant in order to repel the mass of testimony which we have adduced, and by which we have maintained, so successfully, this prosecution.

It has been said that the defendant ought not to be convicted on a question of geography. We reply, that he ought not to be acquitted by a violation of the plain geography of the country. The geography of the subject is a most vital inquiry. It shows the boundaries, and by consequence the jurisdiction, of the several States. If the mines visited by Abbott and Slocum are in the State of Queretaro, then it is clear they are not Gardiner's mines, because his title, and every paper relating to his claim, place his mines in the State of San Luis, and show that his title emanated from the authorities of that State. Queretaro is nowhere mentioned in his claim. As well might a man attempt to prove his title to lands in Virginia by showing a patent from the land office of Maryland. The States of Mexico are as independent of each other as our States are. You have the evidence of this. Then, gentlemen, this geographical question is a very decisive one.

We say the mines shown to Abbott and Slocum are the old mines of Jalpan, in the State of Queretaro, to which Gardiner has ever been, so far as title is concerned, as much of a stranger as any one of you; and that in all probability he never saw them before he made this visit of fraudulent discovery with his two chosen friends, and Raymond Pando, the brother of his accomplice, José Pando. We have seen how Gardiner carried these witnesses blindfold on the route; ignorant of the radical geographical features—ignorant that Queretaro was on the south adjoining to the State of San Luis—without a single inquiry for the boundaries or jurisdiction, as they both admit—not knowing and not caring whither they went, so that they saw an old mine, and could return here to swear to that. You see these men, going, willing recipients of the bandage with which this artful criminal was to hide the geographical truth. They go, and know not where the towns, rivers, or mountains are situated with respect to the jurisdiction of the contiguous States.

You heard our offer to prove, by witnesses who had visited the old mines of Jalpan with instructions to do so, for the very purpose of preventing the success of this fraudulent evidence, which we had long ago expected would be produced, and heard us offer to show, by every mark and sign—by every object, both natural and artificial, referred to and described by Abbott and Slocum—that the mines which they saw were those of Jalpan. Captain Barry had visited them, and had an accurate description of them. The cross-examination of Abbott and Slocum was made by us on Barry's notes. I say you heard us offer to prove this most decisive fact of the whole case, and heard our offer rejected by the court. Now let us see how the testimony which was admitted treats this question of geography.

Abbott and Slocum say they went nearly due south, but they crossed the junction of the Carrizal and Ayutla rivers; and that the first named

was the first stream of running water (besides a small brook) that they met or passed. Now, we fixed the south boundary line of the State of San Luis, and proved by the testimony of the commissioners that going south, they first met and crossed this same Carrizal river, in the State of Queretaro, several leagues south of the most southern line of the State of San Luis; and that its course, which they could see for a great distance from mountains which they ascended, was to the southeast; that they passed the river at the place called Carrizal del Rio; and again, the following day, several leagues further south, saw this same river at Alamos, and its course still was southeast, as far as could be seen. They were then not very far above the junction with the Ayutla, and they all testify that at this point the river was not nearer than three and a half or four leagues to the most southern boundary of San Luis. Captain Barry proves that he followed this same river up and down its course for many leagues, to the south, to the southeast, and southwest of the route travelled by Abbott and Slocum. He did not see the junction of the rivers; but he did fix the course of the one nearest to the State of San Luis, and this on both sides—above and below the junction; and he swears most positively that this river *nowhere*, in any part of its course south of Lagunillas, approaches the State boundary line nearer than four leagues. And you will observe that Barry was accompanied in his explorations by the sworn surveyor of the State of Queretaro—that both his party and the commissioners had instruments to aid them, which they used; and that they all made careful inquiries as to the boundaries, jurisdiction, and geographical location of the towns, rivers, &c., which they met.

Thus you see, gentlemen, we have made this question plain; and every one must see that when Abbott and Slocum crossed these rivers they were then far in the limits of the State of Queretaro; and yet they both testify that when they reached the Carrizal they were not *half way* to the mines. They still proceeded to the south, and the following evening reached there. Their plat of their route south, which they swear is generally accurate, places the rivers about *one-fourth* of the distance to the mines. Can any one doubt, after this, where these mines are? It is, gentlemen of the jury, for you to decide whether the testimony of Captain Barry and the commissioners, on the one side, or that of the defendant's witnesses and friends, Abbott and Slocum, on the other, is to be believed. That is all I think necessary to say on the geography of the question. Whether or not the mines were Gardiner's is still an open question.

We will now examine the relative positions in which the witnesses for the defendant and those for the prosecution stand before you. Much has been said about the bias of the witnesses for the prosecution; and their testimony has been sought to be excluded from consideration on the ground, not of any suspicion that they were subject to any improper influence, but that it would be dangerous as a general principle, and as a precedent which might operate injuriously, to allow their testimony to be given. They had been sent out there by the government to get testimony *post litem motam*—that is, after the controversy had begun; and it was said to be right, on principle, to suspect of an improper bias the statements of witnesses so circumstanced. The

commissioners, so far as they gave testimony, confirmed all that had been said in regard to the geography of the country by Capt. Barry. I admit there may be some minor discrepancies. The commissioners and Capt. Barry were not acting as partisans, but were sent out as public agents in the discharge of a high public trust. Whatever compensation they were to get has been paid to them; and it was a very inadequate compensation for the services they performed and the privations and hardships they endured. They have nothing further to expect; but here are these witnesses, Abbott and Slocum, going out to Mexico, also *post litem motam*, at the request of the defendant, and as his partisans, as is plainly in proof, knowing nothing about this case except from information they acquired from him, and telling you that they knew nothing about his title; and after they reached the theatre of their inquiries, instead of acting like Capt. Barry and the commissioners, seeking information wherever it was likely to be obtained, they did not even know whether they were in Lagunillas or Queretaro, and they told you they did not think it necessary to inquire. They went out there as the adherents of the defendant, acting blindfold, and resting entirely upon his statements, taking it for granted that they were in Lagunillas, and that the mine which they saw was in that district. They arrived at Lagunillas on the 26th of November, and the first thing one of them does the next day is to write a partisan letter, to be published in the "Providence Journal"—a letter full of gross and unfounded imputations on the government and its officers. Slocum admitted he had written such a letter to Joseph H. Pitman, and had requested its publication. This witness, then, did that horrible thing for doing what is said to be like it, but is not at all like it, such a man as James Wright is sought to be discredited—he who had been summoned as a witness on the part of the United States, and who, in vindication of his truth and honor, and those of his companions, thought it necessary to reply to statements in a political speech, made in the State of Ohio by Mr. Robert Corwin, one of the counsel of Gardiner. Because he had been summoned as a witness here, Mr. Wright has been denounced before you for making such a publication as that, lest, perchance, it should "influence the public mind," and excite a prejudice against this defendant. Now, here is Slocum, without any pretence of having been assailed—without any intimation that anything has been said in regard to him, either directly or indirectly, which would require him to abandon what we are told is the sacred duty of a witness—a man who had gone out with the defendant to look at these mines, and to become a witness for him—writing a partisan letter, headed "Attempt to murder Dr. Gardiner and his party," to the editor of a Rhode Island newspaper, and requesting that it should be published; and while they were proposing to go to the mines in two or three days, he gives his friend Mr. Pitman an account of them. He says:

"Before closing this letter, allow me to allude a little more in detail to the silver mines which we propose to visit in two or three days. They are those owned by Dr. Gardiner, and from which he was driven by an order from the Mexican government. There are three of them—the first within *rifle-shot** from this village, (Lagunillas,) and the other two as many days' ride distant," &c.

* Italicised in the Providence Journal of January 17, 1853, in which the letter appeared.

You will all recollect that this witness, Slocum, testified here before you that *all* the mines were *two days' journey* distant from the village of Lagunillas. He undertook to explain to you what "rifle-shot" meant, and he said it was a mile distant. You have heard of men shooting out of a long gun, but, I dare say, not further than this rifle could carry. The witness admitted the printed copy to be correct, except the passage describing one of the mines as being "within rifle-shot from" Lagunillas. He told you that was a mistake, but he did not tell you clearly how it was a mistake—whether it was a mistake of his own or of his friend, Mr. Pitman.

[Mr. BRADLEY here interposed. The DISTRICT ATTORNEY proceeded:]

Captain Slocum testified as follows:

"QUESTION. Have you not said the first mine owned by Dr. Gardiner was within a rifle-shot of the village of Lagunillas," &c.?

"Witness, in reply, was understood to say, in substance:

"That he wrote the letter which was published over his signature in the Providence Journal of January 17, 1853; but that errors occurred in its publication, and that he wrote to the editor of that paper, requesting them to be corrected. He did not write that one of Dr. Gardiner's mines was 'within rifle-shot of the village of Lagunillas;' or if he did, he did not intend to do so—such was not the fact."

He says that this passage is an error, though how it was made does not distinctly appear. He says he did not write it, but then immediately qualifies the denial by saying that if he did write it, "he did not intend to do so," leaving it doubtful whether he wrote it or not: so that the denial is no denial at all. Did General Pitman or the Providence printer measure the distance by a rifle-shot? Gentlemen, are you content with this explanation? It is for you to say how far credit is to be given to Slocum's statement. I presented the question to you as one of comparative credit between Abbott and Slocum, on the one hand, in regard to the topographical question, and Captain Barry and the commissioners, on the other. Here is the statement made by this witness the very day *after* he gets to the village of Lagunillas, to which he went for the purpose of exploring these mines.

You have seen that a single denouncement will not cover several mines, one of which is two days' journey from the others. When the mines which the defendant claimed as his were shown to the witness, and it was found that one of them was two days' journey from the others, then it was that he found out he had made a mistake. Though he had not been to the mines, he gives an affirmative description of them. He says that "there are three of them. They are those owned by Dr. Gardiner," &c. Who told him about them except Gardiner himself?

Mr. CARLISLE. He had read the title-deed that morning.

The DISTRICT ATTORNEY. So much the worse, then. He must have made a strange slip of the pen, then, in saying that one of them was a rifle-shot distant. That is a sort of mistake the explanation of which makes the thing darker. He wrote a letter before he had seen the mine, asserting the fact that one of the mines was only a rifle-shot distant from the village of Lagunillas. On what authority could he assert such a fact, except that of Gardiner, who was with him, and

could tell him about the location of these mines? He had seen this title, to be sure, but it was not from that title that he learned that one of the mines was "within rifle-shot from this village;" but quite the contrary. He must have obtained that fact from Gardiner himself, and that illustrates the blindfold way in which this and the other witness proceeded in the whole matter. They were entirely under the guidance of Gardiner, and did not examine for themselves, as the commissioners and Captain Barry did.

The letter goes on:

"Every means which persecution, aided by shrewdness and promise-rewarded talent, could invent, has been employed to convict Dr. Gardiner of fraud. Individuals have been employed by the government to obtain testimony against him in this country whom they knew to be prejudiced against him to the extent which large pecuniary rewards have upon some men whose pockets are as capacious as their principles of honor are elastic. * * *

"He will substantiate his innocence of any fraud of which he is accused; and, in my opinion, within three months from the time this letter reaches you, will be again in the enjoyment of that property of which he has been so unjustly deprived by the malice of a few evil-minded men." * * *

"But a brighter day for him is breaking; every hour dissolves some cloud which has heretofore darkened his future life. Added to all the persecution I have seen and known in this case, it requires some charity to believe that the salute of our guerilla friends was not another mode of attaining the object in view, thus adding to the crime of robbery attempted murder.

"But enough of this. I do not intend to weary you, but I wished to place you right upon the celebrated 'Gardiner claim.' I wish you would publish that part of this letter which relates to Dr. Gardiner, that justice may at least be partially rendered him, and that the public may know the extent of the persecution against him."

"The salute of our guerilla friends" is what, in the caption of the letter, is styled "attempt to murder Dr. Gardiner and his party." It is thus described in a former part of that composition:

"We were riding along very leisurely, resting our animals after the fatigue of passing the mountain which then lay in our rear, when a volley of escopette balls came suddenly among us from the dense chapparal on our right. After so unfriendly a salutation, of course we were not inactive. Instead of waiting another and perhaps a more fatal greeting, we put spurs to our horses and rushed ahead, at the same time drawing our revolvers. The guerillas—for such they proved to be, ten or twelve in number—thinking we would escape them, did not stop to reload, but rushed out on their horses and gave chase. We went at full speed some hundred yards, when we suddenly turned upon them and commenced a running fire. Their volley killed two of our three servants and all three of our mules, but fortunately did not hit Abbott, Dr. Gardiner, or myself. We took them by surprise, and out of the eighteen shots we threw at them, six of them told with fatal effect, and the balance, thinking undoubtedly from the quantity of lead we sent, that there were more of us, left us as unceremoniously as their horses could carry them. Our remaining servant with his lasso caught four of the horses, whose saddles we emptied, and pressed them into our service, thus gaining four fine horses and saddles for the loss of our three mules.

"We buried our two servants by the road-side, erecting two wooden crosses over their graves; and, leaving the bodies of the others to the kinder attention of their comrades when they recover from their fright, hurried onward over the mountain path." * * *

Whatever opinion, gentlemen, you may entertain of the truth of the facts contained in that letter, you cannot fail to look upon the writer of it as a biased witness—as a man who went to Mexico sympathizing with the accused in all his hostility towards the government, and in all the imputations which he had cast upon those who, under a sense of duty, brought this matter to a public investigation. Although "the attempt to murder Dr. Gardiner" seems to be what the scholiasts to the ancient poets would call the "argument," a considerable portion of the letter is devoted to a subordinate topic, a eulogy on the defend-

ant, and a virulent assault on those who had taken any part in his prosecution. That letter, written on the 27th of November, was for *the North*.

Mr. Abbott, the other witness, who is so free from bias also, and who went out to Mexico with Gardiner for the purpose of becoming a witness for him in his cause, and to see the mines and come hither and tell the jury where they are and what they are, he also, it seems, sat down on reaching Lagunillas, and wrote a letter for *the South*. Slocum wrote his letter on the 27th for the "Providence Journal," and Abbott wrote his on the next day, and sent it to Col. Seymour, the editor of the "New Orleans Commercial Bulletin." It is written in the same grossly partisan and vindictive spirit, containing the same denunciation of the government and all those concerned with it, and the same eulogy on this immaculate defendant—this nonpareil miner. It was sent with a special request that it should be published in New Orleans, one of the great commercial marts of the country, and from which papers circulate everywhere. I will read parts of this letter:

"LAGUNILLAS, STATE SAN LUIS POTOSI,
"Mexico, Sunday, November 28, 1852.

"MR. EDITOR: My friends were doubtless surprised to learn, the day after the presidential election, that I had suddenly left New Orleans; and they will be no less surprised to see this communication dated from a little village situated in the interior of Mexico, amid the rugged cliffs and cloud-capped heights of the Huasteca range of mountains, a distance of hundreds of miles from where

"The Mexique gulf bends round her tropic coast.'

Only a small number of my associates were acquainted with the cause of my sudden departure, but which will be developed to the numerous readers of your interesting journal in the course of the present writing.

"After a rough and stormy passage of eleven days, I arrived safely with my companions in Tampico, where we immediately procured horses and mules and started on our tour to this place. A description of the scenes through which we have passed—the fertile soil on the beautiful banks of the 'Panuco' river; the fearful mountain passes winding around the rugged cliffs, and towering high above each other; valleys teeming with ripened grain, and seen for leagues and leagues, so far as the eye can reach, until their waving tassels seemed to bear up the distant horizon; the poverty and ignorance of the mountaineers, and the present excited and revolutionary state of the country—must all be reserved for another time, as I desire to speak particularly of the business that brought me to this wild portion of our sister republic.

"I came here in company with Captain Slocum, formerly of the ninth regiment United States infantry, at the request of Dr. Geo. A. Gardiner, whose celebrated Mexican claim has caused so much excitement in the United States for the past two years, for the purpose of examining the existence and locality of the mines from which he was expelled during the war by the order of the governor of San Luis Potosi, and also to examine the records of the district in which the mines are situated, and obtain authentic evidence of the truth of Dr. Gardiner's claim. We have been entirely successful in our mission; for we have *not only visited the three mines* owned by him, *and many others* in the vicinity, but have also obtained an authenticated copy of the original deed and order by which possession of these mines was given to the claimant.

"You no doubt remember something of the insurrection of the mountain districts of San Luis Potosi that occurred in 1847 and lasted until 1850, and which gave the Mexican government so much trouble to suppress. Lagunillas being the place of record for the district, came in for a full share of attention from the insurgents. The inhabitants were obliged to fly for their lives; their property was destroyed; and, among other depredations committed, the court records and public archives were nearly all destroyed. A few only were saved, and these by the secretary of the town council, at the hazard of his life. These were thus saved from the general destruction by being buried in a hole in the ground, and among the number was the original deed given to Dr. Gardiner by the regular constituted authorities of the mines, upon which is based his claim. The paper is discolored by dampness and dirt, but every letter is legible, and the signatures of Gardiner and the government officers traced in bold characters upon each page. There seems to be something providential in the fact that

this paper should be among the small number that were preserved, and that, after all the persecution and reproach that Dr. Gardiner has suffered, it remains a full and complete evidence of his integrity.

"The difficulties that Gardiner has met with in prosecuting his claim, the attempt to give to it a political complexion, and to drag in Mr. Fillmore's administration, and especially Mr. Corwin, have already been somewhat developed; and when all the facts in the case are made known, those whose opposition was bought by well-filled pockets will meet with a proper appreciation from the public. Nor were these difficulties confined to the United States; the authorities of the State of San Luis Potosi have thrown every possible obstacle in Dr. Gardiner's way to obtain justice, believing that if the case is decided against him, the quarter of a million of dollars will revert to Mexico, and pass through their own hands. If this should be the case, it would undoubtedly find palms sufficiently itching for filthy lucre."

* * * * *

"But the trouble and expense is not all. Dr. Gardiner has been unjustly branded as a swindler; his name has been trumpeted throughout the Union as a forger, and all this to suit the purposes of a few intermeddling politicians—hangers on about Washington, who, vampire-like, exist upon what they can draw from the veins of the public treasury.

"So far as my own observation extends, I can only speak of Dr. Gardiner personally in terms of respect. He is a modest and unassuming gentleman, of fine acquirements, and the last person any reasonable man would suppose guilty of the great fraud charged against him."

* * * * *

"I am domiciliated in the *casa* of Señor José Pando, a native of Spain, and formerly a resident of New Orleans for two or three years. He is the principal merchant in this part of the country, and was the factor of Dr. Gardiner in his mining operations, and the agent through which he disposed of a large quantity of silver. His hospitality and kindness has made me quite at home, while his wife, who claims Erin's Green Isle as the home of her fathers, aids my untutored Spanish with just enough of the *brouge* to be an interesting companion in conversation. His only daughter, Senorita Flora, is indeed the *flower* of the mountains, and her sweet face, which is a mirror of innocence and purity, lighted up with a hue more lovely than the budding rose when kissed by the morning sun, as she first gazed on the stallwart form of your humble servant.

"In a few days we start upon our homeward-bound tour, and hope to safely arrive, when the warm greetings of old friends will repay us for our absence.

"E. W. A."

In this letter, the witness describes the prosecution to the American people at large, a considerable portion of whom were the political, and many of them the personal, friends of Mr. Corwin, as an attempt to injure his character. This witness was in the city of Washington; and if he read the newspapers he would have found out—because it was a matter of notoriety—that this prosecution was instituted by the President of the United States, the head of the administration of which Mr. Corwin was a distinguished member. I will repeat now what I took occasion to remark in the opening of my argument, that if there was any persecutor in the case, that persecutor was Millard Fillmore. Now, if President Fillmore wanted to persecute Mr. Corwin, is it not the most extraordinary thing in the world that he should keep him in his cabinet in a position of trust, relying on his counsel in the settlement of great State questions? Abbott told you that he was a writer for a newspaper; that he had been engaged in political contests, and was a supporter of General Scott for the presidency. He had some experience, therefore, and knew that this letter was written in a way to affect public opinion. He knew that the friends of Mr. Corwin were numerous throughout the country, and that they might be influenced to some extent by what he stated. Now, I take occasion to say, as my official relation to this prosecution has been often referred to, that nothing is further from the truth than that the prosecution was an attempt to injure Mr. Corwin. I say, as I have stated on oath before a committee of the House of Representatives, that there was no man con-

nected with the government who showed a stronger desire than Mr. Corwin to have this whole thing investigated and brought to light, or who more cordially gave official facilities for doing so. That statement was made as an act of justice. I will say to you, gentlemen, that I made it with pleasure, as the personal and political friend of Mr. Corwin, though it is much against my inclination to say anything in the way of party politics in an address before a jury; and I never, I believe, did so before. The committee of the House of Representatives, after a careful examination of evidence, in their report fully exonerated that excellent and distinguished man from censure in this matter. Although we knew all these things here, the writer of this letter, the political pugilist, the news contributor to newspapers in general, knew well what was Mr. Corwin's position before the American people, and how much indignation and sympathy would be felt by a large portion of them if they were assured that the attempt to bring Gardiner to justice was really a covert attack on Thomas Corwin.

But I now come to the most remarkable part of this letter :

“ We have been entirely successful in our mission, for we *have not only visited* the three mines owned by him, and many others in the vicinity, but have obtained a copy of the deed,” &c.

This witness testifies that they did not get the copy of the mining title until Monday morning, which was on the 29th of November; that they then went on that day to these mines; and that the journey to the mines, their exploration, and their return to Lagunillas, occupied until the following Saturday, a period of five days, which would bring them to the 4th of December; and consequently he could not have been prepared to say with truth before then that “ we have visited the mines,” &c., and then go on to describe them as this letter does. Here is his testimony in explanation of this most fatal inconsistency :

“ QUESTION. Are the dates to these letters correct ?

“ ANSWER. On the Sunday morning after we had examined the deed I wrote a portion of a letter, but it did not embody the whole of what is in the letter which has been shown me. When I came back from the mines, I took that portion, wrote this letter, and sent it off. The part of the letter shown me which refers to my visit to the mines, was not in the first of the letters; but in copying I suppose that I copied the date from the first paper.

“ QUESTION. I understand you to say that you wrote a part of the letter dated, and you went off to the mines ?

“ ANSWER. I wrote the letter which embodied remarks about Dr. Gardiner, the alcalde's notice, and our arrival at Lagunillas, but nothing about distance to the mines. That part I put in after I had returned.

“ QUESTION. You did not alter the date of the first letter ?

“ ANSWER. I see that the date of this letter is November 28; I must have copied the date from the first draught of the letter.

“ QUESTION. What day was it that you reached Lagunillas ?

“ ANSWER. The 25th or 26th of the month. We arrived there on Friday evening.

“ QUESTION. And on Saturday, as I understand you, you went to the alcalde's office ?

“ ANSWER. It was on Sunday morning.

“ MR. BRADLEY. I would inquire of the court how far this examination is to extend ?

“ THE COURT. This is only an explanation to make what follows intelligible.

“ MR. MAY. I understand you to say that the original letters contain the same dates as these copies, and that you believe them to be true copies.

“ ANSWER. I cannot tell certainly; I only judge from the dates which are to these letters. The day before we started for the mines I sat down and wrote a letter to my father, and one to Colonel Seymour. After I had returned from the mines, and when Slocum and Gardiner were sick, I sat down and copied a portion of the letter I had written before, and completed it.

“ QUESTION. After having written that letter, you then sent it to Colonel Seymour for publication ?

“ANSWER. A couple of days after my return from the mines I enclosed it to Colonel Seymour.

“QUESTION. I understand you to say that that portion of it published in his newspaper is a true extract?

“ANSWER. Yes, sir.”

You will recollect that when we obtained this testimony from this witness we had only copies of the letters sent to us by Colonel Seymour; but the next day we received the original of the letter of which I have read portions to you, and found it had been faithfully copied, and the handwriting was admitted by Abbott to be his—*dates* and all.

Now, gentlemen, it is for you to say whether this is a probable explanation. You will observe that there are several difficulties to be surmounted. There were three mistakes. There was a mistake in the day of the week, in the day of the month, and in the month itself, because November had become December, the “28th” the “4th,” and the 4th of December was not “Sunday,” but Saturday. But what have we in connexion with this letter? It is enclosed in one which was written manifestly afterwards, and which refers to it. The letter in which it was enclosed is as follows:

“LAGUNILLAS, November 28, 1852.

“You will be doubtless surprised to find you have a correspondent in the interior of Mexico. I send you the enclosed letter, which you may rely upon being strictly true in each particular. Dr. Gardiner will substantiate his claim, and the attempt to traduce his character, and to injure Mr. Corwin’s character, signally fail.

“Give my regards to Adams and other friends, and believe me truly yours,

“E. W. ABBOTT.

“Col. SEYMOUR,

“*Editor of the Commercial Bulletin.*

“If you publish the correspondence, please enclose copies of the paper to Carlisle and Bradley, attorneys-at-law, Washington, and Hon. Amos Abbott, Andover, Massachusetts.”

Though in the principal letter he had mistaken the day of the week, the day of the month, and the month itself, yet, when he writes another letter to enclose that principal letter, he makes *the same mistake*, except that he leaves out “Sunday.” You will all acknowledge that this letter of the witness Abbott is written in the same partisan spirit which animated the breast of Slocum when he wrote his letter the day before. Both letters cover the same ground, both use the same topics, and both are manifestly the emanation of the same mind. Although there is a remarkable coincidence in the topics of these letters as bearing on this case—the prosecution, its motives and objects, the share of the Mexican government in it, and the general sympathy expressed throughout for this defendant—yet there is one remarkable difference: the letter of Abbott is totally silent in regard to the attempt “to murder Dr. Gardiner and his party,” which was the principal topic in Slocum’s letter. Abbott’s vein seems to be of an entirely different character from that of Slocum. It runs into the soft and amatory. The attempt to murder Dr. Gardiner was the *most remarkable event* in their journey and in the biography of these two individuals; yet, in Abbott’s letter, not a single allusion is made to the chivalry with which they acted, or the bloodshed that took place, which Mr. Slocum commemorates in his letter to Mr. Pitman. He describes the scenery and everything else, except the jeopardy in which their lives were placed—except the bloody brigand fight. Whether it was that the mind of the writer, having been de-

voted to the consideration of tender and soothing subjects, was unable, like that of a distinguished man, "to look on blood and carnage with composure," is for you to determine; but so it is. There is a dead silence on the subject of the desperate attack and brave defence of these three heroes, and how six Mexican robbers were made to bite the dust, &c., &c.

As there is a conflict between some of the statements made by Abbott and Slocum on the one hand, and by Captain Barry and the commissioners on the other, I am calling your attention to the position in which those witnesses for the defendant stand before you, and am making such comments as I think are fair. You will recollect that in the course of the examination of Abbott, some allusion was made to some event in his past military history which was stated to have resulted in his being reduced from the rank of a sergeant to that of a private. He invited examination of the matter, and was desirous that you should hear the whole of it. Otherwise, the subject probably would not have been allowed to come before you; but as it has been brought to your notice, we must look at its bearings. His examination on this point is as follows:

"Mr. MAY. [To the witness.] I ask you, then, whether you were not a private in company H, of the second regiment of dragoons, and enlisted at Baltimore on the 10th of May, 1839, for five years; whether you got to be a corporal in March, 1840, and a sergeant in ———, 1840; and whether, at Fort Shannon, on the 12th of April, 1841, you were not reduced to the ranks from your position as sergeant?"

"Mr. BRADLEY. [To the witness.] You have a right to state all the facts and circumstances connected with your enlistment, and your being reduced in rank.

"ANSWER. I did enlist in Baltimore as a private of the 2d dragoons. From there I went to Fort Columbus, in New York, and thence to Florida. Shortly after leaving there, I was made a corporal, and a few days after that a sergeant. I acted as quartermaster sergeant of company H. I had the forage of that company under my charge, and had a special guard to take care of it every night. Two members of that guard, owing to some misconduct on their part, were placed by me in the guard-house. They were punished by Colonel Twiggs, on the complaint I made against them. On the night of the day when one of them was relieved from the guard-house, he was placed on guard in the forage-house. That day a negro, who had formerly been a guide for the troops in seeking out the Indians, came down to camp from the town, two miles above, riding a poor Indian pony which had been taken from the Indians. The negro was known to all the non-commissioned officers of the regiment. We had often listened to his stories about hunting the Indians. I told him that he ought to be ashamed to ride such a pony. I asked him why Captain Bryant did not give him some forage for it. He replied that he was too stingy. I then told him to take up a part of a bag of forage and carry it off to feed his pony with. He carried it off on his saddle up to the town. That night he came back before the guard was mounted, and brought a bottle of brandy, which he handed to me. It was a cold, rainy night, and the man I had placed in the guard-house being on guard, and appearing to be sick, I got up myself, took the bottle of brandy and gave him a drink of it. He went next morning and complained to Sibley, who was in command of the company, that I had sold forage to a negro for a bottle of brandy. Your brother, [speaking to counsel,] Charles May, [referring to Colonel May,] was president of the court-martial, which I think was a very unfair one.

"QUESTION. Was Colonel Pike Graham present?"

"ANSWER. Yes, sir.

"QUESTION. Was Major Winship a member of the court?"

"ANSWER. I will not be sure about him.

"QUESTION. Have you seen him?"

"ANSWER. Not to know him. I remember Graham perfectly well. I have seen him since I came here. He came to Ceralvo.

"Mr. BRADLEY. Who ranked in Mexico—you or Colonel Graham?"

"ANSWER. He was at that time brevet major. I was lieutenant colonel of a volunteer regiment. I think that the charge made against me by Sibley was, embezzlement of the public property and giving liquor to a soldier on guard. I admitted both the fact of giving forage to the negro and the liquor to the soldier. I thought the affair a mere farce. I think that the court-martial did not find me guilty of the first charge, but they found me guilty of giving liquor to the soldier. I will not be positive, however, about that.

"Mr. MAY. Do you say, on your oath, that the court-martial did not find you guilty of embezzlement?"

"ANSWER. I do not remember. My impression is that there was some difference in the court in regard to the matter. The sentence was, that I was to be reduced to the ranks. If there had been any great embezzlement, my punishment would have been greater. I was a short time after honorably discharged, at the request of my friends.

"QUESTION. Was your discharge obtained while you were with your regiment?"

"ANSWER. No, sir. Shortly afterwards I was taken sick, and an order was given by the Secretary of War, at the request of Mr. Cushing, a member of Congress for the third district of Massachusetts, for me to go to Fort Columbus, at New York, as the climate of Florida had affected my health. At Fort Columbus a discharge was granted me, at the suggestion of Dr. Russell and other friends.

"QUESTION. Were you discharged as an invalid soldier on the 6th of March, 1842?"

"Mr. BRADLEY. Your discharge is in possession of the United States, and ask to look at it. Have you a discharge yourself?"

"ANSWER. I have. I admit that I was discharged at the hospital at Fort Columbus, on the application of Dr. Russell and other friends.

"QUESTION. [The witness's discharge having been handed to him by Mr. May.] Look on the margin of that discharge, and you will find the reason of it.

"ANSWER. It is dated the 4th of March, 1842. It states that my constitution was seriously impaired; that I was affected with intermittent fever and diarrhoea, and a general tendency to dropsy. The physician gave it as his opinion that my final recovery was very problematical. On his certificate I was discharged as an invalid soldier. I have entirely recovered my health since that time.

"QUESTION. Where did you reside until the Mexican war?"

"ANSWER. I resided for a portion of the time at Andover, Massachusetts, the residence of my father, and the other portion of the time in Boston.

"QUESTION. Is that your native place?"

"ANSWER. Yes, sir.

"QUESTION. Did you not serve during the Mexican war?"

"ANSWER. Yes, sir.

"QUESTION. Were you not appointed in your native town major of the regiment?"

"ANSWER. I was chosen major of the regiment at the same time that Cushing was chosen colonel.

"QUESTION. Who was lieutenant colonel?"

"ANSWER. Colonel Wright. I was chosen the first major.

"QUESTION. Was that the regiment of which Mr. Webster's son was major?"

"ANSWER. He was the major after me.

"QUESTION. When you were discharged from the service of the United States you went home to your neighbors and friends, and resided there until the Mexican war, and then became elected major of the regiment?"

"ANSWER. I returned immediately to Andover after my discharge, and resided in Massachusetts some three years. Had I been older than I was when I enlisted, I would have obtained a better position.

"The COURT. It what year was Cushing's regiment raised?"

"ANSWER. It went out to Mexico in 1847. The general order was given in November, 1846, just after the battle of Monterey.

"Mr. BRADLEY. After that time, were you thrown into association with General Twiggs and Mr. Graham of the court-martial?"

"ANSWER. I met Mr. Graham in Mexico. He dined with me one day at Serallo. I met General Twiggs a number of times. I invited him to visit Perote when I was there with Colonel Wright. I have conversed with General Twiggs here. I was his orderly when I was a sergeant in the service in Florida. He took a fancy to me, I suppose, because he thought I was rather a good-looking young man. I am perfectly willing the proceedings of the court-martial held on me shall be made public. I have always made the same statement in regard to the facts that I have this morning. It was a mere matter of humanity on my part, and nothing else.

"Mr. MAY. Were you regularly tried by the court-martial?"

"ANSWER. I looked upon the affair at the time as a farce.

"QUESTION. It was by its sentence, however, that you were reduced to the ranks?"

"ANSWER. Yes, sir.

"QUESTION. Did your friends know that these transactions had taken place in Florida, when you say they elected you a major?"

"ANSWER. All my friends knew of them. They knew I had been a non-commissioned officer.

"QUESTION. Did they know anything about the sentence of the court-martial?"

"ANSWER. I don't know that the public generally knew about it. Some of the officers knew about it. It was always a matter of joke with me.

"Mr. CARLISLE. Who was the president of the court-martial?"

"ANSWER. Charles May.

"QUESTION. What was his rank?"

"ANSWER. Lieutenant.

"QUESTION. Was he first or second lieutenant?"

"ANSWER. I forget. I think that in the spring of 1841 he was first lieutenant, in command of company C.

"QUESTION. When were you appointed lieutenant colonel?"

"ANSWER. I was chosen lieutenant colonel at Matamoras when Colonel Cushing was appointed general.

"Mr. MAY. Was not your regiment, or a considerable portion of it, put in durance for depre-
dation on the people of Mexico?"

"ANSWER. No, sir. General Cushing told them to take the regular uniform, and they re-
fused to do it. Some sixty or seventy refused peremptorily to obey, and they were marched
to the castle of San Juan de Ulloa.

"QUESTION. Were they not put in the castle for disorderly conduct and depredations on the
people of Mexico generally?"

"ANSWER. No, sir. I have said it was for refusing to take the infantry uniform of the United
States when the order was given. They wanted to wear their own uniform.

"QUESTION. Were they not put in for depre-
dation on the people?"

"ANSWER. There were single instances in that, as there were in other regiments. A great
many of the second dragoons were put in on that account.

"Mr. MAY. The fact is a matter of history.

"ANSWER. I repeat again that they were put in the castle for refusing to wear the uniform.

"Mr. MAY. Others have a different impression. This closes the case on the part of the
government."

That a man to whom Sergeant Abbott had given a drink of brandy should have informed upon him to the commanding officer, was a little out of the ordinary course of human affairs. A benefit, however slight, is not apt to be followed by such gratuitous vengeance as that. Brandy was, probably, pretty dear in the country where they were then stationed, and a bottle of it would be a considerable present to be made by a negro. You will probably incline to think it must have been more costly than a feed of corn.

But passing over all this, I desire to call your attention to the fact that a court-martial was held on this witness. He thinks the charge was, embezzlement of public property and giving liquor to a soldier. He admitted both the facts, as he explains them, but thought the whole affair was "a mere farce." The court-martial, however, thought it a serious matter. Mal-appropriation of property involves, as much as larceny, moral turpitude; and however trifling may be the value of the property, the moral and legal character of it is not changed by its being called "embezzlement." I do not say whether the sentence was just or unjust; but I do say that the charge was a grave one to be made against anybody, and more particularly against an officer: and further, though we may be uncertain whether his reduction to the ranks was a punishment affixed to the higher or to the lesser offence—to the embezzlement of property, or to the giving of liquor to the soldier—we are certain of one thing; and this is, however slight was Mr. Abbott's estimate of these transactions—though he "looked upon the affair at the time as a farce," though "it was always a matter of joke with" him, though it seemed to him so frivolous that he is not even sure whether he was convicted of embezzlement or not—that a man of very nice moral sense would not, could not, forget how a charge against him of embezzlement resulted. If he had been convicted unjustly of embezzlement, the sense of injustice and oppression would have rankled in his breast forever. He would

think there must be something wrong in human law—that there must be a radical defect in human justice, if, unconscious of guilt, he could be convicted of crime merely because he had yielded to an impulse of compassion. If he had been guilty, equally deep would be the impression on his mind. I say that the fact of his not being able “to remember” an event like that, which had so important a bearing on his character, presents him before you in unfavorable contrast with Capt. Barry and the commissioners. Do you believe that any one of them, if a charge of that sort had been made against him, would have forgotten what was the result of its investigation? No, gentlemen, surely not. The event on which I have been remarking is proper for your consideration in determining the relative credit of witnesses.

I have necessarily been obliged to treat some parts of this case rather summarily, for a notice of them, as particular as that taken of other parts, would have been a trespass on your patience probably beyond forgiveness. There is, however, one topic which deserves your attention. All the books tell you that in the investigation of the guilt of a party, you are to look at his conduct. The learned gentlemen upon the other side, admitting—and, indeed, claiming—the application of that principle, thought it proper, in the course of this discussion, to give it a construction rather more extensive than our side thought fairly belonged to it, and under that construction, by leave of the court, brought before you the acts and declarations of the defendant made before the board of commissioners. He claims here to be an innocent man. On all occasions, from the time of the indictment until the government was able to surmount the difficulties which were thrown in its way in the bringing of witnesses from a distant and hostile country, he was ready for trial; but when those witnesses came, he was not ready; and although those witnesses had been brought hither at great expense, and with much difficulty, they were sent back again on account of his express allegation, that he wanted time to get testimony on his side. The United States, his counsel said, had changed their front. They had claimed the right, on an indictment for false swearing, to give evidence of forgery, should they see fit to do so, and he had not expected anything of that kind, and needed time for bringing witnesses to show that he was innocent. A right so clear on our part was, when asserted by us in your hearing, objected to by the gentlemen on the other side; but the court overruled them, and evidence of forgery has been presented to you, which is of itself sufficient to place this man beyond all hope of escape.

You saw before you, although the defendant claimed to be an injured and innocent man, averring that everything he had done was just and true, a hard struggle to prevent our bringing before the jury his memorial, which we charged to be a false one. He was, at his own instance, or by his ready consent, examined before the board of commissioners on that very paper, jurat and all; he obtained his award and received his money on papers of which the memorial and jurat was one, and, by the rules of the board, could have done neither without the jurat; and yet, these repeated recognitions by him of the jurat notwithstanding, he struggled strenuously for two days to escape out of

court upon the technical objection that Mr. Myer, the justice of the peace, had forgotten the man who had taken the oath. Was that the conduct of an innocent man? Suppose he had succeeded, as he did not—suppose the court had sustained this technical objection, and that the memorial had not been submitted to your consideration—the case of the prosecution would have been broken down at the very start. He would have gone out of court; but where would have been his boasted reputation? He would have gone out of court, to use the language of a celebrated writer, “*infamous and contented.*” He was willing to have the prosecution broken down on a technical ground, to prevent the facts coming out before you which we have so clearly established. If he had been an innocent man, he would have braved and defied investigation; he would have courted it.

Now, gentlemen, I call your attention to another part of the defendant's conduct; and that is, his refusal to show, or even to describe with reasonable exactness, the mines which he pretends to. For some reason or other, he has always refused to do so, or even to allow a friend to go at the public expense to show them, when applied to for the purpose by Mr. Soulé, and also by the District Attorney, acting on the part of the government as its law officer. And yet you are told that he did offer to show them, or at least that an offer was made to show them to the commissioners who went out to Mexico. Now, what kind of offer was that? The chief of the commission published an advertisement in the Spanish language, offering a reward of \$500 to “the person who may give him exact and circumstantial information in regard to the silver mine and refinery which it is said belonged to Dr. George A. Gardiner,” &c. The advertisement goes on to describe the mine from the Rio Verde mining title. Though the advertisement was not confined in terms to the inhabitants of Mexico, it manifestly looked to local information from those who possessed it. It was never dreamed that an American citizen, and especially one who went out there with the defendant to become a witness to the truth, would have expected a reward; but, notwithstanding that, the commissioners were willing to give it to Abbott, provided his information were such as would be useful. But what was his offer? He did not offer even to go with them himself and show them the mines, but proposed to send a guide. These commissioners, then, were to go on a wild goose chase with an ignorant guide, to be shown these mines! It is a very easy matter, as you have seen, to show mines in the Republic of Mexico. There are many old mines in the States of Queretaro and Guanajuato, which border on the State of San Luis Potosi. What would have been the position of the commissioners had they acceded to the vague and shallow offer which was made to them? They would have followed the Mexican guide, we cannot conjecture whither; and he might have shown them some holes, or caves, or mines, or what not. But how would they have been able to prove to you *whose mines* these were? Suppose that even the writer of the letter had gone with them; what power had they of enforcing his attendance here as a witness? And any testimony which they could have given would have been entirely unavailing; it would have shared the fate of all hearsay evidence, and been shut out by the court. The commissioners made an honest, liberal, and reasonable suggestion, and said in

reply to Mr. Abbott, "You shall have these five hundred dollars"—and he admits that it was a great object with him—"you shall have these five hundred dollars, if Dr. Gardiner will say that the mines to be shown us are those which formed the subject of his claim—are those in controversy." But no; Gardiner would not agree to say this, but left the matter entirely in the hands of his friend Abbott.

The language of the chief of the commission was this:

"The advertisement published over my name, to which you refer, offers a reward for information about that mine, which was the subject of his (Gardiner's) claim at Washington. It is specially described in the original papers filed there by him, and the advertisement copies the words used therein. We have no instruction or inclination to look for or examine any other mine than that described in the original papers above referred to, unless the description therein given should be mistaken in some unimportant point, and *the promised reward will be paid to any one who will show us that mine.* If you are prepared to do so, you are requested to notify us at once, and to show us a written authority from Dr. Gardiner for this purpose, and a written admission on his part that the mine you show to us is the same which formed the subject of his claim."

Abbott says, in reply:

"This note and the former one are individual acts, and I must respectfully decline asking Dr. Gardiner to become a party to them, any further than has already been done, by stating that the mines and refineries mentioned are the identical ones *pointed out by Dr. Gardiner*, as basing his claim, and as directed to us by the original deed."

This witness has sworn before you that he never saw or heard of any deed of Gardiner's mines, except that in the alcalde's office at Lagunillas; that Gardiner never showed him any in the office of the prefect of Rio Verde; that he did not know that the papers presented at Washington purported to come from the office of the prefect of Rio Verde; and he added, "*All I knew of the case was what I had learned from Dr. Gardiner himself.*" So that the commissioners were understood by Abbott to have gone to Mexico only to hear at second-hand, from him, the same story that Gardiner had told at Washington; Gardiner, himself, refusing to say that it was the same story! refusing to write or sign three lines, saying, "the mines which Mr. Abbott offers to show are the same which were the subject of my claim!"

The commissioners would have been false to their trust if they had allowed themselves to go on such an idle tour as that which was proposed. When they went to the house of José Pando, at which the defendant stopped at Lagunillas, he was behind the door with his comrades listening to the conversation. If he supposed that the feelings of the commissioners were hostile to himself, then they were the men of all others on the face of the earth to whom he should have insisted on showing these mines. He should, if necessary, have tied the commissioners and forced them to visit his mines. He should have got *serranos* to carry them until they saw the mines. An honest man would have insisted on that. His friends would have insisted on that. He would not have let the golden moment pass in which his innocence might be manifested to all mankind. Instead of that, he refused to show them the mines. It has been shown to you that he was privy to the correspondence which passed between Mr. May and the witness, Abbott.

Now, gentlemen, look at the position of these witnesses. If they were such men as Captain Barry and the commissioners, who had gone to Mexico for the honest purpose of investigating truth, and removing

the veil which was stretched over this dark transaction, and Gardiner had refused to show them these mines, they would have *made him do it*. They would have said, "We are honorable men; we are American citizens; and although we have come to Mexico as your friends, we have come to be witnesses of the truth, and nothing else. Here is an opportunity to exhibit your innocence. Show these mines to the commissioners. They ask you nothing but what is right, and fair, and reasonable. They only ask you to put in writing the averment that these are your mines. You have said to us that they are yours, and you shall say so to them." But neither of them did this. Gardiner would not comply with the request on the part of the commissioners, and these chosen friends of truth and Gardiner did not urge him to do so. Now, what is the reason given for this refusal? They gave as a reason, that "his counsel had advised him to have nothing to do with these commissioners." Undoubtedly the learned counsel who have charge of this case, after looking at it in all its bearings, gave him such advice as they thought was best for his interest. But he must have known more than anybody else did about his own business. He knew the position in which he was placed, and he knew that the commissioners were there, and that they had called on him; and he might have said, It is not advice which, as an innocent man, I can follow: I will submit to the superior judgment of my counsel in regard to the conduct of the defence—of getting such evidence as will be important; but here is a question involving my personal character. Here is an opportunity which may never occur again of proving my innocence, and a refusal to avail myself of it will be a plain confession of guilt. But *did* he act in this particular according to the alleged advice of his counsel? No, gentlemen. Although he refused to do the only thing which would have made the acceptance, by the commission, of the proposition of Abbott, at all reasonable or sensible, yet, shielding *himself* under the advice of his counsel, he allows Abbott to do it. If he were sincere in his obedience to the advice of his counsel, he would have said, These gentlemen have taken my defence in their hands; they think I ought to have no connexion with the commissioners, and they know better than I do. I will not show these mines to the commissioners; and for the same reason, nobody else representing me shall do so. I will not do it myself, nor shall Abbott nor Slocum do it. Notwithstanding, however, he allowed Abbott to offer to send a guide to show the mines to the commissioners; and why? Because he knew that the commissioners could not possibly accept the offer. It was a mere trick—a mere stratagem on his part. It was a hollow answer to the hand-bill. The commissioners used every effort in their power to induce the defendant to commit himself, and even called at Pando's house to see him, but in vain. Some stress is laid on the fact that at that time he, as well as Slocum, was sick. He might have got one of these friends to write a few lines, saying that the mines proposed to be shown were those which belonged to him, and he might then have signed it; and that is all the commissioners wanted.

There are many other things about the conduct of the defendant, such as his travelling with a false passport, &c., which deserve notice; but I am unwilling to detain you, and will therefore

pass to another point. He has told us over and over again, in substance, that he has abandoned the description of his mine as found in the Rio Verde title; though every now and then it is insisted that both titles describe the same mine. He now claims according to the description in the Lagunillas title. The testimony of Abbott and Slocum as to the ownership is mere hearsay, derived from the defendant himself, and not so strong as his own memorial, because that is sworn to. Gardiner told them all they know about the ownership. He thus becomes a witness in his own case; and, moreover, not on oath, against a principle of evidence, on which you have seen so much important testimony on the part of the prosecution excluded.

THURSDAY, *May 20.*—I now invite your attention to some features of the two mining titles, and of the evidence adduced in support of them. Both these documents agree in the date of the denouncement of the mine or mines—the twelfth of July, 1844; but, according to the Rio Verde title, possession was given to the defendant on the *third* of September, and according to the Lagunillas title, on the *fourth* of September in that year.

In the Rio Verde title, which was that presented to the board of commissioners, the mine is thus described:

“An old mining district of silver, having a number of shafts and excavations, containing water and rubbish, entirely abandoned, without inhabitants, and not worked since the time of the independence, situated on a branch of the Sierra Madre, opposite of Serro Gordo, in the Sierra of La Huasteca, county of Lagunillas, in this department.

“The vein runs north and south, with a slight inclination to the *westward*, and dips to the westward about 45° , and is upwards of eight yards in width,” &c.

The paper states that Gardiner had “nominated the shafts ‘La Trinidad,’ ‘Dolores,’ and ‘San José,’ conjointly, the mines of La Sierra,” &c.

The Lagunillas title now set up gives the following description:

“In the mountains of La Huasteca, in the portion appertaining to this jurisdiction, there exists an old abandoned mineral district called the ‘Poder de Dios,’ which I hereby denounce in due form,” &c., &c. * * * *

“It suits my purpose to denounce one mine in the mountain of ‘the Rodesmo,’ where I wish one allotment of the legal space [pertenencia] to work it, with the name of ‘Sanusima Trinidad;’ and the other two mines I denounce in the mountains of ‘Santa Domingo’ and ‘San José,’ distant from the first nearly *two leagues*, where I ask for the other two *pertenencias* which I am entitled to, to work two mines—one in the mountains of Santa Domingo, which I name ‘Nuestra Senora de los Dolores,’ and the other in the mountain of ‘San José,’ which I name ‘Senor San José.’”

In the Rio Verde document, although the district is said “to be abandoned,” it is not said to be “without inhabitants;” while the Lagunillas title states the district “to be abandoned and without inhabitants.” It could not be said that the district was without inhabitants, because, according to the uncontradicted testimony which has been adduced here, “the village of Pinal” is close to the mines—a village which, from all appearances, existed long before the year 1844.

According to the Lagunillas document, “the scientific surveyor, Don Luis Ledesma,” was appointed by the alcalde on the 3d of September, 1844, to give to Gardiner possession of these three mines; and on the 4th of September, Don Luis (forgetting, perhaps, that possession had

been given on the day before) proceeded in company with Gardiner, Don José Zaravia, the constitutional alcalde, and two other Dons as attending witnesses, to the site of the three mines. Now what do this alcalde, the defendant, Gardiner, and the "expert" and "man of science," Don Luis Ledesma, all tell you about these mines? Why, this: The mine of "Santissima Trinidad" is at "some places" eight "varas [a vara has been proved to you to be a few inches less than our measure of a yard] in width, but *more commonly* about two and a half varas wide." They next "proceeded to the mountain of Santa Domingo, which is distant from the first a little *upwards of two leagues*, where is situated the mine called 'Nuestra Señora de los Dolores.' Of this mine Don Luis "pronounced the course of the vein to be north and south, with a slight inclination to the *eastward* of about forty degrees." The vein, they tell us, is "two varas in width, and in *some* places there are deposits of ores of upwards of ten varas in width." In regard to the third or remaining mine, called "San José," Don Luis Ledesma states "the course of the vein to be north and south, with an inclination of forty-five degrees from *west to east*."

So, gentlemen, the Rio Verde title gives you but one mine, *one* vein, and *three shafts* in the same place; the Lagunillas title gives you *three* different mines, three veins, two of which are distant two leagues from the third. Two of the Lagunillas veins run in a direction contrary to that of the Rio Verde vein: the general width of one of the Lagunillas veins is only two and a half varas, and of another of them only two varas, whereas the width of the Rio Verde vein is throughout upwards of "eight" varas. The inclination of two of the Lagunillas veins is *eastward*, and the inclination of the single vein commemorated in the Rio Verde title is *westward*. Pity it is that Don Luis Ledesma, with all his science, should have been ignorant of the Rio Verde document.

A master mind of the last and present century, in a philosophical inquiry, laid great stress on the doctrine of *compensation*. If that doctrine could be plausibly transferred to a practical tribunal—to a court of justice—this defendant might, I agree, invoke its aid, by setting off, against the discrepancies apparent on the face of his two mining titles, one coincidence between them which is quite as remarkable. In the Rio Verde certificate it is stated that the record of the title is, "in the book of registry of mines of *this office* appertaining to the year 1844, at *folio fifteen*, over." On our following him sixty miles off, to Lagunillas, we learn from him that his mining title is also THERE recorded at "FOLIO FIFTEEN of the *proper book*, and returned to the party, and a note made to that effect!" You recollect that it was a part of the effort on the cross-examination to show that the mining titles were not in a regular book, but were loose. We thought it highly improbable that such a practice could exist anywhere. We presumed that even Mexico would take some care of her public records—that when she meant to record proceedings at all, it would be done as we do here, in a book of registry. But we have shown you that, under the law, neither Rio Verde nor Lagunillas was the place for a book of registry. Now, what is the evidence as to the fact of the existence of any such pretended registry? Captain Barry went to Rio Verde last fall and made a diligent search for the mining title and this book of registry. You

recollect the severe and protracted examination to which he was subjected in order to show that he did not understand Spanish. It was argued that he had to depend on Mr. McCormick in interrogating the alcalde or prefect, or whoever it was; and that he must not tell what had been reported to him by McCormick, as he ought to speak only of his own knowledge. You have seen enough of him to know that when he goes to do a thing he is apt to do it well and thoroughly; and, if it be not done, to give a good reason why it was not done. After he had made a thorough personal examination of the office, he tells you that there was no mining title or book of registry there. Besides, Mr. Partridge testified that the commissioners had made a thorough search of the same office and all its records, but were unable to find either a book of registry or a mining title, or any paper whatever relating to mines, as we have seen there could be none under the law. But, it seems they have got a book of registry at Lagunillas, as well as at Rio Verde; and, what is a most remarkable thing, it appears that the mining title is on the very page of the Lagunillas book on which it is in the other book 60 miles off, and copied and certified by another official! So that, after all, this much decried country of Mexico, instead of being looser than the rest of the world in regard to records, preserves and adjusts them with a symmetry which is hardly conceivable on any principle short of witchcraft! Gentlemen, you will perhaps think that the defendant's coincidences are as suspicious as his contradictions, and stand in the same need of explanation. It is often by such ear-marks as these that knaves are caught.

The defendant in his application to the alcalde at Lagunillas says: "It suits my purpose to denounce one mine in the mountain of Rodesmo." This, gentlemen, is, I believe, your only acquaintance with this mountain. There is not, so far as I remember, a particle of evidence in the cause, oral or written, good, bad, or indifferent, except this Lagunillas document, to show that there is anywhere a mountain called Rodesmo. Its existence has sprung upon us as suddenly as that of the "nephew," who was created for the purpose of writing like one of the defendant's witnesses.

Having contrasted the two mining titles with each other, let us now apply to them some portions of the evidence adduced in support of them.

In the Lagunillas mining title, the defendant says that his mine of Trinidad is nearly two leagues distant from his two other mines, "Dolores" and "San José." Captain Slocum, on the 16th of April, having before him his memoranda for the purpose of refreshing his memory, testified as follows:

"QUESTION. Will you tell us the distance between the mines of Trinidad and San José?"

"ANSWER. I think it was five or eight hundred yards, in an air-line.

* * * * *

"QUESTION. You were asked this morning the distance between San José and Trinidad, and you said that it was from 500 to 800 yards?"

"ANSWER. (Referring to his memorandum.) The distance from San José to Dolores is 500 to 800 yards. The distance from San José to Trinidad is not down. The distance from Dolores to Trinidad is two or three times as far as San José to Trinidad—that is, about 2,400 yards."

Mr. Abbott, on the 18th of April, told you from the stand that "we did not go directly from the mine of San José to Trinidad, but by the

road we went I should say it was five or six miles. It would be impossible for me to say what would be the distance by an air-line. By the road we took from Trinidad to Dolores it would be about five miles."

On the 19th of April this witness testified as follows:

"MR. BRADLEY. Do you mean, then, that San José was three quarters of a mile from the refinery?"

"ANSWER. I did not mean that. It would be impossible to judge of the distance accurately, unless you could see from where you stood, because the mountains intervened, and you had to go round the base of the mountain to reach the refinery.

"QUESTION. From San José, nearly opposite, you say it is about three quarters of a mile?"

"ANSWER. I supposed that it was that, as near as I could judge.

"QUESTION. You stated that by the road from San José to Dolores it was two and a half leagues?"

"ANSWER. I was told yesterday that I had said it was two and a half leagues. I suppose, having been accustomed to saying leagues, I confounded it with miles; but I meant two and a half miles. From San José to Dolores the distance was about three miles. From San José to Trinidad about five miles, as near as I can judge."

Thus you see these two witnesses differ from each other, and from the Lagunillas title, as to distances.

Going back to the depositions filed with the board of commissioners in support of the Rio Verde mining title, we find many discrepancies between them and the testimony which has been adduced in the course of this trial. José Ochoa, in his deposition filed with the Rio Verde title, is made to swear as follows:

He was "the chief miner of the mines for upwards of two years." They "consisted of two main shafts," and "the air shaft of San José," and "the adit of San Andres"—there being throughout the whole depth "numerous workings or excavations of about a mile in extent on the course of the vein, in which were employed about 300 workmen." The "timbering, cleaning out, and ventilating them cost about \$45,000." He then speaks of the solid masonry buildings at each shaft, and their enormous cost; and says that after the defendant was expelled, "the timbering was burned, causing it to cave in," &c.

Gomez, who is put forward as the banker of the establishment, speaks of the steam-engine having cost, inclusive of charge for conveyance, \$29,500. Espinosa speaks of only one refinery, San Cristobal; all the depositions filed speak of only *one* refinery, and the claim asks payment for only one. Espinosa says there were "also storehouses, granaries, ore-sheds, quicksilver house, chemical laboratory, dwelling-houses, stables for two hundred animals, pay store, and other buildings belonging to this class of enterprise, *all* of which were of masonry, &c." Simpson, the superintendent of wood and surface work, says: "The timbering of the mines cost about \$50,000;" and he also speaks of the one refinery and of the extensive buildings and machinery at the mines. Arrellano, "engineer and surveyor of mines," speaks of the mine of San Andres, of the one vein running north and south and dipping to the west; says "the mines had been timbered within in the most efficacious manner;" and "about a mile from the mines he had built a refinery, called San Cristobal." That there were about five hundred workmen, and "a water-race half a league long." That "the timbering and cleaning out the mines to put them in a condition to be worked," cost \$60,000.

Now, let us see what sort of mines Slocum and Abbott saw. If their

descriptions be true, the mines which they saw were not the mines for which Gardiner was paid. Mr. Slocum testifies as follows:

He "did not recollect seeing the mine of St. Andres; saw no ruins of buildings at the mine of San José; saw no appearance of any erections of machinery; thinks he saw no ruins or remains of buildings at the mine of Dolores." The only vestiges he saw around Trinidad were two or three ranches within a quarter of a mile of it, "built on piles driven in the ground, and put together with lattice-work, covered over with palm-leaves or a sort of palisades."

"QUESTION. I understand you did not see the mine called St. Andres at all?

"ANSWER. I did not.

* * * * *

"QUESTION. Did you observe whether either of these mines, San José, Trinidad, or Dolores, had caved in?

"ANSWER. I did not."

He says he saw a building which Gardiner said was one of his refineries, about the size of this court-room, &c. He saw no remains of a water-wheel, or places where vats had been sunk, &c. He saw three or four refineries that Gardiner said were his. I am sure, gentlemen, that you cannot be induced to believe that a building of the size of this court-room would cost in Mexico, where labor is so cheap, \$60,000 or \$70,000. On the 18th of April Mr. Abbott testified as follows:

"QUESTION. Were any of the mines—San José, Dolores, or Trinidad—supported by timbers?

"ANSWER. I believe not.

"QUESTION. Did you see any remains of burnt timber near the mines?

"ANSWER. No, sir. Never saw a mine called San Andres."

In the testimony of these witnesses, Slocum and Abbott, you find a complete negative to material averments made by the defendant through the channel of the depositions filed before the commissioners. It is impossible that if these buildings of solid masonry, as all his depositions describe them, had been there, every vestige of them would have disappeared within a few years—that "like the baseless fabric of a vision," they should have

"Melted into air, into thin air."

All the troops of Mexico—all the troops of all the nations on the globe—could not have so utterly destroyed them as to "leave not a rack behind." If they had ever been there, some vestige of them would have remained, and have been discovered by the commissioners and Capt. Barry in their very minute and careful explorations. I have already called your attention to the fact that there are numerous old mines in certain parts of the republic of Mexico; and that there is no sort of evidence before you to identify the mines shown to these witnesses as those belonging to Gardiner, except *his own declarations* to those witnesses that the mines were his. He only is the witness to this most vital point. So far as the internal evidence goes, arising from a comparison of the mines which they saw, with those for which he claimed and received compensation, there is a total and radical discrepancy throughout. If you believe Captain Barry, the mines shown those witnesses were those of Jalpan, which are to the south of Lagunillas, and in the adjoining State of Queretaro.

On yesterday I stated the relative positions in which these witnesses, and the commissioners and Captain Barry, stood before you. I said that whatever compensation the commissioners and Captain Barry expected, they have received; and alluded to the fact of there being a total absence of anything in the evidence in this cause to show that there was any feeling of hostility or bias which could at all warp their testimony. There is one topic which I did not mention in that connexion, which I will notice now.

Mr. Abbott testified as follows:

“Mr. MAY. Then there is no contingent expectation on your part; all your claims were fully satisfied when your expenses were paid? (by Gardiner.)

“ANSWER. I have no expectation whatever. If he is successful, it rests upon his generosity to pay me what he may.”

It is for you to say, when a witness makes such a statement, whether he does not—however, perhaps, unconsciously—look forward to the result of this trial for a “generous” compensation, and how far the prospect may create a bias.

I will detain you no longer, gentlemen, than to resume and conclude a topic, the consideration of which was left unfinished yesterday. I then reminded you that in all criminal prosecutions the conduct of the accused was an important part of the case; and mentioned several circumstances in the conduct of this defendant which were inconsistent with the hypothesis of innocence, particularly the fact of his refusing to sign an admission that the mines which Abbott proposed to show, through a guide, to the commissioners, were his. The natural promptings of an innocent man would be to insist, even if the commissioners had not made the requirement, on their visiting and examining his mines. His excuse for his refusal is palpably frivolous and false. The other day, when allusion was made to a fact in the life of Mr. Abbott, that witness insisted on having it brought before you, although his wish was discountenanced by his counsel.

Mr. BRADLEY. He had no counsel here.

The DISTRICT ATTORNEY. I mean the counsel who called him.

Mr. BRADLEY. We called for the record, and when that was produced we made no further objection.

The DISTRICT ATTORNEY. The witness felt it due to himself that the matter should be investigated, and he insisted on its investigation. As to what the result was, that is an entirely different thing. I am now speaking of what is the natural emotion of the human mind when a charge affecting character is made. Even if a man is not guilty, and a charge affecting his moral character is made against him, he should, out of a proper respect to public opinion, be ready and willing to have the matter investigated, and take his chance as to the result. The fact to which I have alluded is one of the most significant parts of the history of this case. The Senate commissioners—the countrymen of this defendant, as it is said—went out to the country where his mines were alleged to be, and he had there an opportunity of manifesting his innocence beyond all dispute, by signing his name to three or four lines, stating that the mines which Abbott proposed to show to the commissioners were those which had belonged to him. If there were nothing

else in the case, his refusal to comply with this honest request is alone sufficient to convict him.

There is a circumstance in his conduct which will no doubt be relied upon by his counsel, and to which, indeed, they have several times adverted in the previous stages of this trial. It is that, when he went abroad, he left in the United States the money which he had obtained, and that when this charge was made against him he came back and surrendered himself for trial. His leaving his money here, it is said, is a strong presumption in his favor; but you find that repelled by a multitude of other facts. It is a part of the ordination of Providence that guilty men should sometimes make blunders; and unless this were so, we should rarely be able to detect and punish them. If they were always to act with perfect consistency—if they could guard every crevice through which guilt appears—they would seldom be caught, and society would continue to be their victims. It is only when in schemes of crime there is a moment of incaution, that something is overlooked.

Now, was there ever a case in which a guilty man might feel more confidence and more security that the veil which he had thrown over his crime would be impenetrable, than the present one? It is a case in which the defendant had fortified himself with such an array of testimony in his favor—testimony apparently from the highest functionaries in the republic of Mexico—that it escaped detection, though subjected to the ordeal of an intelligent tribunal, the board of commissioners. When his claim had passed that board, he had every ground of confidence that his guilt would forever remain undetected. Suspicion had been excited, but was removed; he was able to tranquilize the little disquietude which had arisen in the minds of the commissioners; he got the money, and then he felt perfectly safe. He came back from Europe, it is true; but on terms of his own making. He came back with his liberty; and with the assurance that provision would be made, out of the fund which the government claimed as its property, for indemnifying his bail. He was to be as free here as he had been in England. Having been thus far successful, had he not every reason to feel confidence in returning and going through this trial? His “men of science” might have told him that his “manifest destiny” was to escape detection in the future as he had in the past. His star was high in the ascendant. He had deceived Messrs. Evans, Smith, and Paine, and where was the danger of his crime being discovered by anybody else? He had one of the most admirably made out cases on paper that ever existed in the world. The law expressly provided that after the commissioners had made their awards and closed their duties, the papers which had been presented before them should be transferred to the State Department—there, as the defendant no doubt supposed, to have their long last sleep. By the act of Congress, the decision of the board was a final one. His condition was infinitely better in coming hither and taking his chances of trial, than by staying where he was. The government had enjoined every dollar which it could ascertain was left in the country, of the vast mass of plunder that he had made; it had enjoined between \$90,000 and \$100,000 in the hands of Corcoran and Riggs, and \$130,000 deposited with an in-

surance company in New York. If he had remained in Europe, he would have been there without money, if his statements are true; for you have been repeatedly told that the government had stripped him of all he had. And what would life have been to him without money?—money, for the sake of which, if the theory of the prosecution be true, he had risked his own soul. With him, where the treasure was, there was the heart also. Had he remained where he was, he would have been, according to his own showing, whether true or false, a beggar; while his return to the United States would subject him to perils no greater than he had before braved, and would afford to him the chance of getting the money again.

Gentlemen, I thank you for the patience with which you have listened to the extended observations that it has been my duty to make. Though you may have been fatigued, I am sure your candor will appreciate the necessities of this extraordinary case—extraordinary in its nature and history, and in the host of collateral issues and confusing elements which the defence has thrown into the investigation; and, long as I have trespassed on your attention, the time has not, perhaps, been more than the character of the case, its numerous and complicated facts, and the wide field to be travelled over, may have led you to apprehend.

On the present, perhaps my last, occasion of addressing from this position a jury of my fellow-citizens, permit me, gentlemen, to say that I do so under a deep—an almost overwhelming—sense of public duty. Never, in any country, did a criminal case devolve on all concerned in the administration of justice a responsibility more weighty than that arising from this trial. The magnitude of the fraud, the atrocity of its conception, the multiplied crimes by which it was consummated, and the bold front presented by the criminal—all fasten the attention of the whole country on this jury box. Other and more general considerations attract to your proceedings the watchful notice of foreigners. A great political philosopher has said that virtue is the principle of a republic. The existence of virtue among its citizens is, all history informs us, inseparable from a just and equal administration of the laws. It is our boast that in these United States all men are equal—all equally entitled to the protection of the law—all equally liable to its penalties. And yet it is the subject of frequent remark—a problem which has engaged the minds of speculative men—that when a criminal has the advantages of station, influence, association, or connexion, and sometimes even when the influence results from the crime itself, it is more difficult to bring him to justice in the United States than it would be in England. Though social distinctions are inwoven with the political system of that ancient monarchy, it may truly be said that in England “the law is no respecter of persons.” Gentlemen, will candor allow us to say that such is uniformly the practical spirit of our own law? Must we not admit, much as our countrymen have improved on their English ancestors, and important as are the points of superiority, yet that they have been less successful, because less vigilant, in a particular to which, in a principal degree, England owes her greatness and her glory? Our constitution wisely forbids—the temper of our people indignantly rejects as odious—all social distinctions. The last place into which they should be permitted to creep is the temple of justice.

If there be in the position of this defendant any circumstances like those to which I have adverted, it is due to you, gentlemen, to presume that they will not, because they ought not to, in the slightest degree affect your minds.

The public prosecutor sometimes finds it necessary or proper to warn a jury against indulging a feeling of sympathy with the criminal. In this case such a caution would be worse than idle. It would be an insulting mockery of your moral sense. Crimes have, indeed, been committed in which the magnitude of the plan, or the boldness or dexterity of the perpetrator, has been such as to work a sort of bewitchment of the imagination; and I shall not deny that some such romantic interest may be found in the case before you. But its influence is so amply overbalanced by the general effect of the whole picture, that I should be without excuse for insinuating that it can by possibility mislead you. Sympathy with this defendant! Why, what honest man has heard the testimony without feelings of indignation and disgust?—indignation at the wholesale baseness of the criminal, and disgust at his brazen effrontery!

The guilt of this man has, in our view of the evidence, been established in four different ways. If any of the propositions which have been argued is proved to your satisfaction, your verdict will be, “guilty.” If the defendant had not the means which he swears he had, and without which he could not have had the mines, he is GUILTY: If at the times when he was at the mines, if his oath be true, he was, in point of fact, elsewhere, he is GUILTY: If he had not the mines which he swears he had, or was not engaged in the mining operations which he swears he was engaged in, he is GUILTY: If he forged papers, or knowingly uttered forged papers, in support of his oath, the oath is false, and he is GUILTY. Now, gentlemen, I repeat that we have established ALL these propositions by proof—plenary, conclusive, unanswered, and unanswerable.

We cheerfully admit that if, on a careful consideration of the whole evidence, you entertain a reasonable doubt of the defendant’s guilt, he is entitled to an acquittal. But, gentlemen, the doubt must be a “*reasonable*” one; not a doubt forced by torturing your minds in search of one—not the doubt of subtle metaphysicians, but of practical men acting on practical common sense subjects. “To acquit,” says an eminent jurist, “to acquit upon light, trivial, and fanciful suppositions and remote conjectures, is a virtual violation of the juror’s oath, and an offence of great magnitude against the interests of society, directly tending to the disregard of the obligation of a judicial oath, the hindrance and disparagement of justice, and the encouragement of malefactors.”

We have no fear, gentlemen, that you will fall into any such error—that you will act on any doubt which is not reasonable. Once more, I thank you for your attention, which has been so long continued and so patient, that I feel it as a personal kindness. Having discharged, as best I could, my duty in this momentous case, I now leave it, so far as I am concerned, in your hands. I do so in the confidence that the action of a Washington jury will amply sustain the warmest eulogy which has ever been pronounced on the “TRIAL BY JURY”—that great pillar of our free institutions.

The first part of the paper is devoted to a general discussion of the
 subject, and to a statement of the objects of the present inquiry.
 It is then divided into two parts, the first of which is devoted to
 a consideration of the nature of the evidence, and the second to
 a consideration of the manner in which it should be received.
 The first part is divided into two sections, the first of which
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APPENDIX.

- I. THE MORELIA PAPERS.
 - II. THE RIO VERDE MINING TITLE.
 - III. THE LAGUNILLAS MINING TITLE.
 - IV. JOHN CHARLES GARDINER'S PETITION TO DOMINGO CHAVES, ALCALDE OF RIO VERDE, WITH THE ALCALDE'S DECREE.
 - V. JOHN CHARLES GARDINER'S DEPOSITION FOR JOSE PANDO TO SWEAR TO; AND HIS LETTERS TO MANUEL VERASTEGUI AND OTHERS.
 - VI. ADVERTISEMENT OF HENRY MAY, CHIEF OF THE SENATE COMMISSION, AND CORRESPONDENCE OF E. W. ABBOTT WITH HIM.
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I.—THE MORELIA PAPERS.

These papers were obtained by the Senate commissioners in December, 1852, at the city of Morelia, otherwise called Valladolid, in the State of Michoacan, from Mr. Antonio Quiros, to whom most of them were addressed. Mr. James Wright, who was despatched by the commissioners to Morelia, testified, on his examination before the jury on the 16th of March, 1853, that the signatures to all, and the body of the writing of most of them, were in the handwriting of the defendant, George A. Gardiner. He also proved the signatures of John B. Halsey and Andrew J. Halsey. [See *ante*, pp. 46, 47.]

The witness, in answer to a question put by Mr. MAY, said:

"I am acquainted with the handwriting of George A. Gardiner.

"QUESTION. Where, when, and how often have you seen him write?

"ANSWER. I have seen him write frequently in the city of Mexico, when he lived there, at Mr. Halsey's; and more frequently at Mr. Eddy's. I do not know any other places at which I have seen him write besides those I have named. I saw him write at those places at different times."

The Morelia papers were then shown to the witness, and examined by him.

"WITNESS. These papers are all signed by George A. Gardiner. The body of most of the papers is in his handwriting.

"QUESTION. Are you acquainted with the handwriting of Andrew J. Halsey?

"ANSWER. I am. I have seen him write; have seen letters written by him. I know the handwriting of J. B. Halsey; his name is John. We always called him John Halsey. I have seen him write; he kept a writing-school in Mexico; I have seen him write at the school and at different places. I do not know the handwriting of De Costa.

"QUESTION. (The original paper marked A. J. H., No. 33, is shown to the witness.) Say whose handwriting on this you can recognise from having seen him or them write.

"ANSWER. I recognise but the two Halseys' and Dr. Gardiner's. He wrote his name, in Spanish, 'Jorge Gardiner.'

"(Another paper shown.) I recognise but one signature to this; it is George Gardiner's.

"(Another shown.) I recognise three of the signatures; those of George Gardiner and the two Halseys."

Dr. Mackie also testified as to Gardiner's handwriting in the Morelia papers. [See *ante*, p. 47.]

Numerical list of the Morelia Papers.

These papers are numbered from 1 to 35, with the letters "A. J. H.," the initials of the name of Mr. Andrew J. Halsey, to whose deposition, obtained by the Senate commissioners, they are annexed as exhibits.

[A. J. H.—No. 1.] Jorge Gardiner to Antonio Quiros, dated San José Miraflores, December 16, 1844.

[A. J. H.—No. 2.] Jorge Gardiner to D. Mariano Maldonado & Co., dated San José Miraflores, December 16, 1844.

[A. J. H.—No. 3.] Jorge Gardiner to Antonio Quiros, dated San José Miraflores, January 5, 1845.

[A. J. H.—No. 4.] Jorge Gardiner to Antonio Quiros, dated San José Miraflores, January 12, 1845.

[A. J. H.—No. 5.] George Gardiner to Antonio Quiros, dated San José Miraflores, January 26, 1845.

[A. J. H.—No. 6.] Jorge Gardiner to Antonio Quiros, dated San José Miraflores, February 3, 1845.

[A. J. H.—No. 7.] Jorge Gardiner to Antonio Quiros, dated San José Miraflores, February 10, 1845.

[A. J. H.—No. 8.] Jorge Gardiner to Antonio Quiros, dated San José Miraflores, February 11, 1845.

[A. J. H.—No. 9.] Jorge Gardiner to Antonio Quiros, dated San José Miraflores, February 16, 1845.

[A. J. H.—No. 10.] George Gardiner to Antonio Quiros, dated San José Miraflores, February 24, 1845.

[A. J. H.—No. 11.] George Gardiner to D. Antonio Quiros, dated Hacienda S. José Miraflores, March 3, 1845.

[A. J. H.—No. 12.] George Gardiner to Antonio Quiros, dated S. José Miraflores, March 9, 1845.

[A. J. H.—No. 13.] George Gardiner to Antonio Quiros, dated San José Miraflores, March 27, 1845.

[A. J. H.—No. 14.] George Gardiner to Antonio Quiros, dated San José Miraflores, April 18, 1845.

[A. J. H.—No. 15.] George Gardiner to Antonio Quiros, (draft in favor of Esteban Santoyo for \$70 62½,) dated San José Miraflores, December 15, 1845.

[A. J. H.—No. 16.] George Gardiner to Antonio Quiros, (draft in favor of Faustino Hernandez for \$50, with endorsements of subsequent payees,) dated San José Miraflores, December 16, 1844.

[A. J. H.—No. 17.] George Gardiner to Antonio Quiros, (draft in favor of Esteban Santoyo for \$72 50,) dated San José Miraflores, January 12, 1845.

[A. J. H.—No. 18.] George Gardiner to Antonio Quiros, (draft in favor of Alejo Avalos for \$76,) dated San José Miraflores, January 14, 1845.

[A. J. H.—No. 19.] George Gardiner to Antonio Quiros, (draft in favor of Edwardo Llave, for \$40,) dated San José Miraflores, January 15, 1845.

[A. J. H.—No. 20.] George Gardiner to Antonio Quiros, (draft in favor of Esteban Santoyo for \$31,) dated S. José Miraflores, February 3, 1845.

[A. J. H.—No. 21.] George Gardiner to Antonio Quiros, (draft in favor of Alejo Avalos for 50,) dated San Jose Miraflores, February 23, 1845.

[A. J. H.—No. 22.] George Gardiner to Antonio Quiros, (draft in favor of Ysidoro Guillot for \$87,) dated San José Miraflores, February 24, 1845.

[A. J. H.—No. 23.] George Gardiner to Antonio Quiros, (draft in favor of Esteban Santoyo for \$11,) dated San José Miraflores, February 24, 1845.

[A. J. H.—No. 24.] George Gardiner to Antonio Quiros, (draft in favor of Esteban Santoyo for \$17,) dated San José Miraflores, March 9, 1845.

[A. J. H.—No. 26.] George Gardiner's receipt for \$10 to Quiros, dated Morelia, November 9, 1844.

[A. J. H.—No. 27.] George Gardiner's receipt for \$20 to Quiros, dated Morelia, July 18, 1844.

[A. J. H.—No. 28.] George Gardiner to Antonio Quiros, (draft in favor of Faustino Hernandez for \$70,) dated College of St. Nicolas, Morelia, November 24, 1844.

[A. J. H.—No. 29.] George Gardiner's receipt for \$2 94 to Quiros, dated Morelia, August 25, 1844.

[A. J. H.—No. 30.] George Gardiner's receipt for \$8 to Quiros, dated Morelia, August 31, 1844.

[A. J. H.—No. 33.] Regulations of the Mining Company of Curucupasco, signed by George Gardiner and others.

[A. J. H.—No. 34.] Receipt by Gonzalez for \$300, paid by Andrew J. Halsey, for half a share in the mine, &c., &c., dated Morelia, January 3, 1845.

[A. J. H.—No. 35.] Bond No. 3 of the mining company of Curucupasco, signed by the partners, dated Morelia, November 10, 1844.

The Morelia Papers, in chronological order.

[A. J. H.—No. 27.]

\$20.

MORELIA, July 18, 1844.

Received of D. Antonio Quiros the sum of twenty dollars as partner in the mines the "Union" and "Genio," ten dollars for tools—seven on account of expenses of denouncement, &c., and three dollars corresponding to the weekly expenditures for the first week, which commences next Monday, 22d instant.

GEORGE GARDINER, *Treasurer.*

[A. J. H.—No. 29.]

MORELIA, August 25, 1844.

As treasurer of the company who work the mine Guadalupe, and others that we have denounced, I received of the citizen D. Antonio Quiros, a partner of said company, two dollars and ninety-four cents, being his share of the cost of the denouncement of the water of the reducing establishment of Rincon, for the smelting of the ores of said mines.

GEORGE GARDINER.

[A. J. H.—No. 30.]

\$8.

MORELIA, August 31, 1844.

As treasurer of the company who work the mine Guadalupe, &c., I received of D. Antonio Quiros eight dollars for two weekly payments of expenditures—one payment extraordinary of five dollars, and another of three—the week to commence the second day of the coming month. Those who refuse to pay must continue to pay according to what was last agreed upon by all the partners.

GEORGE GARDINER.

Regulations of the Mining Company of Curucupasco.

[First part not in original paper.]

of ores, employing for this purpose all the clerks that may be necessary.

2. To denounce mines, purchase ores of other mines, reduce ores on shares in the reducing establishment, purchase the silver resulting from said reduction, and to speculate in this manner as may best suit the interests of the company.

3. To work mines of other persons, giving free shares in the same to their owners, and to contract for this business as may be most proper, but shall not purchase mines for money.

4. To present every six months at the general meetings, which shall be mentioned in another article, an account of the expenditure of money in the said periods, and to show the accounts, in whatever state they may be, or whenever called for by extraordinary meetings.

5. To recommend anything to the corresponding committee.

6. To purchase and sell things of small amount, but never to sell the principal property of the company without the consent of all the partners.

7. To keep the general and special books, as also the one called *De Actas*, which shall be provided for the purpose, and in which shall be entered the part that each partner may have.

8. Any of the individuals to preside at the ordinary and extraordinary meetings, except when there be any accusation pending against them.

Lastly. To direct the mines, the reduction of the ores, and the financial department of the company, with full liberty and absolute independence, in respect to which no one of the partners shall have anything to say, in order that the directors' department shall be alone responsible.

The attributes of the corresponding committee shall be to receive and fulfil all the commissions with which it may be encharged by the direction department.

9. The department of the direction, and the corresponding committee, shall be renewed every six months, and any of the same individuals may be re-elected, if at a general meeting it be so ordered.

10. They may be removed before this period on account of bad management, incapacity, or bad faith in the direction, the working of mines, reduction of ores, or in any other business of the company.

11. In order that the foregoing article have effect, it is necessary it be decided upon at a general meeting by two-thirds of the partners, excepting the votes of the directors.

12. If the resignation of the directors be of their own accord, and without notice, it cannot be admitted until a person be found in the company or out of it to replace them, the which shall be appointed by a majority at a general meeting.

13. The directors are not to have any salary, and there shall be only allowed them, for their living and office expenses, one hundred dollars a month for the two, which sum shall be paid out of the common fund.

14. The company names the partners and citizens Bonifacio Gonzalez and George Gardiner directors for the six months, beginning from to-day; and the citizens Antonio Quiros and Mariano Maldonado, as the corresponding committee.

15. The members of the company shall meet at a general meeting, in person, or by their representatives, named simply by a letter, on the first day of May and first of November of every year, in order to revise the accounts and attend to all business that may be presented; but the days afore cited can be changed whenever any unforeseen circumstance may require it; but this must not prevent the meeting from taking place during all the month of May and November.

16. Extraordinary meetings may be had whenever two individuals of the company require it, in order to take into consideration any subject that may (be) of interest to the company; and to obtain this meeting, application shall be made to the directors, who shall take the necessary measures for it to take place.

17. In deciding upon the business of the company, each partner shall have only one vote, whatever may be the part he holds in the company, and the majority shall decide. If, on voting, there result a tie, two disinterested persons—one by each side—shall be chosen, and, if necessary, a third shall be chosen by both, who shall decide definitively, except in cases in which are positively needed two-thirds of the votes.

18. If any circumstance should hinder a full ordinary or extraordinary meeting, it shall be considered as installed when six of the partners meet; but an account of what may have been agreed upon shall be immediately given to the absent partners.

19. When any partner shall resolve to sell all his part to any one not a shareholder, he shall advise the directors of it previously, if no prejudice can arise to the company from such sale, in order that it may have the preference; but in case any prejudice may arise, then the notice shall be given afterwards, so that the company may avail itself of the one and exclude the other. Should the sale be of a part of a share, notice shall be given of it under the same conditions, in order that the company may have the preference, and also in order that the following article may have effect:

20. No purchaser of a part of a share, who is not already a partner of the company, shall be considered as such except for the reception of his share of the dividends, and shall have no voice nor vote in matters of business.

21. If in future any of the partners purchase the entire interest of another or others, he shall replace the vendor or vendors in regard to their right of voting.

22. When the case occurs of the company's having a surplus of money in its favor, the directors shall order the respective dividends to be paid according to the shares each partner may hold; the same to be repeated tri-monthly, and in the months of November, February, May, and August, of each year.

23. All silver which may belong to the company shall be remitted to Mexico for the purpose of obtaining the advantages of exchange.

24. These regulations may be altered in the whole or in part, as experience may indicate, according to the decision of the majority had at a general meeting.

And all the partners having agreed to the foregoing articles, sign the same, in order to be governed by them, and make them valid.

MORELIA, *November the ninth, eighteen hundred and forty-four.*

The foregoing is a copy taken from the original existing in the archives of the directors of this negotiation, same date. (*Fhacet supra.*)

Signed by B. Gonzalez, Andres J. Halsey, O. M. Da Costa, Antonio Quiros, Maro. Maldonado Neira, George Gardiner, Ysidoro Gillot, J. B. Halsey, Simon Rosales, Ignacio Camacho.

[A. J. H.—No. 26.]

\$10.

MORELIA, *November 9, 1844.*

Received of D. Antonio Quiros ten dollars, as a partner in the mining negotiations of Curucupasco, for his part of one share, at \$10, for the purchase of animals for the negotiation.

GEORGE GARDINER.

[A. J. H.—No. 35.]

MORELIA, *November 10, 1844.**Mining Company of Curucupasco.—Bond No. 3.*

We, the undersigned, D. Bonfacio Gonzales, George Gardiner, Andrew J. Halsey, John B. Halsey, Mariano Maldonado Neira, Isidoro Guillot, Antonio Quiros, Ignacio Camacho, Simon Rosales, and Pelegrin M. Da Costa, the only partners in the negotiation called the Mining Company of Curucupasco, recognise Andrew J. Halsey as owner of two parts or shares of the twenty-four into which this negotiation is divided. Entered in the corresponding book.

Signed by Bonifacio Gonzales, Antonio Quiros, Mariano Maldonado Neira, George Gardiner, Ysidora Guillot, P. M. Da Costa, Andrew J. Halsey, Ignacio Camacho, Simon Rosales, J. B. Halsey.

[A. J. H.—No. 28.]

\$70

COLLEGE OF ST. NICOLAS, MORELIA, *November 24, 1844.*

MY DEAR SIR: Please pay at sight, to the order of D. Faustino Hernandez, the sum of seventy hard dollars, value received, and charge the same to the account of your obedient servant,

GEORGE GARDINER.

D. ANTONIO QUIROS.

DECEMBER 24, 1844.

Pay to the order of D. Juan Medal, of Tacambara.

FAUSTINO HERNANDEZ.

TACAMBO, *December 24, 1844.*

Pay to the order of Eugo. Bermijillo, of Pascuara.

J. MEDAL.

PASCUARA, *December 25, 1844.*

On account of the absence of D. Eugenio Bermijillo, the undersigned endorses to the order of D. Agapito Solarzano.

FRANCISCO ARRIAGA.

Received, Morelia, December 27, 1844.

AGAPITO SOLARZANO.

[A. J. H.—No. 15.]

\$70 62½

SAN JOSE MIRAFLORES, *December 15, 1844.*

Please pay to the order of Esteban Santoyo the sum of seventy dollars sixty-two and a half cents, for value received, and charge the same to the company's account.

GEORGE GARDINER.

D. ANTONIO QUIROS.

Received, Morelia, December 18, 1844.

SANTOYO.

[A. J. H.—No. 2.]

SAN JOSE MIRAFLORES, *December 16, 1844.*

ESTEEMED SIR: The hour has arrived in which it is necessary for me to defend my honor and reputation, which, unfortunately for me, are attacked by some imprudent persons.

I will say to you that I, having been the originator of these mining speculations, associated myself, rather for the sake of having a companion in labor, or be it on account of some fatal-

ity, with the man who till now has participated in the credit which I perhaps may have acquired, but not in the labors, the cares and anxieties which I have endured; and although I soon found out my error, and the sufficiently-perverse sentiments of him of whom I speak, I knew it would be impossible to effect a separation without great risk to the interests of all, because I had studied his character sufficiently to satisfy myself that our new undertaking could not resist his intrigues, and that an abyss of disorders would confound us on breaking with so powerful an enemy. Therefore, I encouraged myself to let my well-known reputation be endangered rather than let the interests which I considered under my especial protection suffer. The desired moment and the time for me to take off the mask at length arrived. Possession of the mine and of the reducing establishment has been given us; the tribunal has informed itself of all, and did not need any hints, because they knew him of old; we run no risk now, because none of his dishonest tricks can take effect, and thus his separation is to be desired. In good faith, the curtain was drawn at the critical moment at which my reputation was about to be endangered after so many sacrifices; and were it possible to depict my moral sufferings on account of being obliged so long to coincide with infernal ideas for the purpose of disconcerting them, the person the least susceptible would pity my sufferings.

Add to this all the weight of the responsibility and labor, and my situation has been but little enviable.

I alone have managed the money matters, and I believe that the accounts will prove the legal outlay of capital; but as I notice a certain inquietude or fear, I request that some one come and examine, and he will find that there is a difference between acting and speaking.

This undertaking ought to go on rapidly, or nothing will be done; and I think it strange that you will expose me to the fury of these barbarians by detaining the money for the weekly expenditures when I send for it. The work is to go on, or not to go on, and it is the same whether the money be expended little by little or at once, and let the work go rapidly on.

We have about eight masons, two carpenters, and two blacksmiths, several people cutting timber, and about eighty common laborers at work continually, all being engaged in necessary works. There are now arriving also thirty and forty mule loads of boards weekly, which cost \$1 25 for freight. There are oxen employed in bringing beams and heavy timber from the mountains; there are lime-burners burning lime; there are mud brickmakers and brickmakers, and the miners, who do not cease from working. All these gain money, and the expenses are seldom less than two hundred and two hundred and fifty dollars a week. The furnaces are well advanced, and the water-conduits will soon be done. The ditch will be finished this week, and nobody here doubts that all will soon be finished, and that the money will be sufficient.

I hope that you will decide at a meeting whether I merit the confidence reposed in me, or name another person to come and occupy a post so little to be envied.

I request that Mr. Maldonado present this letter to the partners, and answer me without delay, with the assurance of having the sincere thanks of his friend, &c.,

JORGE GARDINER.

Messrs. MALDONADO, CAMACHO, QUIROS, and Company.

Superscribed, "To D. Mariano Maldonado and Company, College of San Nicolas, Morelia."

[A. J. H.—No. 1.]

SAN JOSE MIRAFLORES, *December 16, 1844.*

MY DEAR SIR: I accompany with the present a letter to the partners, which I have addressed to Mr. Maldonado, fearing that your illness would not permit you to occupy your mind in regard to its contents. By it you will inform yourself of what is passing.

When I sent Mr. Augustin Bayon with a draft for \$200, it was because this amount was absolutely necessary to pay the weekly expenditures. You thought proper to send me only half of that amount, and I was obliged to ask a loan in order to pay the operatives. Consequently I had to give a draft to Esteban Santoyo for \$70 62½, and another for \$50 to another gentleman, which amount, \$120 63, when the drafts be presented, you will please pay them out of the \$245 in your possession.

I gave a draft to Mr. Medina against Gomez for \$306 12½ for the costs of possession, the same having amounted to \$314 12½, but he received here \$8 in cash.

For the expenditure of this week there is not even a *real*; consequently you will see whether it be best to send me on Saturday, by Mr. Esteban Santoyo, the amount of the enclosed draft for \$250; and if not, advise me by D. Augustin, in order that I may get rid of the insults of these barbarians.

The aspect our business has taken is very surprising to me, as is also the distrustful spirit of which some persons are possessed; but I trust that time will clear things up.

You will excuse the haste in which I write, and command your friend,

JORGE GARDINER.

D. ANTONIO QUIROS.

P. S.—I also gave an order in favor of the family of the carpenter, Hernandez, for eight dollars.

They say that during the coming week of the *Pascua* many of the operatives will go to their (native) towns, and I will then see if I can go and see you all.

Gonzales took away with him a pack-mule and saddle, and the deputies took two. You can receive them back.

Superscribed, "To D. Antonio Quiros, Morelia."

Noted on the outside, "Received 18th December; answered 19th of the same."

[A. J. H.—No. 16.]

SAN JOSE MIRAFLORES, *December 16, 1844.*

Please pay to the order of D. Faustino Hernandez the sum of fifty dollars, value received by this company.

GEORGE GARDINER.

D. ANTONIO QUIROS.

COLLEGE OF ST. NICOLAS, MORELIA, *December 24, 1844.*

Pay to the order of Don Juan Medal, of the town of Tacambo.

FAUSTO HERNANDEZ.

TACAMBO, *December 27, 1844.*

Pay to the order of D. Eugenio Bermijillo, of Pascuaro.

J. MEDAL.

PASCUARO, *December 25, 1844.*

On account of the absence of Don Eugenio Bermijillo, the undersigned endorses this to the order of D. Agapito Solarzano.

FRANCO. ARRIAGA.

Received, Morelia, December 27, 1844.

AGPTO. SOLARZANO.

[A. J. H.—No. 34.]

MORELIA, *January 3, 1845.*

Fourth seal, twenty-five cents.—For the years 1844 and 1845.

[L. s.] By the present it is proved that there has been sold to Mr. Andrew J. Halsey a half a share in the mine called Guadalupe, and its corresponding share in the establishment for the reduction of silver ore, called San José Miraflores, for the sum of three hundred dollars, which I hereby acknowledge to have received to my entire satisfaction; and for his security I extend this document of sale. And if this document be insufficient, I promise to make him another public one, and in due form.

BONIFICIO GONZALEZ.

Signed as witnesses:

GEORGE GARDINER.

J. C. GARDINER.

[A. J. H.—No. 3.]

SAN JOSE MIRAFLORES, *January 5, 1845.*

ESTEEMED FRIEND: I arrived at this place with the happiness and haste desired, and found every thing in a good state, and in the desired advanced condition. The furnaces are now covered, the chimneys finished; and all that is wanting to complete them is to lay the elevation at the base, (asentarel banco.) The water-conductors may be considered as finished, because, by means of the nails I brought with me, they will be done in three days. During all this week the posts which are to serve as pillars will be brought down from the mountains, as also some boards for the throat of the furnace chiflon. In this week we will undeceive ourselves in regard to the ditch, because we are thinking of putting the water in it. The mine presents us every day a more flattering appearance, because the ore is very pretty, and it appears difficult that we be deceived in its quality, which does not have a doubt. In my opinion, it would not be amiss to write again to Angangueo, to Trojis, and to Osumatlan, respecting oxide of lead, which D. Edwardo says can be obtained at eight a mule load; also, to see Patino, who, perhaps, may be able to give some information. There is near to Angangueo a reducing establishment, where much oxide of lead is produced, and where D. Carlos purchased it at eight dollars. To bespeak again at these places two bellows' noses, with the pipes: Don Edwardo says that he bargained for two bellows' noses, at five dollars, in the house of Gallegas. For all this, it would be well that my brother see if any thing is said to me in letters from Angangueo for your government.

A tanned hide is wanted here for the bellows; and if any empty quicksilver flasks could be bought very cheap, they would be useful; but they are not absolutely necessary. I do not say more, on account of my many occupations and in consequence of those which surround me, for its being pay day.

Regards to all friends, particularly to Messrs. Camacho and Maldonado, and command your friend, &c.,

JORGE GARDINER.

DON ANTONIO QUIROS.

[A. J. H.—No. 4.]

SAN JOSE MIRAFLORES, *January 12, 1845.*

ESTEEMED FRIEND: I send you by the bearer, D. Estaban Santoyo, a draft on the house of Gomez for \$200, and I request you to remit to this place, by the same bearer, one hundred dollars. You will also have the goodness to pay to Santoyo the draft he carries on you for seventy-two dollars four *reals*. The hundred dollars which you will have over, you will reserve for other things which may occur within a few days.

I must be in that place on Saturday, but perhaps on Friday; consequently I do not write at length, because we will talk. I received a letter from friend Maldonado, the which I do not answer, for the same reason; and, supposing that you have returned to that place, I extend the draft on you in order not to change the course which, up to the present, our business has had.

Here every thing goes on from well to better, as I will explain at length when we meet. Desiring that all our friends be well, I am, &c.,

JORGE GARDINER.

D. ANTONIO QUIROS.

P. S.—If Mr. Quiros be not there, Mr. Maldonado will have the goodness to collect the draft and remit the hundred dollars.

Superscription, "Messrs. D. Antonio Quiros or D. Mariano Maldonado, College San Nicholas, Morelia."

[A. J. H.—No. 17.]

SAN JOSE MIRAFLORES, *January 12, 1845.*

Please pay the bearer, Don Esteban Santoyo, the sum of seventy-two dollars fifty cents, for value received, and charge the same to the account of the negotiation.

GEORGE GARDINER.

D. ANTONIO QUIROS.

Received, Morelia, January 16, 1845.

ESTEBAN SANTOYO.

[A. J. H.—No. 18.]

SAN JOSE MIRAFLORES, *January 14, 1845.*

Please pay to the order of the bearer, Don Alejo Avalos, the sum of seventy-six dollars, for value received by this negotiation.

GEORGE GARDINER.

D. ANTONIO QUIROS.

Received, Morelia, January 18, 1845.

COLLEGE OF ST. NICOLAS, MORELIA

ALEJO AVALOS.

[A. J. H.—No. 19.]

HACIENDA, SAN JOSE MIRAFLORES, *January 15, 1845.*

Please pay to the order of D. Eduardo Llave the sum of forty dollars, and charge the same to the account of the negotiation.

GEORGE GARDINER.

D. ANTONIO QUIROS.

Received, Morelia, January 17, 1845, for my father.

RAFEL ORTIGA.

[A. J. H.—No. 5.]

SAN JOSE MIRAFLORES, *January 26, 1845.*

As D. Edo. goes to that place for two days, I avail myself of the occasion to remit you the enclosed draft for a hundred dollars, in order to pay for the fifteen hundred pounds of oxide of lead that we have agreed for in the house of Mart. Mr. Alejandro goes also with mules to

bring said oxide of lead, and has instructions to go to your brother's shop. We hope he may not be delayed, because his mules are engaged.

D. Edo. will get a strong pulley, and will deliver the same to you, in order that it may also come on with the oxide of lead.

D. Edo. supposes that with this quantity of oxide of lead, and the ore amalgamated with lead, which is obtained here, there will be no positive necessity for more; consequently it will be well to write to Angangueo in order that, if they have not purchased the oxide of lead yet, they may obtain a bill of exchange for the purpose of replacing the \$260 in Morelia; for this it will be necessary to have an order from Mr. Rosales.

We are at a stand here for the want of oxen and the pulley to raise the water conductors; the water comes beautifully, with rapidity, and in abundance. Excuse my haste.

Your faithful friend,

GEORGE GARDINER.

D. ANTONIO QUIROS.

There is no weekly stipend to be paid now to Valderas, as his family is here.

Superscribed, "To D. Antonio Quiros, by favor, Morelia."

Endorsed, "Received 28th; answered 30th January."

[A. J. H.—No. 6.]

SAN JOSE MIRAFLORES, *February 3, 1845.*

DEAR SIR AND ESTEEMED FRIEND: I have before me your esteemed favor, received yesterday, dated 30th ultimo, and in answer I acknowledge the receipt of the 750 pounds (30 arrobas) of oxide of lead, &c., and it is a pity the quantity was not greater, as we expected.

In regard to the journey of D. Edwardo to Angangueo, I cannot help expressing my regret at it, because the business could have been done by means of letters without incurring that expense, because you know that the journey of Mr. Rosales cost us thirteen dollars, and God knows how much that of D. Edwardo will cost us. This gentleman was very desirous to go to Angangueo, as he had business of his own to arrange there, as he has availed himself of this circumstance to go there free of expense.

Besides, the putting up of the throat of the furnace (*chiflon*) has been delayed, as I have not been willing to determine the size of it, because, as it is to be of brick, I have desired that the smelter should determine this in order that he may have no excuse if it does not produce the desired effect.

And also, D. Edwardo is getting a salary of 12 dollars a week, and to employ him in things that another might do is to throw money away.

Finally, my friend, I speak with the frankness you desire; but were not this the opinion of the other gentlemen who see how things go on here, I would be silent and not say a word. By a letter to Mr. Halsey you can inform yourself of what I say, because in salary twenty-four dollars are spent, and there are persons who will not recognise those expenses.

I remit a bill on Mr. Gomez for \$300, which money is absolutely needed here; and if D. Edwardo arrive, and can be here by Saturday, it would be best to send it by him.

A bill also goes on you for thirty-one dollars in favor of Santoyo, which you will please pay out of the hundred dollars for the oxide of lead; and if D. Edwardo brings the money from Angangueo, you can then collect the trifle due you, and remit the balance here.

I am very sorry I cannot now comply with your desires in regard to the \$250, because, as you know, the bills of exchange pass through the hands of Mr. D——, and this gentleman has not yet placed my own at my disposal.

I desire you to continue to pay the weekly stipend of the carpenter, Fernandez, who is now the only one.

Have the goodness to send me your accounts, in order that I may thus know what I am to charge in the books.

Many regards to all friends, and receive you those of the gentlemen here, of my brother and your friend,

JORGE GARDINER.

D. ANTONIO QUIROS.

Superscribed, "To D. Antonio Quiros, College of San Nicolas, Morelia."

Endorsed, "Received February 5, and answered the 6th."

[A. J. H.—No. 20.]

\$31.

S. JOSE MIRAFLORES, *February 3, 1845.*

Please pay to the order of D. Estiban Santoyo the sum of thirty-one dollars, and charge to the account of the negotiation.

GEORGE GARDINER.

D. ANTONIO QUIROS.

Pay to the bearer, Juan Salto, February 3, 1845.

ESTIBAN SANTOYO.

[A. J. H.—No. 7.]

SAN JOSE MIRAFLORES, *February 10, 1845.*

ESTEEMED FRIEND: The servant Juan Salto arrived at this place without accident with the money, and last night D. Edwardo also arrived in good health. I am sorry that the little time allowed by these posts, and my many occupations, do not permit me to write with the attention demanded by friendship; but you can excuse these unavoidable defects.

In regard to the journey of D. Edwardo I have nothing to say, and only repeat, that what I did say was said in compliance with the frankness due to friendship, and in order to remind you of the sentiments of the other partners; but all that has passed, and I hope that these disagreeable occurrences may have an end.

We have done much here during the last week; still, on account of an unforeseen fatality, the smelting has not yet commenced, but I now believe that we have not to fear a much longer delay.

It gives pleasure to see the mine; the improvement is admirable, and the vein has nearly the four varas in width that has been ascribed to it, and all of it is good ore. Favored by good luck, and having no further accidents, all will go well.

Receive the sincere regards of my brother and Messrs. Guillot and Da Costa, and command your friend, &c.,

JORGE GARDINER.

D. ANTONIO QUIROS.

P. S.—Regards to the partners Camancho and Maldonado.

Superscription, "To D. Antonio Quiros, by favor, Morelia."

Endorsed, "Received the 12th, and answered the 13th February."

[A. J. H.—No. 8.]

SAN JOSE MIRAFLORES, *February 11, 1845.*

ESTEEMED FRIEND: The bearer goes for the sole purpose of delivering to you the present, with the enclosed bill of exchange for one hundred and fifty dollars, which is expressly for the

purchase of oxide of lead, which you can find in that city. In the house of Patino there is about 1,500 pounds, (*sesenta arrobas*,) and you may be able to find some also in other shops. Patino did not wish to sell his for less than two dollars *an arroba*, (25 pounds,) and if that price be still maintained, it is necessary to take it; perhaps you may be able to obtain it in small quantities. The object is to purchase litharge, because it is absolutely necessary to have it; with sixty or eighty arrobas (1,500 or 2,000 pounds) we shall have sufficient.

In case you should not be able to obtain the litharge, it is desired that the bill be returned here without being presented.

If the oxide of lead be obtained, it is desired that it be sent as soon as possible by those who bring freight from there, who will bring it at \$1 75 a mule load of three hundred pounds. For this purpose it would be well to obtain the services of the two brothers Martinez, who can provide muleteers; and in case they will not, we shall have to pay \$2 freight.

It is desired that the money which may be over be returned here by the bearer, D. Antonio Bayon, and we desire him to return with a definite answer, in order that in case you cannot obtain muleteers there, we may send them from here; so that what happened to us the other day, when Mr. Alexandre collected from us half freight and came with unladen mules, may not occur again; consequently, on the return of Bayon, we desire to know positively if any oxide of lead will come, what quantity, or if it be purchased only, and whether we can send for it with security; at all events, it would be best if muleteers could be procured there.

It appears to me that it is probable that some oxide of lead may be obtained now at the house of Lariatigui; in fine, we expect that you will do all that is possible; and with that hope, I pray you excuse your friend, &c.,

JORGE GARDINER.

D. ANTONIO QUIROS.

P. S.—D. Eduardo wants two dollars' worth of segars.

Superscribed, "To D. Antonio Quiros, by Extraordinary Courier, College of San Nicolas, Morelia."

[A. J. H.—No. 9.]

SAN JOSE MIRAFLORES, *February* 16, 1845.

ESTEEMED FRIEND: I have received your esteemed favor of the 13th, sent through Bayon; the muleteer has not yet arrived here, but probably will arrive to-morrow; consequently I have nothing to answer until I know with certainty the quantity and other circumstances in respect to the oxide of lead, except to give you thanks for the efficiency and promptitude with which you have aided our undertaking.

I have to inflict on you another trouble; which is, that you inform yourself how much lead there is in *all Morelia*, at what price it may be obtained, and whether it would be possible to purchase on three months' time, on account of the negotiation. We wish to know the same with regard to oxide of lead, because all that which will come by the muleteer will last only two or three days' smelting, and we shall have to stop until the silver be refined.

I do not know how we shall make out with the ore of Mr. Ojéda. I have been to his mine, and all his ore which he shew me is a hundred per cent. inferior to ours. It has a bad appearance; and if we take it, it will only be in order not to lose all the money already advanced.

As it always happens to fall to my lot to write on Sunday, and late at night, I cannot report at length in respect to the negotiation. I will only say that we have encountered unforeseen obstacles, but that they are already overcome; that our greatest affliction is the want of oxide of lead and lead, and that the mine gives us every day greater proofs of its value.

I request you again to give the information I ask in regard to lead and oxide of lead; and, with sincere regards to Messrs. Camacho and Maldonado, I am your sincere friend,

JORGE GARDINER.

D. ANTONIO QUIROS.

Superscribed, "D. Antonio Camacho, Morelia."

Endorsed, "Received the 18th, and answered 20th February, 1845."

[A. J. H.—No. 21.]

\$50.

SAN JOSE MIRAFLORES, *February 23, 1845.*

Please pay to the order of D. Alejo Avalos the sum of fifty dollars, and charge the same to negotiation.

GEORGE GARDINER.

D. ANTONIO QUIROS.

Received, Morelia, February 27, 1845.

ALEJO AVALOS.

[A. J. H.—No. 10.]

SAN JOSE MIRAFLORES, *February 24, 1845.*

ESTEEMED FRIEND: I received your esteemed favor of 20th instant, and notice all you say in regard to the oxide of lead and lead, upon which I shall say nothing now, because the mail is about to leave. I will see to-morrow, when the servant of Mr. Guillot leaves, if any thing occur.

I remit you a bill of exchange on Mr. Gomez for six hundred dollars, and at the same time I have drawn on you a bill in favor of Alejo Avalos for fifty dollars, and another in favor of Mr. Guillot for eighty-seven dollars, and another of eleven dollars in favor of the bearer, D. Esteban Santoyo. You will take the \$39 50 which is due you on the oxide of lead, the sum total being \$187 50, and do us the favor to send us the balance by Mr. Santoyo, or Halsey, if he arrive there (*esta*) by Saturday.

The shortness of time will not permit me to say more. Sincere regards to the partners, and command your friend, &c.,

GEORGE GARDINER.

D. ANTONIO QUIROS.

On the outside, "Please see if there be any letters for Mr. D. Costa in the house of Gomez or in the post office."

Superscribed, "To D. Antonio Quiros, by favor, Morelia."

Endorsed, "Received 26th, and answered 27th February, 1845."

[A. J. H.—No. 22.]

\$87.

SAN JOSE MIRAFLORES, *February 24, 1845.*

Please pay to the order of D. Ysidoro Guillot the sum of eighty-seven dollars, and charge the same to negotiation.

GEORGE GARDINER.

D. ANTONIO QUIROS.

Pay to the order of D. Esteban Santoyo.

YSIDORO GUILLOT.

Received, Morelia, February 26, 1845.

ESTEBAN SANTOYO.

[A. J. H.—No. 23.]

SAN JOSE MIRAFLORES, February 24, 1845.

\$11.

Please pay to the order of D. Esteban Santoyo the sum of eleven dollars, and charge the same to the account of the negotiation.

GEORGE GARDINER.

D. ANTONIO QUIROS.

Received, Morelia, February 26, 1845.

ESTEBAN SANTOYO.

[A. J. H.—No. 11.]

HACIENDA S. JOSE MIRAFLORES, March 3, 1845.

ESTEEMED FRIEND: I received in due time your esteemed favor and the \$405 of the bill of exchange, and again trouble your attention to remit to us some *arrobas* (an arroba is 25 lbs.) of powder, as many as the bearer can bring; one arroba of steel, and about six dozen ropes. You will have to obtain all on credit, because it will not now be easy to send a draft, but probably it may be during the ensuing week.

At the same time I request you to please send to the post office for my letters and remit them to me. All of us here are in tolerable health; and, with my kind regards to the partners, I am your sincere friend,

GEORGE GARDINER.

D. ANTONIO QUIROS.

(On the outside:) You can send the 150 lbs. of powder, as a mule goes on our account. Superscription, "To D. Antonio Quiros, College of San Nicolas, Morelia." *
Endorsed, "Received the 3d, and answered the 6th instant."

[A. J. H.—No. 12.]

S. JOSE MIRAFLORES, March 9, 1845.

MY DEAR SIR AND ESTEEMED FRIEND: I received with your esteemed favor of the 6th the powder, steel, and ropes; and the smelter of whom you speak, and who we need, (were in need of,) has arrived to-day. I write you with my usual haste, as those who do our errands are casual, and we must avail ourselves of all opportunities. I can only say to you and partners that to-day we have commenced smelting with one furnace the *greasy ores* (slabs?) and to-morrow and the day after we shall follow with the leaden ones, with small quantities of our selected ore. As we are in want of leaden ore and oxide of lead, we shall have to go on by degrees with our ores until they themselves give us a sufficient supply of oxide of lead.

The bellows and furnace are admirable, and as we could have desired.

The mine never has given such ore as it gives now, because the stones contain real wires of native silver, and everything announces a happy future.

I enclose to you a draft on Gomez for \$300, in order that you may pay yourself for the powder, steel, and ropes, and in order that you may please remit me a quintal of round iron, not very thick, or rather one-half of it small and the other half middling; and I draw a draft on you in favor of Santoyo for \$17, requesting that the balance of the \$300 be sent me by the bearer for the weekly expenditures. Santoyo assures me that the bearer is an honest man, although I do not know him; but I have employed him and one mule, because the money and iron are absolutely necessary.

The servant of Mr. Guillot bore a request to the house of Amescua for them to obtain something; and as he will not return yet, it is desired that what he requested may be sent by

the bearer, if you will take the trouble to send for it. If there be any way of disguising the money so that they may not know what they bring, in my opinion it would be well.

On Saturday, God willing, the silver will be refined, and we shall see what proportion (of gold) our ore will give. With sincere regards to the partners, I am your friend,

GEORGE GARDINER.

The bearer is to have \$1 75 for the journey.

Superscribed, "To D. Antonio Quiros, College of San Nicolas, Morelia."

Endorsed, "Received the 12th, and answered the 13th instant."

[A. J. H.—No. 24.]

\$17.

SAN JOSE MIRAFLORES, *March 9, 1845.*

Please pay to the order of D. Esteban Santoyo the sum of seventeen dollars, and charge the same to the account of the negotiation.

GEORGE GARDINER.

D. ANTONIO QUIROS.

SAN JOSE MIRAFLORES, *March 9, 1845.*

Pay to the order of D. Leonidas Valenzuela.

ESTEBAN SANTOYO.

Received for Mr. Valenzuela.

QUINTANA.

[A. J. H.—No. 13.]

SAN JOSE MIRAFLORES, *March 27, 1845.*

ESTEEMED FRIEND: Mateo arrived to-day, and I see, with great regret, the sad picture you depict us of our hopes. I have not yet changed my opinion, and every day I am more convinced that there is wealth concealed in it. D. Guillermo called here on his way, and will return within a few days. He said that the ore was handsome, and there was no doubt of its quality; that the furnaces were too large, and that all the ore had come out, more or less, as it went in the furnace, without being melted. In fine, he left me a few notes, and according to them the furnaces are being altered. The assay of the *Chamaco* ore was also unfortunate, as 12½ lbs. of lead was lost, and from 25 lbs. of ore there was only obtained ¼ of an ounce of silver.

D. Edwardo has made lately thirteen assays of very inferior ore, and has obtained silver, but of a poor quality. To-morrow he will make others, but of ores chosen by ourselves. I cannot comprehend where the malice exists, but this gentleman has become just the opposite of what he was; and as before he took pains to be well with us, and to defend and give assurance of the good quality of the ore, he now looks upon all with displeasure, &c., &c., and says it is useless to smelt again. D. Guillermo is to return here in about eight days, and then the furnace will be replaced, and we shall see then if he extend his hand to us as he has promised.

All is stopped, less the arranging of the furnace; and I hope that, although we be without money, the second assay will give better hopes.

Mr. Dacosta will naturally give you his opinion, and I do not write more on account of want of time, as it is 12 o'clock at night. Regards to the partners, and receive you those of my brother, and of this your friend, &c.,

GEORGE GARDINER.

D. ANTONIO QUIROS.

Superscribed, "D. Antonio Quiros, Morelia."

[A. J. H.—No. 14.]

SAN JOSE MIRAFLORES, *April 18, 1845.*

MY DEAR AND ESTEEMED FRIEND: I am very sorry if, in my former letter, in which I complain of my honor being severely attacked, I have offended any person innocent of the charges that I make against some of the partners. At the time of writing it, all, except those who always reside here, were in that city. If it were addressed to you it was because you were the legal channel of our intercourse, because I assure you that, were I certain of the individual, or individuals, who have so grossly attacked me, "another cock should crow to them." That my expressions were strong: I believe that language does not possess any term sufficiently strong for the injury done, and I am only sorry to trouble those who were not guilty; but my expressions were general, and he alone should be offended who knows himself in fault.

How is it possible that the credit of a man should be considered so lightly? How is it that any one will be bold enough to utter expressions or suspicions which he never can prove? It is perhaps believed, that because a person is prudent he has no blood in his veins!!!

From whence, my friend, could it have originated that I am poor, and should have needed the company's money to follow up my own little undertaking? Go to! go to! I can yet prove to them the contrary, and give them the lie in the face. Perhaps they do not remember that the accounts were revised and approved by Mr. Dacosta, when he arrived from Mexico; and from that time he has been here, seeing, from day to day, how the capital was applied. But these are explanations which are repugnant to a soul that has acted with the generosity that mine has; and I will only say to you, that I desire that the like baseness be cleared up, in order to know to whom I may address myself: at the same time, I desire you to show this to the other partners who accompany you, in order to justify [torn here] I have offended any one who be innocent, and repeating to you, as ever, I am your friend, &c.,

GEORGE GARDINER.

D. ANTONIO QUIROS.

Superscribed, "To D. Antonio Quiros, College St. Nicolas, Morelia."

II.—THE RIO VERDE MINING TITLE.

This is the mining title presented by George A. Gardiner to the board of commissioners; and on which, with the other depositions accompanying it, and with other papers filed by him, he obtained his award, and received from the treasury of the United States FOUR HUNDRED AND TWENTY-EIGHT THOUSAND SEVEN HUNDRED AND FORTY-SEVEN DOLLARS AND FIFTY CENTS.

"The citizen Francisco Fernandez, prefect of Rio Verde, State of San Luis Potosi:

"I certify that in the book of registry of mines of this office appertaining to the year 1844, at folio 15, over, is to be found an entry in the following words, to wit:

"*July 12.*—The American citizen Mr. George A. Gardiner, by profession a physician, of twenty-six years of age, and a resident of this place, has denounced, on the date hereof, an old mining district of silver, having a number of shafts and excavations, containing water and rubbish, entirely abandoned, without inhabitants, and not worked since the time of the independence, situated on a branch of the Sierra Madre, opposite of Serro Gordo, in the Sierra of La Huasteca, county of Lagunillas, in this department.

"The vein runs north and south, with a slight inclination to the westward, and dips to the westward about forty-five degrees, and is upwards of eight yards in width; its ores are the red sulphuret of silver; and he claims the rights and privileges conceded to restorers of abandoned mineral districts.

"Granted and conceded as requested by the petitioner, subject to apply for possession within sixty days, as prescribed by the ordinance.

“MR. MAY. Did you require him to produce a title?”

“ANSWER. He did produce a title. He produced this, which appeared to us to be a sufficient title. It is evidence of the title existing on the record there. There was evidence before us—I do not know whether you would regard it as evidence here—that he was working mines, and deriving a profit from them.

“QUESTION. Where is that evidence?”

“ANSWER. I do not know; it may have been parol evidence; but there certainly was sufficient evidence before us to convince us that he was working mines, and for that reason I was opposed to giving him more damages than he suffered at the time. That was one principal reason why I did not care to inquire into the title, because I thought if the title was good yesterday, it would be good to day, under all the circumstances which appeared before us.

“MR. MAY. If you were examining a land title, would you be satisfied with a mere abstract?”

“ANSWER. Certainly I would not, if I could obtain a full title.

“QUESTION. And for this reason you accepted this, being in ignorance of what the laws of Mexico were in regard to titles?”

“ANSWER. From the face of the papers we were satisfied he had complied with the requirements of the laws of Mexico.

“QUESTION. Then you were satisfied from the depositions that he was working mines?”

“ANSWER. Certainly; and we should have awarded him damages for the amount of loss he suffered, whether he actually owned the mines or not. We did not give him the value of his title. We had the evidence that he was there working mines. We considered that he had a title in Mexico, and we were satisfied of his rights there.

“QUESTION. Do you recollect whether the mining ordinances were before you?”

“ANSWER. We had a Mexican book relating to mines in Mexico.

“QUESTION. Did you ascertain the mode of obtaining titles to mines?”

“ANSWER. I do not know that we made an examination to see whether the abstract came from the right office or not. We examined the law as laid down in (the reporter did not get the name of the book) in connexion with this case, and we discovered nothing in it in opposition to the law as we discovered it laid down in that book.”

Augustine de Aguilar, a witness for the United States, on his cross-examination on the 7th of April, testified as follows:

“QUESTION. Ask him to look at the paper called ‘the mining title,’ and then ask him whether that is a mere denouncement of a mine, or a mere record or memorandum existing in the office of the prefecture, that a mine has been denounced? Whether it represents the denouncement of a mine, or a mere note that a mine has been denounced?”

“ANSWER. This paper pretends to be a copy of a denouncement of a mine, such as is found noted in a book, which it is said was kept for that purpose; that is, for the purpose of registering mines, in the prefecture of Rio Verde. He says that if notice is taken of the heading of the document of the registry, there is found on the fifteenth leaf a note or entry which reads as follows: [Witness here read the page referred to.]

“MR. CARLISLE. It is a copy of an entry.

“THE TRANSLATOR. The witness called your attention to this to prove that this pretended to be a copy of a denouncement.

“MR. BRADLEY. Ask the witness whether that is an application for a denouncement of a mine, or a record that a denouncement has been made?”

“ANSWER. He has said that it pretends to be a copy of the taking an account, or entry, or register that has been made in a book of the denouncement of a mine.

“QUESTION. The question is, whether this is a denouncement of a mine, or the record of a fact that a mine has been denounced?”

“ANSWER. He cannot give any other answer to the question than that which he has already given, that this pretends to be a copy of a register, or taking an account of the denouncement of a mine which is supposed to have been made, which register or account is found in the prefecture of Rio Verde.

“QUESTION. He has said that the prefects remit not “*informis*” [so understood] by statistical data, the forms of which he has manifested here, comparing it with the documents given by the State of San Luis Potosi?

“MR. MAY. That is, with the pamphlet which was produced the other day?

“ANSWER. Yes. In respect to the second part of the question, he says the paper that has been shown to him does import more than the proof or manifestation that can be found in the office of a prefect, because in that office by no means could there be found a notice, nor would it serve for anything that Dr. Gardiner had or had not denounced a mine.

“MR. BRADLEY. Ask him if the fact of a denouncement would not form part of the statistics of a prefecture?

“ANSWER. By no means. It is a subject quite away from the duties of a prefect. It is quite out of his jurisdiction.

“QUESTION. If a man had established a school in Lagunillas, would the sub-prefect report that fact to the prefect?

“ANSWER. He would say generally to the prefect of a department, there are so many schools in this town and so many in another.

“QUESTION. That is not an answer. If Dr. Gardiner had established a school in Lagunillas, would the sub-prefect make any note of it?

“ANSWER. Departing from the principle that a like notice would be out of the ordinary form, the prefect who might receive it would preserve it in order to take it into consideration in reporting to the government.

“QUESTION. Now if the sub-prefect had a notice that Dr. Gardiner had denounced a mine, what would be done with such notice?

“ANSWER. Nothing. An impertinent thing like that would be put to one side, under the statistical accounts.

“QUESTION. Are there any forms prescribed by law in which the reports of the sub-prefects shall be made to the prefects?

“ANSWER. There is a law which speaks of plans.

“QUESTION. Cannot each sub-prefect keep just such a register of statistics as he chooses for the making up of his reports?

“ANSWER. Leaving this matter to the pleasure of such authorities would produce confusion, and that is the reason why the forms on which these plans are made are established as a general thing.

“QUESTION. I did not ask him as to the forms in which these reports are made by the prefect to the government, but of the forms of the sub-prefect to the prefect—how such accounts are to be preserved?

“ANSWER. He has already said that there are various provisions which prescribe the forms in which the statistical accounts shall be given. This uniformity is the more necessary because many of the towns are composed of Indians, who are uncultivated, and it is necessary to tell them that they should make their reports in a given form. But in spite of that, they sometimes make it differently.

“QUESTION. Ask him if there is any law which prevents any individual who has denounced a mine from reporting that fact to the prefect?

“ANSWER. Such a thing would be out of the natural order of everything. It is not prescribed by law; but it is positively determined before whom denouncements shall be made

“QUESTION. Is there anything to prevent a prefect from putting upon the register of his office such a fact when communicated to him?”

“ANSWER. There is not only a law, but the constitution of the republic, and particularly the constitution of the State, which, in the absolute independence of its powers, completely shuts the door against the prefects and all functionaries of the executive power from mixing themselves up with judicial affairs; and consequently the prefect cannot make that note, because he would then invade the judicial power.”

Captain Barry examined on the 23d of March.

“QUESTION. I ask you whether you visited the office of the prefect of the town of Rio Verde?”

“ANSWER. I did.

“QUESTION. What was the name of the prefect?”

“ANSWER. His name was Francisco Fernandez.

“QUESTION. Did you see him?”

“ANSWER. I saw him; I conversed with him repeatedly.

“QUESTION. Did you examine the records in his office?”

“ANSWER. I did. I examined them with his consent.

“QUESTION. What did you examine those records for?”

“ANSWER. To see if I could get any denouncement of mines, or papers relating to mines.

* * * * *

“MR. MAY. I asked you if you examined the records in the prefect's office; what answer do you give?”

“ANSWER. I found no denouncement, or any papers relating to mines.

“QUESTION. Was he present?”

“ANSWER. He was present—he and his secretary.

“MR. FENDALL. Who was his secretary?”

“ANSWER. Juan P. Gutierrez, I think, was his name.

“QUESTION. Did he assist you in making this search?”

“ANSWER. The prefect himself assisted me.

“QUESTION. Had you free access, so far as you knew, to all the papers in his office?”

“ANSWER. So far as I knew, I had free access to all the papers in his office.

“QUESTION. You say that you could not find any paper of any description relating to the mine?”

“ANSWER. No; none of any description.

“QUESTION. Or a record of papers?”

“ANSWER. None.

“QUESTION. Or a register?”

“ANSWER. I found no paper, of any kind, relating to a mine.

[The Rio Verde mining title was exhibited to the witness.]

“MR. MAY. Had you a copy of that paper with you when you went to the prefect's office, at Rio Verde?”

“ANSWER. I had.

“QUESTION. Did you find any such paper as that there?”

“ANSWER. No.

“QUESTION. The prefect assisted you in the search, I understand?”

“ANSWER. He did. He pointed out where all the papers in his office were.”

James R. Partridge examined on the 1st of April.

“QUESTION. Will you say whether you went into the office of the clerk at Rio Verde?

“ANSWER. I did every day while there, except one, which was a feast day.

“QUESTION. Did you search there for records of mines?

“ANSWER. I did, and found none. The office was the prefect's office.

“QUESTION. Who was the prefect?

“ANSWER. Francisco Fernandez. I visited the office often, looked for records of mines, and found none.”

Cross-examined on the 2d of April.

“QUESTION. And in Rio Verde you went to the prefect's office and examined the records?

“ANSWER. Yes, sir.

“QUESTION. Did you or not find that the records in the prefect's office had been mutilated?

“ANSWER. We saw one book which had been injured as if by fire.

“QUESTION. Was that all?

“ANSWER. Yes, sir.

“QUESTION. Was there a record of a connected series of proceedings?

“ANSWER. I did not go chronologically through the records; I went through them with a view to ascertain a single fact with regard to mines.

“QUESTION. Did you or not go through the records from 1844?

“ANSWER. I did.

“QUESTION. Did you find them in chronological order?

“ANSWER. I did not examine them with that view.

“QUESTION. Well, sir, in Lagunillas; did you search the records there?

“ANSWER. I did.

“QUESTION. Did you find that they were in consecutive order for a number of years past?

“ANSWER. We did not find them in consecutive order.

“QUESTION. Did you find whether they were mutilated or not?

“ANSWER. I saw some that were stained as if they had been abused. *There is no such thing as a regular register.* The records are loose papers, unbound, and occasionally fastened together with a piece of tape.

“QUESTION. Did you look through them to see whether the dates were in consecutive order or not?

“ANSWER. I did not. I did not look at the chronological order.

“QUESTION. Were the papers there in a state of good preservation?

“ANSWER. Some of them were torn.”

Waddy Thompson, a witness for the defendant, on his cross-examination on the 12th of April, testified as follows:

“QUESTION. You say, when he was about to go to Mexico; at what time do you speak of?

“ANSWER. It was when he was going to Mexico in the spring of 1850. He went in 1849, and he also went in 1850. He must have left here about the first of July, 1849.

“QUESTION. When did he return?

“ANSWER. I left early in October, 1849, and returned late in November, 1849. Before that time Dr. Gardiner had returned; so that he left about the first of July, 1850, and returned, I think, in November. I was absent when he returned.

“MR. CARLISLE. You do not remember when he got back?

“ANSWER. He must have got back some time in November, 1849, the first time; the second time he left some time in March, 1850, and returned also in October or November.

1850. I left there early in October and returned late in November, and the papers which were afterwards brought back were filed with the commission before I returned.

“MR. MAY. These papers you speak of his bringing with him were the second batch—the mining title?”

“ANSWER. Yes, I never saw them except in the commission.

“QUESTION. All you know is, that you found them there?”

“ANSWER. I found them there, and went and looked over them.

“QUESTION. You don't know anything about his bringing them back?”

“ANSWER. No; I went to get them, and when I came back late in November, I found the papers in the commission filed among papers in his case.”

General Thompson had been examined on the 4th of October, 1852, as a witness before the select committee of the House of Representatives. His testimony before that committee was referred to on the trial, and portions of it were read. The following is an extract:

“QUESTION BY THE COMMITTEE. Do you remember when the depositions which Dr. Gardiner presented after he returned from Mexico were filed?”

“ANSWER. I cannot give the precise date. I left Washington about the 10th or 15th of October, 1850, and returned on the 19th of November, 1850. During my short absence Dr. Gardiner returned from Mexico, and the papers had been presented before my return. My impression is, that the *title deed* was among the papers last presented, but the date of the official certificate to that *title deed* will show whether it was presented then or before.”—[*Ho. Rep. No. 1, 32d Cong. 2d sess., p. 41.*]

III.—THE LAGUNILLAS MINING TITLE.

On the 15th of April, 1853, the defendant offered in evidence to the jury a copy of his mining title, which copy his witnesses, Abbott and Slocum, testified that they had obtained from the office of Alvino Olvera, alcalde of Lagunillas, on their petition to that officer, dated 27th November, 1852. The document is as follows:

[TRANSLATION.]

NOVEMBER 27, Year 1852.

Copy of a Mining Denouncement petitioned for by Messrs. John S. Slocum and Edward W. Abbott, citizens of North America.

The undersigned, citizens of the United States of America, appear before you, and with due respect say: That in order to discharge faithfully the duties which have brought us here, it is necessary that we should have a copy of the “denouncement,” (*denuncio*,) and the taken of possession of a set of silver mines made by Dr. George A. Gardiner, at your court, in the year 1844.

Have the goodness to order the said copy to be made out, as we protest to act in good faith, and also to replace this paper, with that of the corresponding seal, as none can be had at this place.

LAGUNILLAS, November 27, 1852.

EDWARD W. ABBOTT.
JOHN S. SLOCUM.

[Seal of the Constitutional Court of Lagunillas.]

LAGUNILLAS, November 27, 1852.

Let a copy be taken as asked for by the parties in their memorial, and let this copy be certified and given to them for whatever uses they may have.

The citizen Alvino Olvera, only constitutional alcalde, has thus decreed it, and signed the same with assisting witnesses.

ALVINO OLVERA.

Witness: MARCELINO SARAVIA.

Witness: PEDRO GOMEZ.

The following is a copy of the proceedings:

Juan Ygnatio de Azna, collector of revenues of the village of Lagunillas, in the department of Rio Verde: I certify, in due form of law, that the American citizen, Dr. George A. Gardiner, having applied to this office for stamp-paper, and there being on hand but one sheet of class 5th, I sold it to him, and as it might be detrimental to him to wait until more stamp paper reached this office, I hereby authorize him to use common paper until the proper kind can be procured, when he is to replace it.

VILLAGE OF LAGUNILLAS, *July 10, 1844.*

JUAN YGNACIO DE AZNA.

Señor Constitutional Alcalde of this village and Judge of the First Instance:

George A. Gardiner, an American citizen and resident of this village, by profession a physician and worker of mines, with all due respect, and as he best can by law, represents to your honor, that in the mountains of "La Huasteca," in the portion appertaining to this jurisdiction, there exists an old abandoned mineral district, called the "Poder de Dios," which I hereby denounce in due form; and as, by art. 5th, tit. 6th, of the mining ordinances, I have a right to demand three appendages, which, according to art. 2d of same chapter, these appendages may be continued or disconnected, it suits my purpose to denounce one mine in the mountain of the "Rodesmo," where I wish one allotment of the legal space, [pertenencia,] to work it, with the name of "Santisima Trinidad;" and the other two mines I denounce in the mountains of "Santo Domingo" and "San José," distant from the first nearly two leagues, where I ask for the other two *pertenencias*, which I am entitled to, to work two mines; one in the mountains of Santo Domingo, which I name "Nuestra Senora de los Dolores," and the other in the mountains of "San José," which I name "Senor San José." I make no mention of the last owners, for there is no remembrance of them in the place; therefore, in accordance with article 4th of the ordinance, the three mines should be considered well and properly denounced by me, whether they contain gold, silver, copper, or whatever Providence may have in store for me. I therefore ask your honor that, after being registered, this denouncement may be returned to me for my protection, and that public notice be ordered of the same, as directed by art. 4th, tit. 6th, of the ordinance, &c.

VILLAGE OF LAGUNILLAS, *July 12, 1844.*

GEORGE A. GARDINER.

I furthermore say that, having applied to the collector's office for stamp-paper, there was none, as will appear by the accompanying certificate. I would therefore request your honor to admit this petition on the present sheet, and allow the proceedings to be made out on common paper until they receive the proper stamp at the office. *Date ut supra.*

GARDINER.

VILLAGE OF LAGUNILLAS, *July 12, 1844.*

The above denouncement is hereby acknowledged to be presented, and is decreed to be admitted on the stamp-paper on which it is written, and the proceedings may be made out on common paper, subject to be replaced by the proper stamp; and it is also ordered that account be taken of it in the proper book, and that notices be placarded for three consecutive

Sundays; all in accordance with article 4th of the mining ordinance. The names of the denounced mines are hereby confirmed as the mines of "Santisima Trinidad," "Nuestra Senora de los Dolores," and "Senor San José," and these proceedings are to be returned to the party for the purposes prescribed by the aforesaid article of the ordinance.

The citizen José Zaravia, constitutional alcalde of this village, thus ordered and decreed it in the presence of the attending witnesses, there being no public notary within the distance prescribed by law.

JOSE ZARAVIA.

Witnesses: LEON FONTANELI.

PEDRO GOMEZ.

The above denouncement has been taken account of on the same date on folio 15 of the proper book, and returned to the party, and a note made to that effect.

Señor Constitutional Alcalde of this village and Judge of the First Instance:

George A. Gardiner, an American citizen, by profession a physician, and engaged in mining, with due respect and according to law, hereby says to your honor that, on the 12th of July last I denounced before your honor an ancient "*mineral*" district called "El Poder de Dios," situated in the mountains of La Huasteca, in the part appertaining to this jurisdiction, and there were ordered to be registered three mines with the name of "Santisima Trinidad," "Nuestra Senora de los Dolores," and "Senor San José," and said denouncement was accepted and ordered to be published, and returned to me for the purposes prescribed by article four of the ordinance, as may be seen by the said denouncement, which is hereto annexed. Having complied with every requisite, and the guiding-well being sunk upwards of the ten yards required by the law, I would request your honor to proceed to the said mines, in company with any expert you may appoint, in order that possession may be given to me, as prescribed by the article referred to, and that a copy of all the proceedings be given to me, that it may constitute my title deed. Being a just demand, I expect your honor will grant it as above, &c.

GEORGE A. GARDINER.

VILLAGE OF LAGUNILLAS, *September 3, 1844.*

VILLAGE OF LAGUNILLAS, *September 3, 1844.*

Accepted and admitted according to law, and let possession be given of said mines of "Santisima Trinidad," "Nuestra Senora de los Dolores," and "Senor San José," to the American citizen George A. Gardiner; for which purpose the scientific surveyor, Don Luis Ledesma, is appointed by this court, and be he notified for acceptance; and this being done, be a copy of all these proceedings given to said Gardiner, that, in accordance with the latter part of article four, of tit. sixth, of the ordinance, it may serve him as a title deed to the property. It is so ordered and decreed by the citizen "José Zaravia," constitutional alcalde of this village, in presence of the attending witnesses.

JOSE ZARAVIA.

Witnesses: LEON FONTANELI.

PEDRO GOMEZ.

On the same date, the scientific surveyor, Don Luis Ledesma, being notified of his appointment in the foregoing decree, said he accepted the same, and swore to be exact and faithful

in the discharge of his duties to the best of his knowledge and skill; and in testimony thereof he signed this, with me and my attending witnesses.

JOSE ZARAVIA.
LUIS LEDESMA.

Witnesses: LEON FONTANELI.
PEDRO GOMEZ.

And, therefore, Mr. George A. Gardiner being notified of the above decree, and of the appointment as above of the expert, signified his acquiescence, and signed the same.

JOSE ZARAVIA.
GEORGE A. GARDINER.

Witnesses: LEON FONTANELI.
PEDRO GOMEZ.

On the 4th of September, 1844, being at the mineral district called "El Poder de Dios," situated in the mountain of "La Huasteca," at the part appertaining to the jurisdiction of this village of Lagunillas, with the object of complying with the preceding decree, dated yesterday, in company with expert Don Luis Ledesma, Mr. George A. Gardiner, the party interested, and my attending witnesses, Don Leon Fontaneli and Don Pedro Gomez, I proceeded to give possession of the denounced mines called "Santisima Trinidad," "Nuestra Senora de los Dolores," and "Senor San José." Standing on the mountain called the "Rodesmo," I ordered the aforesaid expert, "Don Luis Ledesma," to proceed to the inspection of the mine there situated, called "La Santisima Trinidad," of its measurement and other particulars, which, accomplished by him, he pronounced the vein to have a north and south course, with but a slight dip of about forty-five degrees from west to east—its ores to be tractable red sulphuret of silver and white bronze; that at some places the vein is eight "varas" in width, but more commonly about two and a half "varas" wide; and that the "guiding-well" is upwards of twenty-five "varas" in depth, which is more than the ten "varas" required by art. 4th, tit. 6th, as requisite to give possession. After the aforesaid examination of the vein, we proceeded to measure off the apportionment ["*pertenencia*"] asked for, at this place, by the petitioner; and standing at the entrance of said mine of "La Santisima Trinidad," we measured from the level [camps] of the hill, where the mine is, to the north three hundred and fifty "varas," and from the same said entrance to the south to the rivulet which divides the mine from "San Antonio," fifty varas;" to the west to the foot of a large white rock, three hundred and fifty "varas;" and, lastly, to the east, towards the gap of the "Echadero," fifty "varas;" and having ordered the proper landmarks to be placed, prescribing the limits of this *pertenencia*, and these admeasurements being concluded, we proceeded to the mountain of "Santo Domingo," which is distant from the first a little upwards of two leagues, where is situated the mine called "Nuestra Senora de los Dolores," and being on the spot, I instructed the said expert, Don Luis Ledesma, to examine the vein—the quality of its ores, its course, inclination, and other particulars; and having complied, he pronounced the course of the vein to be north and south, with a slight inclination to the eastward of about forty degrees, its ores to be of a similar nature to those of "La Santisima Trinidad," there being also ores containing yellow bronze. The vein is two "varas" in width, and in some places there are deposits of ores of upwards of ten "varas" in width; and finally, that the "guiding-well" is upwards of thirty "varas" in depth. The inspection of the vein being terminated according to the above report of the expert, I proceeded to give the measurement for the limits of the "*pertenencia*" of the mine of "Nuestra Senora de los Dolores," as requested by the petitioner. At this place, and being at the entrance of the said mine, one hundred "varas" were measured to the north in the direction of the mine of "Santo Domingo," and to the south in the direction of the "Gap of San José," five hundred "varas;" to the westward, one hundred "varas;"

and to the eastward, one hundred "varas;" directing the respective landmarks to designate this "pertenencia." These admeasurements being finished, we proceeded to the mountain of "San José," where the mine of the same name is situated; and being on the spot, I ordered the expert to proceed in his examination of the vein, its course, inclination, class of ores, and other particulars; and having done so, he stated the course of the vein to be north and south, with an inclination of forty-five degrees from west to east; its ores to be very similar to those of the aforesaid two mines, but of less quality and not as tractable as those of "La Trinidad;" and lastly, that the "guiding-well" was upwards of fifteen "varas" in depth, with the requisite width.

The foregoing inspection of the vein being completed, I proceeded to measure off this last apportionment to Mr. Gardiner; and standing at the entrance of the mine, there were measured off to the north five hundred "varas" up to meeting with the limits of "Dolores," to the south one hundred "varas," to the west fifty "varas," and to the east one hundred and fifty "varas." Finally, I ordered the landmarks to be placed as prescribed by law, to designate this last "pertenencia."

Having accomplished the inspection of the veins and the measurements that demark the three apportionments of the same, the expert surveyor stated that he had concluded, and had discharged legally and faithfully his commission, to the best of his knowledge and skill, and in accordance to the oath he had taken. And I, the present judge, in the name of the supreme authorities of the nation, gave full and complete possession to the American citizen, Dr. George A. Gardiner, of the aforesaid mines of "Santisima Trinidad," "Nuestra Senora de los Dolores," and "Senor San José," and of their apportionments, as prescribed by the aforesaid limits, without there appearing in the whole course of these proceedings any one to object. And in the name of the same supreme authorities, I declare the said Gardiner to be absolute owner of the said mines; that he may sell them, grant them, or in any other way dispose of them; and he, in evidence of his ownership, went in, came out, tore up grass, and threw stones, and did all such things as evince entire ownership. And these proceedings being finished, are signed by the expert surveyor, the party interested, and by me, the present judge, with my attending witnesses, with whom I certify.

JOSE ZARAVIA.

GEO. A. GARDINER.

LUIS LEDESMA.

Witnesses: LEO FONTANELI.

PEDRO GOMEZ.

On the 9th instant a copy of these proceedings was granted, in compliance with the decree to that effect of 3d instant, which mention is made in testimony of the same.

The foregoing is a certified copy, faithfully taken, word by word, from the mining denouncement, at the date mentioned, which exists in the archives in this office, under charge, and which I give to the parties for whatever use they may wish to make of it, on common paper, there being no sealed paper; and in testimony thereof, I signed it with my assisting witnesses. I hereby certify to the same.

ALVINO OLVERA.

Witness: MACSIMO SARAVIA.

Witness: PEDRO GOMEZ.

The testimony in regard to this Lagunillas title paper is as follows:

John S. Slocum examined on the 15th of April, 1853.

"QUESTION. State, as near as you recollect, what steps you took in Lagunillas to ascertain if there was any mining title belonging to Dr. Gardiner?"

"ANSWER. On the morning of the day after we arrived there, I went over to the alcalde's office to see if the mining deed could be found.

"QUESTION. Did you find any?

"ANSWER. I did. Abbott and myself wrote to the alcalde requesting a certified copy.

"QUESTION. Did you have a copy of that made for you?

"ANSWER. We did.

"QUESTION. State whether you compared that copy with the original, or not?

"ANSWER. We did, word for word, and letter by letter.

"QUESTION. Is that the copy, sir? (showing the paper.)

"ANSWER, (after looking it through.) It is, I should think. I have no doubt of it.

"MR. BRADLEY. We now offer, if the court please, to read to the jury the translation of this mining deed. If the gentlemen on the other side desire it, they can have Mr. Bowes to look at the original while we read the translation."

Cross-examination.

"QUESTION. Have you seen any other mining title or paper relating to these mines of Dr. Gardiner except that which you saw in the office of the alcalde of Lagunillas?

"ANSWER. No.

"QUESTION. Was any other ever shown to you?

"ANSWER. No.

"QUESTION. No other was ever shown to you?

"ANSWER. No; not that I recollect."

Cross-examination continued April 16.

"QUESTION. You spoke of the original having the appearance of being stained; did you look through it carefully?

"ANSWER. I did.

"QUESTION. Did you examine every leaf carefully?

"ANSWER. Every leaf, every word, and every letter.

"QUESTION. Was it all stained?

"ANSWER. No; only on one corner of the whole document.

"QUESTION. Did you observe any new leaves in the title?

"ANSWER. No.

"QUESTION. You saw no new leaves?

"ANSWER. None; there were none.

"QUESTION. You saw no fresh alterations?

"ANSWER. I saw none.

"QUESTION. Did you see the name of George A. Gardiner signed through the document with fresh ink wherever his name was signed?

"ANSWER. I did not; I saw his name signed, but not with fresh ink.

"QUESTION. The only stains, then, that you saw upon any of the leaves of the original title deed, were on one corner?

"ANSWER. Only on one corner of the whole document.

"QUESTION. Were they all the way through it?

"ANSWER. Yes.

"QUESTION. You saw no other stains or any appearance of acids?

"ANSWER. No.

"QUESTION. Did you notice the appearance of the thread with which the leaves of the document were stitched together?

"ANSWER. I did.

"QUESTION. How was that?

"ANSWER. It was not new thread.

"QUESTION. Was there nothing unusual about it?

"ANSWER. It looked as if it was of the same age with the paper.

"QUESTION. As if it was put there in 1844?

"ANSWER. I do not know when it was put there.

"QUESTION. Did you look at the date?

"ANSWER. I saw the date.

"QUESTION. It bore the date of 1844?

"ANSWER. Yes."

Captain Barry, on his examination on the 23d of March, stated that he entered Lagunillas on the evening of the 19th of October, 1852. On his further examination on the 23d of March he testified as follows:

"QUESTION. Did you see the first alcalde of the town?

"ANSWER. I did.

"QUESTION. Talked with him?

"ANSWER. I talked with him repeatedly on my first visit there.

"QUESTION. And second?

"ANSWER. Yes.

"QUESTION. Did you visit the office of the alcalde on your first visit?

"ANSWER. I did; I visited the office and examined it.

"QUESTION. *Did you examine the office of the alcalde to see if there were any mining papers or any denouncements of mines in it?*

"ANSWER. *I did.*

"QUESTION. *Did you find any such papers there?*

"ANSWER. *I found none of any kind.*

"QUESTION. Was the alcalde present in the office?

"ANSWER. He was.

"QUESTION. At the time you made the search?

"ANSWER. At the time I made the search.

"QUESTION. The first alcalde?

"ANSWER. The first alcalde.

"QUESTION. The officer who had charge of the place?

"ANSWER. The officer who had charge of the place, sir.

"QUESTION. What time was that, as well as you can fix the date?

"ANSWER. *I think it was on the first or second of NOVEMBER,*" [1852.]

James R. Partridge recalled May 7.

"The DISTRICT ATTORNEY, (handing the witness a paper.) Is that the copy of the descriptive portion of the mining title in the alcalde's office at Lagunillas to which you referred on yesterday?

"ANSWER. Yes, sir; it is a literal copy of the descriptive portion of the mining title found in the alcalde's office at Lagunillas, showing the position of the mine. It was made on the spot, and from the original paper in that office. It agrees with the copies of the mining title which were handed to me yesterday. I never saw those mining copies until I saw them on the stand yesterday."

[“Mr. CARLISLE and the witness then compared the copy of the mining title brought from Lagunillas by Messrs. Slocum and Abbott with the copy of that portion made by the witness, and they were found to be literally the same.”]

"THE DISTRICT ATTORNEY. Did you perceive any variation between the copy of the mining title which was shown you and the original in the alcalde's office?

"ANSWER. I have a strong impression that the words 'Sierra de la Huasteca' were not in the mining title shown me at Lagunillas, but I cannot swear positively to the fact.

["MR. CARLISLE stated that the extract made by the witness was from the original petition of Dr. Gardiner.]

"MR. MAY. Did you examine the paper with a view of getting the descriptive parts?

"ANSWER. Yes, sir; I examined it three several times.

"QUESTION. I understand you to say that the Huasteca range of mountains was not mentioned in the original?

"ANSWER. That is my impression, but I am not willing to swear that it was not mentioned in the original. I am not so certain of that as I am of other things.

* * * * *

"MR. MAY. Describe the appearance of the mining deed that you saw at the alcalde's office at Lagunillas.

"MR. BRADLEY objected to the evidence.

"THE COURT. I think they may ask with reference to the appearance of the mining deed, as that was brought out by your cross-examination. The witness cannot say a word about what the alcalde said.

"MR. MAY. We have a right to question the witness as far as their cross-examination extended.

"THE COURT. You have not that right. You must confine yourself strictly to defence.

"THE DISTRICT ATTORNEY. When the witness was previously on the stand, this deed had not been produced.

"THE COURT. That is wholly immaterial. You can only ask him about the appearance of the deed, and you cannot go into the re-examination again. I know that very often a man is called back and made to say the same thing over again, but it is irregular. I do not suppose that gentlemen want to beat the matter out like gold-leaf.

"MR. MAY. We wish to examine the witness in regard to the points on which he was examined by Mr. Bradley.

"THE COURT. You cannot do that now. The time for doing so has passed.

"MR. MAY. We are, then, shut out from those inquiries on this subject with reference to which we have never asked him a single question.

"THE COURT. You have no one to blame for that but yourself.

"THE DISTRICT ATTORNEY. The witness on the stand took a copy of a portion of the mining deed which was in the alcalde's office.

"THE COURT. And it is on that ground that you are allowed to ask with reference to the appearance of that deed. As the court has already decided, you must confine yourself strictly to the defence. You may ask whether the witness saw the original deed, but you cannot go over the whole cross-examination.

"MR. MAY. (To the witness.) Describe the appearance of the mining title in the alcalde's office at Lagunillas, a portion of which you copied.

"ANSWER. The original paper, of which I copied a portion, was sewed in among some records of the year 1844. It was uniformly, though differently, stained from the documents before and behind it. The paper going before, and the one following it, were torn in the same place, but the original deed itself was not torn in a corresponding manner. [Here the witness explained to the court that on turning the original deed under, and placing the tear of the paper that went before it on the tear of the following paper, he found that they fitted exactly.]

"MR. BRADLEY. Was any part of the deed torn?

“ANSWER. No part of the deed was mutilated or torn. The papers between which it was sewed were torn.

“MR. MAY. Were they all sewed together, composing one document?

“ANSWER. There were a number of papers tied together, among which was the deed.

“QUESTION. Were there any other deeds in the bundle?

“ANSWER. It was the only mining title in the bundle.

“MR. BRADLEY. Did you examine the others?

“ANSWER. Yes, sir; I read the signatures on the other documents, and their character. They were civil proceedings of one sort or the other—suits, I suppose, before the magistrate.

“MR. MAY. Did you observe any other appearances about that paper besides those you have stated?

“ANSWER. The deed was stained in a uniform manner, but the documents preceding and following it were stained irregularly—that is, they were more stained in one place than in another. There was a spot on the paper preceding the deed, corresponding to the one on the paper which was behind it, but there was none on the intermediate leaves. The mining title was not mutilated in any way.

“QUESTION. Did you make a memorandum of this matter on the spot?

“ANSWER. I did. I hold it in my hand, and looking over it I find that it contains the same statements I made before, and which I make now. When I was examined before, I had not this memorandum with me.

“QUESTION. I understand that your attention was particularly invited to the appearance of the paper?

“ANSWER. I scrutinized it, of course, closely. I particularly examined it three several times.

“QUESTION. Did you observe the names and character of the functionaries by whom it was signed as officers and witnesses?

“ANSWER. Yes, sir; the decree in the mining title was signed by José —— as constitutional alcalde; whereas in all the other papers—that is, those which preceded and followed ——

“MR. BRADLEY objected to the witness proceeding further.

“MR. MAY. Cannot we show that the man who signed the deed did not sign the papers which preceded and followed it in the bundle?

“MR. BRADLEY. Mr. Partridge has stated that the other papers had no connexion with it.

“THE WITNESS. They had none in the world.

“MR. MAY. I understand you to say that that was the only mining title on record?

“ANSWER. It was the only one that we could find.

“MR. BRADLEY objected.

“THE COURT. I do not think that is strictly in evidence.”

[See *Mr. Partridge's* examination on the 9th of April, *post*, p. 178.]

Captain Doubleday recalled 9th May.

“MR. MAY. Did you see the mining title which was in the alcalde's office at Lagunillas?

“ANSWER. I did.

“QUESTION. Did you examine it carefully?

“ANSWER. Yes, sir.

“QUESTION. Describe its appearance to the jury.

“MR. BRADLEY. The witness has been examined with reference to this matter in his examination in chief. We would like to have the rule fixed.

“MR. MAY. This is the same question which has been asked Mr. Partridge.

“THE COURT. The Court is of opinion that the question may be put.

“THE WITNESS. It seemed to be stained very evenly. The stains were very much of the same tint. It was not unequally stained, like the rest of the papers to the right and the left of it. They had upon them what were apparently water-stains. These water-stains were of a different appearance from those on the mining title. The water-stains on the papers to the right and left of the mining title fitted each other. There was a large water-stain on the paper preceding the mining title which fitted exactly to a stain on the paper which followed it.

“QUESTION. Were the stains upon the mining title?

“ANSWER. They were not.

“QUESTION. Did you make a comparison with a view of satisfying your mind as to whether the stains fitted each other?

“ANSWER. Yes, sir; it was sewed on the back, and the edges in several places were not stained, but were of a brilliant white, like new paper.

“QUESTION. Did you read the paper through?

“ANSWER. Yes, sir; two or three times.

“QUESTION. Was the Huasteca range of mountains, or Cerro Gordo, mentioned?

“ANSWER. Neither was mentioned in it.

“QUESTION. Are you clear upon that point?

“ANSWER. Yes, sir; my attention was called to the fact, and I went back and made a special examination to see whether they were mentioned or not. It struck me as an extraordinary circumstance that they were not mentioned. I am certain that they were not.”

Captain Hunter recalled 10th May.

“MR. MAY. Did you see the mining title in the office of the alcalde at Lagunillas?

“ANSWER. I saw a paper there purporting to be such.

“QUESTION. Describe to the jury the mining title relating to the traverser.

“ANSWER. There was a document there composed of two papers: one was dark and the other light. The dark paper embraced the light-colored paper. There was a rent or tear on one corner of the leaves of the dark-colored paper. The white-colored paper was between the dark one, and the rents on the dark-colored paper, when I compared them, fitted each other precisely; that is to say, I became fully convinced that the rent in the paper that went before the mining title, and in the one that followed it, were made at one and the same time.

[“Here the witness explained that by doubling the mining title or light-colored paper under, he had compared the rent in the preceding paper with the one in the paper which followed the title, and found them to correspond.”]

“MR. CARLISLE. I understand you to say that there were a number of different files or documents sewed together?

“ANSWER. There was one small document pertaining to the same subject.

“QUESTION. Do you mean that the portions of the same document pertaining to the same matter on each side of the title were torn?

“ANSWER. I think so.

“MR. MAY. Did you read the documents?

“ANSWER. No, sir.

“QUESTION. Whom were they read by?

“ANSWER. Captain Doubleday and Mr. Partridge. I think they read them through. It was the signatures that were on the clean white paper. I made a little note of these facts at the time, which I now have with me. If desired, I will read it.

“MR. MAY. You cannot read it: you can only use it to refresh your memory.

“ANSWER. It is pretty nearly the same as what I have stated. It was made at the time I was there.

“QUESTION. Did you notice the inequality of the stains on the paper?

"ANSWER. The outer papers were stained.

"MR. BRADLEY. You may read the memorandum, if it be composed of facts. If the gentlemen on the other side know there is anything of opinion in it, you cannot read it. Is there anything of opinion in it?

"ANSWER. Yes, sir, there is.

"QUESTION. You cannot say anything about your opinion.

"ANSWER. That is the reason why I do not care to read it.

"MR. MAY. You have spoken of some papers on either side of the mining title as being dark-colored papers; do I understand you to say that those dark-colored papers were part of the mining title, or that they related to other matters?

"ANSWER. I did not read the documents through, and do not know whether they related to other matters or not."

On the 23d of April, the defendant offered in evidence another copy of the title alleged to be in the office of the alcalde at Lagunillas. This copy was stated to have been obtained by John Charles Gardiner in November, 1851, and to have been in the possession of the counsel for the defendant since January or February, 1852. It was now offered in evidence for the assigned reason that the counsel for the United States had, by their course of examination, sought to impeach the Lagunillas title deed, and particularly to show that no such paper was in the office of the alcalde of Lagunillas on the first or second of November, 1852. The copy now offered was excluded by the court, on the ground that no proof had been given of the signature and seal of the alcalde to the particular paper.

On the 25th of April *John Charles Gardiner* was put on the stand to supply this evidence, and the copy being shown to him, was examined as follows:

"MR. BRADLEY. Look at that paper and state whether you ever saw it before, or not?

"ANSWER. I have seen it before.

"QUESTION. Did you see the signatures of the officers appended to that paper, or not?

"ANSWER. I saw the name of Genaro La Vega signed to it, and afterwards the signature of the prefect of the prefecture of Rio Verde, Fernando Santa Maria.

"QUESTION. State in what capacity La Vega acted in signing the paper?

"ANSWER. He was judge of the ayuntamiento, which was what I suppose to be the alcalde of the municipality of Lagunillas."

Cross-examination.

"MR. MAY. Did you see him acting as judge of the ayuntamiento, or alcalde, at Lagunillas?

"ANSWER. I did not see him acting; I do not know what you mean by that; I went into the room and saw him sign it; I understood that he was either the judge or alcalde; it would be a difficult matter to say whether I saw him acting or not.

"QUESTION. What room do you speak of?

"ANSWER. What we term there the alcalde's office.

"QUESTION. Had it the appearance of being a public office?

"ANSWER. Yes, sir.

"QUESTION. Did he seem to be a person in authority?

"ANSWER. Yes, sir.

"QUESTION. Did he appear to be at the head of the office?

"ANSWER. He appeared to me to be so.

"QUESTION. When was this?

"ANSWER. In November, 1851.

"QUESTION. Was this office in the town of Lagunillas?

"ANSWER. It was in the plaza, opposite the house of Mr. Pando; it fronted the plaza.

“QUESTION. Did you see the alcalde signing other papers besides this, and appearing to be the person principally transacting business in the office?

“ANSWER. When I saw the man Vega, I went in to compare this copy with the original copy. The man I supposed to be the secretary read the original, and I read over this one. Afterwards we took the paper to the old gentleman, and he signed it. While we were reading he was reading and signing papers.

“QUESTION. Was that the only visit you made to the office?

“ANSWER. The day before that, I went to see whether I could get a copy.

“QUESTION. Did you see La Vega there?

“ANSWER. I did not see La Vega.

“QUESTION. From whom did you get the copy?

“ANSWER. I did not get the copy at that time; I went to inquire how I could get a copy of the title deed, and the secretary wrote me a rough draught of a memorial which it would be necessary to present to get this copy of it.

“QUESTION. Did you get the paper the same day, or on the next day?

“ANSWER. The next day, in the afternoon.

“QUESTION. Then it was that the secretary took that copy which he had written in the mean time, and carried it to him whose name you saw signed as La Vega?

“ANSWER. I went to the office in the afternoon, and I had to sign a few memorials. He said all that was necessary was the signatures of Senaro La Vega and his own. I wished to have it compared; I took this copy, and the secretary read over the copy which was at his office; I compared it, and it was like the original; the secretary then took it to Mr. La Vega, who signed it, and he signed it himself afterwards.

“QUESTION. He signed it in your presence?

“ANSWER. Yes, sir; I was in the room.

“QUESTION. What did you do then?

“ANSWER. I returned to the city of San Luis Potosi.

“QUESTION. The Lagunillas you speak of is in the State of San Luis Potosi?

“ANSWER. Yes, sir.

“QUESTION. What did you do there?

“ANSWER. I there found out that it was necessary that the signature of this man should be certified by the prefect of Rio Verde. I went to the prefecture of Rio Verde, and presented this document.

“QUESTION. At what time was that?

“ANSWER. I arrived there about six o'clock in the morning, having travelled all night, and I suppose that I presented it after breakfast, about half-past nine or ten o'clock. I do not speak precisely of the time.

“QUESTION. What was the day of the month?

“ANSWER. It was in the same month—towards the latter part of November; I remained a few days at San Luis Potosi.

“QUESTION. What did you do at Rio Verde?

“ANSWER. I handed it to the secretary, J. Pio Gutierrez, to have the signature of La Vega certified to. He said that he would have the matter attended to. I returned in the afternoon, desiring to leave that night. Mr. Gutierrez had written out a certificate, but it was not signed, either by the prefect or himself. I only saw the body of the certificate. He told me that it was necessary to go to the prefect's house, which was a dry-goods store opposite the prefecture, and under some arches. We took it to the prefect, Fernando Santa Maria, whom I knew before, and he signed it at his desk.

“MR. MAY. You went to Morelia in the latter part of July, 1844?”

“ANSWER. Yes sir.

“QUESTION. How long did you remain there?”

“ANSWER. I remained in the State of Michoacan, I think, until September, 1844.

“QUESTION. Were you in the city of Morelia during that time?”

“ANSWER. I was in the city of Morelia on the 16th of September. On that day the Mexicans have a great feast, because it is the anniversary of their independence. For that reason I can fix the date.

“QUESTION. Where were you between July and the 16th of September?”

“ANSWER. I was at Curucupaseo.

“QUESTION. Were you practising dentistry there?”

“ANSWER. No, sir; loafing, shooting ducks, &c.

“QUESTION. Did you visit a place called San José Miraflores?”

“ANSWER. I did not. I do not remember of any such place in Michoacan.

“QUESTION. What sort of a place is Curucupaseo?”

“ANSWER. It is a mining department of the State of Michoacan. It is a place where old mines are located.”

The document is as follows:

Copy in due form of the denouncement and possession of the abandoned mineral district called the “Poder de Dios,” which comprehends the mines of the “Santisima Trinidad,” “Nuestra Senora de los Dolores,” and “Senor San José,” which were denounced by the American citizen George A. Gardiner, on the 12th July, 1841, and possession of the same was given on the 4th September of the same year. [A rubric.]

I, the citizen Genaro Vega, constitutional alcalde of the town of Lagunillas, department of Rio Verde, in the State of San Luis Potosi, certify in all due form of law that there exists in the archives of this court, of the year 1844, a document relative to the denouncement of the abandoned mineral district called the “Poder de Dios,” made on the 12th July of said year by Dr. George A. Gardiner, of which a copy is given to his brother, J. Charles Gardiner, on account of his having asked it in a petition of the 10th instant, and in order to comply with the decree of the same date, written at the foot of the said petition; and as it is ordered that the petition be inserted before the said document, it says as follows:

Third seal, 50 cents. To the Constitutional Alcalde of Lagunillas, Judge of the Court of First Instance:

I, J. Charles Gardiner, an American citizen, temporarily in this town, appear before you in the most legal manner, and, reserving my right to the proper protests, say: that on the 12th July of the last year of 1844, my brother, Dr. George Gardiner, denounced an abandoned mineral district, called the “Poder de Dios,” recording three mines, called the “Santisima Trinidad,” “Nuestra Senora de los Dolores,” and “Senor San José,” of which possession was given him on the 4th of September of the same year; all of which, as is the custom in like cases, was reduced to writing (*se formó el expediente respectivo*), which document must exist in the archives of your court. If fortunately it were not burned by the mountaineers when they burned all the archives of this town; and if it do exist now, it suits the interests of my brother, Dr. Gardiner, to have a copy of it in due form; and therefore I request your honor to be pleased to order a copy, in due form, to be given me, of the said proceedings for the necessary (or suitable) purposes. My request is just, I swearing all that is necessary, &c. Town of Lagunillas, November 10, 1851.

J. CHARLES GARDINER. [A rubric.]

TOWN OF LAGUNILLAS, November 10, 1851.

Let the document referred to by J. Charles Gardiner be sought after, and, annexing it to the present petition, give him the copy in due form, as he requests, inserting also in it this

writing. Thus Don Genaro Vega, constitutional alcalde of this town, decreed and ordered, officiating with assistant witnesses, and with whom I certify, for want of a notary public, there being none within the distance prescribed by law.

GENARO VEGA. [*A rubric.*]

Assistant witnesses:

PEDRO GOMEZ. [*A rubric.*]

GREGORIO ALVARADO. [*A rubric.*]

On the same date Mr. J. Charles Gardiner being informed of the foregoing decree, said he heard it and signed the same.

We hereby certify to the same:

VEGA. [*A rubric.*]

J. CHARLES GARDINER. [*A rubric.*]

Assistant witnesses:

PEDRO GOMEZ. [*A rubric.*]

GREGORIO ALVARADO. [*A rubric.*]

[Here follows John Charles Gardiner's copy, varying in some respects from that of Slocum and Abbott.]

Juan Ignacio de Azua, receiver of the united revenue of the town of Lagunillas, in the department of Rio Verde, certify, in all due form of law, &c., the present copy is faithfully taken from the original, to which I refer, on fourteen useful written leaves, the first and last being of the second seal, and the intermediate ones of the fourth seal for the current two years, Don F. Francisco Reyes and Don Leonardo Rodrigues being witnesses of its being taken, besides my assistant witnesses, in the town of Lagunillas, department of Rio Verde, in the State of San Luis Potosi, 10th November, 1851.

We hereby certify to the same:

GENARO VEGA.

Assistant witnesses:

PEDRO GOMEZ.

GREGORIO ALVARADO.

And I, the judge who certify to the foregoing copy, swear that I am not interested in what is contained therein; neither am I an agent, lawyer, nor director of the Messrs. Gardiner; and in testimony of the truth, I sign the present, with my assistants, with whom I certify.

GENARO VEGA.

Assistant witnesses:

PEDRO GOMEZ.

GREGORIO ALVARADO.

I, Fernando Santa Maria, Constitutional Prefect of the Department of Rio Verde, certify that the foregoing signature of the citizen Genaro Vega, the present judge of the common council of the town of Lagunillas, is the same that he has always used in his private and official correspondence; and for the consequent effects I give the present, at Rio Verde, on the 27th November, 1851, signing the same with the secretary of my office.

FERNANDO SANTA MARIA, (abbreviated.)

J. PIO GUTIERREZ.

IV.—JOHN CHARLES GARDINER'S PETITION TO DOMINGO CHAVES, ALCALDE OF RIO VERDE, AND THE ALCALDE'S DECREE.

John Charles Gardiner cross-examined on the 26th of April.

“Mr. MAY. Were you in Rio Verde in October? [1851.]

“ANSWER. I went for the paper, which has been referred to, in November—[the copy of the mining title from Lagunillas.]

“QUESTION. You cannot say that you were there in October ?

“ANSWER. I think that I returned to San Luis Potosi on the 25th or 26th of November; I do not think that I was in Rio Verde in October.

“QUESTION. Do you know Domingo Chaves, the principal alcalde in Rio Verde ?

“ANSWER. I do not remember him at all.

“MR. MAY, (handing the witness a paper marked No. 18.) Is that in your handwriting ?

“ANSWER. The signature attached to it is my own. I do not know whether the body of the paper is in my handwriting or not.”

A translation of the paper was then read to the jury, and is as follows :

Fourth seal, L. S., for the years 1850 and 1851. 12½ cents.

To the First Constitutional Alcalde of this city :

I, J. Charles Gardiner, a citizen of the United States, and temporarily in this city, appear before you, in the most legal manner, and say that my brother, Dr. George A. Gardiner, worked mines in the point (or place) called Lagunillas, in the Huasteca range of mountains (*Sierra de la Huasteca*,) and known by the name of “Trinidad,” “Dolores,” and “San José ;” he spent in them a large capital, which he had to abandon on account of having been expelled by virtue of the first article of the decree of the 24th of October, 1846, which was issued by the government of this State. As is to be supposed, not only was the capital invested lost, but also were the profits which must have resulted therefrom ; and now, in order to make his rights prevail in our republic, it is necessary that the witness who may be presented shall be examined upon everything relative to the said mines, their workings, reducing establishment, drag-mills, (*arrastres*,) mule-yards, &c., &c.; they must depose if they be relations of my brother ; whether they be or not interested in this claim, either directly or indirectly, and whether they be agents or directors of the business ; and, the said depositions being taken, return me their original for the purposes which may suit my brother. I therefore request you to order what I ask, because it is just.

RIO VERDE, October 10, 1851.

J. CHARLES GARDINER

[*Rubric.*]

RIO VERDE, October 10, 1851.

What the petitioner asks cannot be done, because what is contained in his petition is not true ; because neither in the municipality of Lagunillas, nor in all this department, is there, nor has there ever been, any mines, much less (has there been any) of the importance and magnitude that is intended to be represented ; neither has Mr. George A. Gardiner ever been known as a miner in this jurisdiction, but as a surgeon and doctor, in the few days that he resided here. The expulsion that he alleges is also false.

In consequence, let this writing be returned to him with the present decree ; and warn him, too, in future, to have more respect for the judicial authority that I exercise than to attempt to surprise it, and make me an accomplice in a fraud such as is now attempted to be made.

DOMINGO CHAVES.

[*A rubric.*]

[SEAL.]

[First Juzgado of Rio Verde.]

Assistant witness :

J. BLAS URIBE.

[*A rubric.*]

In the original paper, immediately after the signature of John Charles Gardiner to the petition, and on the same page, follows the alcalde's decree, with this caption:

"RIO VE., Oct'e 1^o, de 1851."

Mr. Bowes, who made the translation, being examined as to the date, said:

"ANSWER. I take the date to be 'Rio Verde, October 10, 1851.' It would, perhaps, be taken by many for the 'first.' I have very frequently seen 'tenth' written as it is on this paper. To be 'first,' there ought to be a small *r* between the figure '1' and the small raised *o* or cipher, [*1ro.*] Some, in writing the date 10th, put a figure '1' with a small cipher at the bottom [*1_o*;) others reverse that mode, and put a '1' and a little cipher at the top, [*1^o*.] I have translated dates in many documents, and always, when written as in this paper, as the *tenth*."

On the 10th of May Mr. Partridge was examined as to the date:

"MR. MAY. According to your knowledge of the writing of dates in Mexico, is the date on that decree of Domingo Chaves the 1st, or the 10th?"

"ANSWER. I believe it to be on the 10th of October.

"QUESTION. Have you seen 10th written in Mexico in the same way?"

"ANSWER. It is usually written with a larger 'o' than the one on this paper.

"QUESTION. How is 1st written?"

"ANSWER. It is generally written with a figure '1' and 'ro.'"

On the 11th of May, other witnesses were examined as to the same point:

Dr. Davis testified that he had lived in Mexico for seventeen years; that he had frequently been brought in contact with the authorities there, and their writings, and that he should suppose the date was "Rio Verde, October 10th, 1851."

Mr. Julius Meiere, Professor of Modern Languages, was positive that the date was October *first*.

John Charles Gardiner testified that "*primero*" is always made with a figure "1" and an "o." One of this witness's letters to Verastegui is dated "Washington, Sep. 1ro. de 1852."

V.—JOHN CHARLES GARDINER'S DEPOSITION FOR JOSÉ PANDO TO SWEAR TO, AND HIS LETTERS TO MANUEL VERASTEGUI AND OTHERS.

Of these documents the Senate commissioners obtained that marked "A. J. H., No. 31," from Antonio Quiros; that marked "L. T., No. 15," and "A. J. H., No. 32," from Andrew J. Halsey; and the others from Manuel Verastegui. The evidence bearing on them is as follows:

John Charles Gardiner cross-examined on the 26th of April.

[The witness had stated that he visited the village of Lagunillas in the fall of 1844.]

"MR. MAY. Where did you go to from the village of Lagunillas?"

"ANSWER. I remained in the district of Lagunillas, and then returned to San Luis Potosi.

"QUESTION. From the village of Lagunillas where did you go to in the district of Lagunillas?"

"ANSWER. I went to the Huasteca mines.

"QUESTION. Were those the first mines?"

"ANSWER. Yes, sir.

"QUESTION. At what time was that?"

"ANSWER. It was in the latter part of 1844.

* * * * *

"MR. BRADLEY. What mines do you refer to?"

"WITNESS. I mean the mines of my brother, now in controversy.

"The COURT. That inquiry, in my judgment, can be pursued no further. You can only ask whether he was there or not.

"Mr. MAY. Cannot I ask him with reference to the roads to those mines?

"The COURT. The location of the mines is the point in controversy.

"QUESTION. Did you visit the Huasteca mines on any other occasion?

"Mr. BRADLEY objected to the question.

"The COURT. That particular question can be asked, but it cannot be shown where the mines are.

"WITNESS. I had visited them on another occasion. I went to them for the first time in the latter part of 1844. The next time I went to them was in the middle of 1845, and the third time was in the summer of 1846.

"QUESTION. Have you received a share of the award on account of that claim?

"ANSWER. No, sir.

"QUESTION. Did you say at Mr. James's, in the city of Washington, to Mr. Philip C. Johnson, before the commission which adjudicated your brother's claim was organized, that you were interested in the claim?

"ANSWER. All I remember about any conversation I had with Mr. Johnson is, that it was with reference to the President having appointed the members of the board of commission. I think that he stated to me that Mr. Evans was one of the board, and, coming as he did from the same State, Maine, besides being acquainted with him, he thought that his (Mr. Johnson's) services might be of some use to my brother.

"QUESTION. Did you ever say to Mr. Johnson that you were interested in your brother's claim?

"ANSWER. No, sir; I do not recollect having said so.

"QUESTION. Do you say that you never did say so?

"ANSWER. I say that I do not remember having said so.

"QUESTION. Had you any hand in the fabrication of the title-deed which you brought here?

"ANSWER. What do you mean by that?

"QUESTION. Did you suggest and advise how that title should be made up and put in the alcalde's office?

"ANSWER. No, sir; I would not do such a thing.

"QUESTION. Are you acquainted with Mr. Andrew Halsey?

"ANSWER. Yes, sir; I knew him in Mexico.

"QUESTION. Did you correspond with him?

"ANSWER. I do not remember that I did.

"QUESTION. (Handing the witness a letter marked 'L. T., No. 15,' and 'A. J. H., No. 32.')

Is that like your handwriting?

"ANSWER. It looks like my handwriting.

"QUESTION. Do you admit or deny that it is your handwriting?

"ANSWER. I cannot say positively that it is my handwriting.

"QUESTION. Have you corresponded with Don Antonio Quiros?

"ANSWER. I do not remember. I knew him some years ago.

"QUESTION. (Handing witness a letter marked 'A. J. H., No. 31.')

Is that your handwriting?

"ANSWER. I do not think that 'J. Carlos Gardiner' is my signature. I have variously signed my name 'John Charles,' 'J. C.,' and 'J. Chas.'

"QUESTION. Have you never signed it 'Carlos?'

"ANSWER. I do not recollect ever having signed it in that way.

"QUESTION. Do you deny that it is your handwriting?

"ANSWER. I do not think that it is.

“QUESTION. You cannot swear, then, to your handwriting?

“ANSWER. I cannot say that it is my handwriting. It does not look like it. It resembles it very slightly. If the name ‘J. Carlos Gardiner’ were taken away, I would then say positively that it was not my handwriting.

“QUESTION. Examine the flourish under the signature, and state what you think about it?

“ANSWER. It resembles my flourish. Mr. Halsey was my writing-master, and taught me how to make the flourish which I attach to my name. There are two or three things which make me doubt this being my handwriting. In the first place, I do not recollect having written the letter; secondly, I do not sign my name in the manner in which it is here signed; and thirdly, the handwriting is not like mine.

* * * * *

“MR. MAY. Are you acquainted with Don Manuel Verastegui, of Rio Verde?

“ANSWER. Yes, sir.

“QUESTION. Was he the prefect of Rio Verde at any time?

“ANSWER. I do not know whether he was or not. He was one of the Verasteguis of Rio Verde.

“QUESTION. Is he the same one who certified to the accounts of your brother?

“ANSWER. I have not seen those books.

“QUESTION. Do you know any other Don Manuel Verastegui?

“ANSWER. I know of several persons by the name of Verastegui, but only one by the name of Manuel.

“QUESTION. Have you corresponded with him?

“ANSWER. Yes, sir.

“QUESTION. (Handing a letter to the witness, marked L. T., No. 4.) Is that in your handwriting?

“ANSWER. I do not believe it is. I do not remember having written the letter.

“QUESTION. (Handing the witness a letter marked L. T., No. 7.) Is that your handwriting?

“ANSWER. I do not think that it is.

“QUESTION. Do you deny it to be your handwriting?

“ANSWER. I do not remember having written that letter. The handwriting is not like mine.

“QUESTION. Is the rubric like yours?

“ANSWER. I think that the rubric to this letter is like the one just previously shown me.

“QUESTION. Do you deny that to be your handwriting?

“ANSWER. I neither deny nor admit it.

“QUESTION. (Handing the witness a paper marked L. T., No. 8.) Is that your handwriting?

“ANSWER. It looks like my handwriting; but I do not believe that it is.

“QUESTION. (Handing the witness a paper marked L. T., No. 5.) Is that your handwriting?

“ANSWER. It looks more like my handwriting than any that has yet been shown me.

“QUESTION. Do you think that it is your handwriting?

“ANSWER. I do not remember having written the letter; but I think that it is in my handwriting.

“QUESTION. (Handing the witness a paper marked L. T., No. 6.) Is that your handwriting?

“ANSWER. I do not believe that it is.

“QUESTION. (Handing the witness a paper marked L. T., No. 11.) Is that your handwriting?

"ANSWER. The first part of the letter looks like my handwriting; but, as a general thing, it does not.

"QUESTION. Are the initials "J. C. G." in your handwriting?

"ANSWER. The rubric looks like mine, but the handwriting does not.

"QUESTION. Do you deny that it is your handwriting?

"ANSWER. I do not admit that it is my handwriting.

"QUESTION. (Handing the witness a paper marked L. T., No. 12.) Is that your handwriting?

"ANSWER. I think the scroll is like the one I sometimes make under my name; but the initials are not like mine.

"QUESTION. Do you deny it to be your handwriting?

"ANSWER. I do not think that it is. I do not recollect having written the letter.

"QUESTION. Do you admit or deny that that letter was written by you?

"ANSWER. I do not admit that it is my handwriting. I do not recollect the contents of the letter.

"QUESTION. (Handing the witness a letter marked L. T., No. 13.) Is that your handwriting?

"ANSWER. There is a scroll to the name which looks like mine, but I think that it is not.

"QUESTION. (Handing witness a letter marked L. T., No. 14.) Is that your handwriting?

"ANSWER. I do not think that it is.

"QUESTION. Do you admit or deny that it is your handwriting?

"ANSWER. The writing resembles that of the letters before shown me; I do not admit that it is my handwriting.

"QUESTION. (Handing the witness a letter marked L. T., No. 2.) Is that your handwriting?

"ANSWER. I do not think that it is; I do not admit that it is my handwriting.

"QUESTION. (Handing the witness a paper marked L. T., No. 3.) Is that your handwriting?

"ANSWER. It does not look like my handwriting.

"QUESTION. Do you admit or deny that it is your handwriting?

"ANSWER. I do not admit it.

"QUESTION. (Handing the witness a paper marked L. T., No. 10.) Is that your handwriting?

"ANSWER. It resembles my handwriting, but I do not remember having written it.

"QUESTION. Do the scrolls on that letter look like yours?

"ANSWER. No more than the ones you have already shown me.

"QUESTION. (Handing witness a letter marked L. T., No. 9.) Is that your handwriting?

"ANSWER. I do not remember having written that letter.

"QUESTION. (Handing witness a paper marked L. T., No. 1.) Look at that paper and say what you think with reference to it?

"ANSWER. I do not think any of the copies are in my handwriting.

"QUESTION. Do you deny that those copies are in your handwriting?

"ANSWER. I do not believe that they are.

"QUESTION. There are some pencil-marks about the papers; are they in your handwriting?

"ANSWER. I do not think they are; I do not remember having made them."

On the 27th of April, the United States offered the following rebutting testimony as to the handwriting of these papers:

Colonel Lorenzo Thomas sworn.

"Mr. MAY. Be good enough to tell the court and jury your rank in the army?

"ANSWER. I am a lieutenant colonel in the United States army.

“QUESTION. Are you an adjutant general of the army of the United States?

“ANSWER. I am one of the assistant adjutant generals now on duty with Major General Scott, in New York.

“QUESTION. Were you adjutant general in Mexico?

“ANSWER. Yes, sir.

“QUESTION. Are you acquainted with John Charles Gardiner?

“ANSWER. Yes, sir, very well.

“QUESTION. Was he in your employment?

“ANSWER. Yes, sir; he was interpreter at the headquarters of the army for several months. I think he was with the army from the 15th February, 1848, to the 10th of July of the same year.

“QUESTION. Are you acquainted with his handwriting?

“ANSWER. Yes, sir, very well.

“QUESTION. State the sources of your knowledge on that subject?

“ANSWER. I went up to the city of Mexico with General Butler as his chief of staff, in the month of December, 1847, and very soon afterwards became acquainted with John Charles Gardiner. My duty was to go to the adjutant general's office every day. I was not then adjutant general of the army. The command of the army was transferred to General Butler at the date I have mentioned. I was the adjutant general of his division, and being the senior of my grade in the army of Mexico, I became adjutant general. Mr. Gardiner was interpreter at the office which I took possession of, and he continued in that capacity during the whole time I have before referred to. It was his duty to be at the office every day where I was, to translate for me any documents in Spanish that I might require. If I required it—and I very often did—his duty was to make the translation in writing, but he would frequently read the translation of letters to me. I had thus occasion to see his writing almost every day. I would also state that, from the position which I held, I had an opportunity of seeing the handwriting of almost every officer of the army.

“QUESTION. You had an opportunity of judging of handwriting?

“ANSWER. I have had many opportunities of judging of handwriting. I have stated the above facts to show that I have frequently seen the handwriting of John Charles Gardiner.

“QUESTION. Did you write at the same table with him?

“ANSWER. I did. He sat opposite me at the same table.

“QUESTION. You were then in almost daily intercourse with him?

“ANSWER. Yes, sir.

[“Mr. MAY handed the witness the papers marked ‘A. J. H., No. 31,’ L. T. No. 1 to L. T. No. 15, inclusive.]

“QUESTION. Are these papers in the handwriting of John Charles Gardiner?

“ANSWER. They are; and they also contain his signature: the pencil-marks about No. 1 are also his. I have seen these papers before, and have very carefully examined them.

“QUESTION. You notice that his rubric is a peculiar one?

“ANSWER. I remember his rubric very well. His accounts often came before me over his own signature.

“Mr. BRADLEY. Did you say that his rubric was a peculiar one?

“ANSWER. There are some marks upon his rubric which I noticed: you will find dots made with the pen on each side of it; I think that is the way in which he generally made it.

“Mr. MAY. The accounts you speak of came officially before you, did they not?

“ANSWER. Yes, sir; they were accounts for his compensation. I had to certify them before he could get the money.

“Mr. BRADLEY. Where are those receipts?

“ANSWER. Some of them are in the Treasury Department.

"MR. BRADLEY. If the other side examine with reference to receipts, we must have them produced in court."

On *Mr. Partridge's* re-examination on the 7th of May, he gave the following testimony as to the letters:

"MR. MAY. Do you know where the letters signed by John Charles Gardiner, and which were read to the jury the other day, were obtained?"

"ANSWER. Yes, sir.

"MR. BRADLEY. I submit to the court that that is not evidence.

"THE COURT. I do not think that it is.

"MR. MAY. It is part of our case to show how we got those papers.

"THE COURT. It is part of your case to show that John Charles made them, if you can.

"MR. MAY. We desire to show that they came to the person to whom they were addressed.

"THE COURT is of opinion that this is not rebutting evidence; that it does not rebut anything that the defence have given.

"THE DISTRICT ATTORNEY. The letters, to some extent, by the decision of the court, have been permitted to go to the jury, and unless they come in as rebutting evidence they could not come in at all. They were a part of our rebutting evidence, and we have proved them to be in the handwriting of John Charles Gardiner. We now propose to show how we obtained them.

"THE COURT. Had they dropped from the clouds it would not have made any difference. The question is, were they the work of the witness, John Charles Gardiner.

"THE DISTRICT ATTORNEY. There is no objection on the ground of its not being evidence.

"THE COURT. I do not think that it is evidence of anything, rebutting or otherwise.

"MR. MAY. When John Charles Gardiner was on the stand I asked him whether he had corresponded with Verastegui. He said that he had, and thereupon I presented him with these letters, which he refused to admit were a part of the correspondence which he had with Manuel Verastegui. Now, I want to prove that these letters were received by Manuel Verastegui from him, and in that way to contradict him.

"MR. BRADLEY. We waive the objection to save discussion.

"MR. MAY, (handing to the witness the letters 'L. T. Nos. 4, 5, 6, and 11,' and the petition from John Charles Gardiner to Domingo Chaves.) Do you identify these letters?"

"ANSWER. Yes, sir.

"MR. CARLISLE. When did you first see them?"

"ANSWER. I first saw them in Rio Verde.

"QUESTION. Were you present when they were delivered?"

"ANSWER. Yes, sir; they were delivered by Manuel Verastegui into my hands at the table at which I sat.

"MR. BRADLEY. Who was there at the same time?"

"ANSWER. Mr. May.

"QUESTION. Was there anybody else present?"

"ANSWER. There was nobody else present belonging to the commission. Mr. Richter was present.

"QUESTION. Who is Mr. Richter?"

"ANSWER. He is a Prussian.

"QUESTION. Did he speak English?"

"ANSWER. Yes, sir.

"MR. BRADLEY. I suppose that he spoke Spanish, of course?"

"ANSWER. Yes, sir."

Numerical list of papers proved on the 27th of April, 1853, to be in the handwriting of John Charles Gardiner, and offered in evidence by the prosecution on the 3d of May.

L. T., No. 1. "Declaracion de Pando," being a rough draught of a deposition for José Pando to swear to.

Certificate of the judge, to be annexed to the deposition.

Printed copy, in English, of the rules and regulations of the board of commissioners under the treaty of Guadalupe Hidalgo, with a few lines in pencil, in Spanish, in the handwriting of John Charles Gardiner.

L. T., No. 2. J. C. G. to Verastegui, S. L. Potosi, January 12, 1851, [1852.]

L. T., No. 3. J. C. G. to Verastegui, Queretaro, January 18, 1851, [1852.] [Superscribed, "Sor. Dr. Manuel Verastegui, Rio Verde."] Postmarked Enero, [q. 20.]

L. T., No. 4. J. C. Gardiner to Manuel Verastegui, S. Luis Potosi, May 8, 1851.

L. T., No. 5. J. C. Gardiner to Verastegui, S. Luis Potosi, 6th November, 1851. [Superscribed, "Sor. Dr. Manuel Verastegui, Rio Verde."] Postmarked "San Luis Potosi, Noviembre."

L. T., No. 6. J. C. G. to Verastegui, S. Luis, Nov. 9 and Nov. 10, 1851.

L. T., No. 7. J. C. Gardiner to Verastegui, Mexico, September 17, 1851.

L. T., No. 8. J. C. Gardiner to Verastegui, Mexico, October 3, 1851. [Superscribed, "Sor. Dr. Manuel Verastegui, Rio Verde, D'to. de S. Luis."] Postmarked Mexico, Octubre 4, 3 (reals.)

L. T., No. 9. Loscar to Verastegui, Washington, Sep. 8 de '52. [Superscribed, "Sor. D. Manuel Verastegui, Cuidado de Dr. Fco. Correa."]

L. T., No. 10. Loscar to Verastegui, Washington, Sep. 1ro, de 1852.

L. T., No. 11. J. C. G. to Verastegui, S. L. Potosi, Nov. 13, 1851.

L. T., No. 12. J. C. G. to Verastegui, S. L. Potosi, Dec. 15, '51. [Superscribed, "S. D. Manuel Verastegui, Rio Verde."]

L. T., No. 13. J. C. G. Fragment and postscript; no date.

L. T., No. 14. Memo., without date or signature, concerning George A. Gardiner's connexion with the claim in the name of John H. Mears.

L. T., No. 15, A. J. H. No. 32, original in English. J. C. Gardiner to A. J. Halsey, S. Luis Potosi, Nov. 15, 1851. [Superscribed, "Sr. Dr. A. J. Halsey, Grand Sociedad, Megico."] Postmarked San Luis Potosi, Noviembre 15.

A. J. H., No. 31. Carlos Gardiner to Quiros, San José Miraflores, December 12, 1844. [Superscribed, "Al Sor. Dr. Antonio Quiros, Morelia, favor del Sor. Pateno."]

Letters, &c., of John Charles Gardiner, arranged in chronological order.

[Private.]

[A. J. H., No. 31.]

SAN JOSE MIRAFLORES, December 12, 1844.

MR. ANTHONY QUIROS: I have hardly time to say two words to you, and to inform you of the details of the [giving] possession of the mine "Guadalupe," and this reducing establishment, the which I will do the first opportunity. Neither does my time permit me to give you a minute account of the disagreeable events that have taken place within these few days, caused by Mr. Gonzales; he has had disputes and quarrels with everybody, and he has finally decided on going to that city at the most critical moment. Such conduct ought not to be observed in a person having such considerable interests under his charge. This conduct in Mr. G. is not to be wondered at when we take into consideration for a moment his violent temper and pride.

In fine, you can inform yourself from Mr. Medina and Mr. Cambran, who will give you a minute relation of all that has occurred; they say that my brother is deserving of compassion,

on account of having to struggle and having to do with such a man, because they say they know him well.

You will do that which you think most proper for your interest, and see what remedy you will apply to evils which are now in their beginning, and which, *after a while, may have no remedy*. In the present state of things, it is clear that they can have no satisfactory end.

The gentlemen who gave possession [de la possession] stop in that city, at the house of Mr. Ojeda y Covarruvias. Having nothing else to say, I remain

Your very affectionate servant, &c.,

CHARLES GARDINER.

[*A rubric.*]

Regards to the partners there, and receive you those of my brother and Mr. Gillot. The former does not write for want of time.

[L. T., No. 4.]

S. LUIS POTOSI, *May 8, 1851.*

MY DEAR SIR AND MY FRIEND: In reply to your letter of yesterday, I say to you that the money was paid to Mr. Correa yesterday, and consequently your notice [aviso] arrived [too] late. But for your satisfaction I will say that the agents of W——— unfortunately “hear the noise,” without knowing from whence it comes. A year ago there was the same rumor, that to my brother there had been paid \$600,000, and now you see how false it was. I can very easily explain the [cause of] the present rumor. I have already told you that my brother has in his *own name* a great business, composed of many others; that we (he and I) have bought between us. These, when I left, were about to be decided on, and now, doubtless, the sum for which they have been acknowledged [admitidas] has been named, and your agent (who doubtless sees visions) has written immediately that which his blind perceptions have suggested to his mind.

As you will see by my letter of this morning, and as I have already told you before, our business is presented in the name of *Mears alone*; and it is clear that whatever besides that may have been approved in my name, or rather in my brother's, has nothing to do with that of that gentleman.

Although this explanation be unsolicited, I make it, guided by the good faith with which I made the contract with you; and I avail myself of this occasion to reiterate the offer I made you this morning in respect to Mr. P., and I request you not to forget the letters I asked of you for Cuesta, because I have learned that Mears thinks of going to Washington before me.

As ever, I am your sincere friend,

J. C. GARDINER.

[*A rubric.*]

DON MANUEL VERASTEGUI, *Rio Verde.*

[L. T., No. 7.]

MEXICO, *September 17, 1851.*

MY DEAR SIR AND ESTEEMED FRIEND: I had the pleasure of writing a letter to you, in much haste, from New Orleans, to advise you that I was going to that city, by way of this capital, and now I have the pleasure of announcing to you my safe arrival, which took place yesterday.

You will have been already informed of the infamous accusation that has been made against my brother, and consequently [see] the necessity of putting into execution the necessary means to frustrate the designs of his enemies.

I believe that this will not be difficult for you [to do,] seeing that you are well acquainted with his business, and I have undertaken this long journey for the purpose of assisting you.

I believe that the government of the United States will send very soon an agent to San Luis to make investigations. The charges are so difficult to prove, they have believed the minister can send some person to make these investigations without there being any necessity of troubling the government. Public opinion in the United States and the press are in our favor. What is needed above all, is the copy of my brother's books, which I suppose exists in the prefecture, if the mountaineers (*serranos*) have not destroyed that office; next, certificates from respectable persons, (such as those my brother took with him in order to prove his claim,) which may support the justice of his claim. In fine, when we meet I will tell you what is necessary, and in the mean time you can take such preparatory measures as you may judge prudent. I believe it would be well to gain the good will of some person in the government of San Luis, and of other persons, such as the Licentiate Parada, &c., &c., because, as depositions will be taken at San Luis, I judge it very essential [to do so.] I have not the least doubt that all will go well, because the business is too just and too clear for it to go otherwise. I am now preparing some documents here which will be of much use, and as soon as I conclude (in this week) I shall set out for San Luis. You will write to me whether I ought to remain in San Luis, or go on to R. V. I believe that we can do what is necessary to be done in San Luis, and afterwards you in R. V. can do the rest, because I believe it will be most prudent for me not to present myself in R. V. In fine, this is a matter that we can arrange afterwards. Do me the favor to write me at San Luis, to the care of Messrs. Davies & Co., in order that I may receive the letter on my arrival.

I have already told you that I hold the contract we made to be null, because I was under a mistake when I assured you that the news you received from your agent at Washington was unfounded. You will inform yourself of the particulars of the difficulties from a letter written to Señor Lastra by his lawyer, (which he will doubtless send to Señor Pando,) and when we meet, I will give you a complete history [of them.] What is necessary now is to employ every moment in preparing the evidence that it will be necessary to produce. My brother must arrive from Europe in the coming month, and we will all meet at San Luis.

Should you believe that I ought to go on to Rio Verde, (which does not appear to me to be necessary,) let me know whether I can go to your house. I believe this would be the most prudent.

Excuse this hasty letter, because my occupations do not now permit me to write more at length.

Yours, affectionately,

J. C. GARDINER.

[*A rubric.*]

MANUEL VERASTEGUI.

[L. T., No. 8.]

MEXICO, *October 3, 1851.*

MY ESTEEMED FRIEND: At length, to-morrow, I leave for San Luis, where I expect to see you or receive some of your letters.

I have been here all this time obtaining certificates for the business which takes me to San Luis. I have obtained some very good ones, which I have sent to Washington through the legation.

I have learned to-day that the agent and the minister are about to arrive. The first will immediately go to San Luis, and I suppose commence his investigations, in which it is probable the government will have something to do. You have already received my former letters, and also those of your agent, Señor Cuesta, and they will have informed you of what has occurred. It is necessary that not a moment should be lost. I believe it probable that the agent will desire to go to the mines; but this, I suppose, will depend upon the success which may attend him in his investigations in San Luis and Rio Verde.

Write me at San Luis, to the care of Messrs. Davies & Co., and command your friend and servant,

J. C. GARDINER.

[*A rubric.*]

DON MANUEL VERASTEGUI.

[L. T., No. 5.]

SAN LUIS POTOSI, *November 6, 1851.*

MY ESTEEMED FRIEND: I learned yesterday of your departure for your city, and I avail myself of to-day's mail to advise you that by the mail of yesterday I was informed that the agent will start soon for this capital; so that he must be already on his way, and we have not a moment to lose.

It is indispensably necessary that you make some arrangement with Mr. P. in order that he provide the means to pay the expenses of the lawyer, and that the latter lose no time in going. I suppose, however, that a bill for \$2,000, which Davies bought, drawn by the former in your favor, may be for that purpose.

It is also necessary that you arrange things so that I may be able to address myself to this government here, asking the same information that the agent will ask for. It is very essential that I do this beforehand, in case of its being necessary to arrange any difficulty, because, if the same thing happens to us with him as did with Mr. Bte., we shall have lost our labor.

Neither do you forget that we want the rest of the receipts from the mint; it would be well that Mr. P. give me a letter for this purpose.

Neither do you forget the matter of Lastra in regard to the other silver. In fine, there is not even one moment to lose, because we have to do with Yankees, who, you already know, are indefatigable.

As I told Mears that I would remain here until I should know his resolution, and as the agent will arrive very soon, I think I shall stay here until I know something of the former. In the mean time remember that, according to the laws of the United States, we do nothing, notwithstanding the report of the government be favorable, unless I returned armed with infinite evidence.

I trust that, with your natural skill, you will be indefatigable in this business, always advising, under cover to Davies & Co., of the results.

I have heard something said about a letter of Reyes to Mr. Barragan in regard to this business. Can you give me any information about the matter?

I repeat, I am your friend and very affectionate servant,

J. C. GARDINER.

[*A rubric.*]

P. S.— Tell Mr. P. what my brother writes me.

(vale) a rubric.

Superscribed "Sor. Dn. MANUEL VERASTEGUI, *Rio Verde.*"

S. Luis, November 9, 1851.

MY ESTEEMED FRIEND: It is 10 o'clock at night, and I have just this moment learned from a person who has arrived from Mexico, that the agents are in Queretaro, where they had stopped for the purpose of repairing a wheel of the coach in which they came. Mr. Fco. does not come with them; but Mr. Smith, the secretary of the legation, comes.

I have learned that they bring orders to make the most unscrupulous investigations. In Mexico they cited Mr. R., but I do not know what answers he gave them. They also examined other persons, who said that they knew nothing of the business of my brother. They bring instructions to ask of the mint the receipts for the silver they may have received of my brother. They also bring instructions to examine you and Mr. Correa; for which reason I am going to tell the latter to go immediately to you at Rio Verde. I have heard all this news this evening; so to-morrow I am going to ask Davies for \$200 for the purpose of sending Mr. Sousa away, because if he do not go the day after to-morrow, (the day on which the agents ought to arrive,) nothing will be done. I believe that Davies will let me have this amount, and it is absolutely necessary that you, who are there, give the balance for Guadalcazar, until the \$5,000 be received from Mears.

My friend, if there be not much quickness displayed, all will go to the devil; because, however good the business be, as few know my brother, appearances will be against him.

It is necessary not to lose a single moment, and to even work at night, or we shall be caught in the trap, because we cannot rely upon sympathy of any kind. Bring into play all your influence, all your tact and energy, and we shall get out of the difficulty. I suppose we cannot doubt of the government here.

The agents will stop at the house of Mr. Marriner, and bring letters to Davies and others. They know nothing of the mines, and will tell them (the agents) to go to the government.

This evening, speaking with Davies, I learned that about four years ago he had an amount of money in his house that the government desired to confiscate, belonging to Mr. Pando. I said to him that I believed that his money had something to do with my brother's mines, because I had heard it spoken of before. If *it be so*, let P. add it in his deposition, because every little helps.

I do not know if they may desire to go to the mines. If so, let them go alone to seek adventures with mountaineers, (*serranos*), and take the consequences. I will not expose my skin, and much less if *about this time that people have an inclination to make a little disturbance*, (*bullita*.)

I believe that the coming of these gentlemen to S. Luis favorable; think of it well, and you will agree with me. I take leave of you for to-night; to-morrow I will finish this letter; and it only remains for me to pray you not to lose a single moment, because before you think of it these gentlemen will be there, (in Rio Verde;) Marriner expects them day after to-morrow, and he says that they may arrive to-morrow, Monday.

MONDAY, November 10.

I have just seen the Licentiate Sousa and Mr. Correa, and to-morrow they both leave for your city. I obtained, as expected, the \$200 of Davies, and have delivered them to the Licentiate. I regret infinitely having had to ask for the loan of this sum, because there is nothing which so much discredits a man among foreign merchants as asking for money; but under such straitened circumstances one must not be scrupulous. I pray you not to lose a single moment in getting everything ready; and it appears to me it would be very well that Mr. Pando should write to the mint, and say that, knowing that an agent is coming to ask an

* The Spanish words, from which the italicised words are translated, are underscored in the original letter.

account of the silver that my brother may have introduced, he believes it his duty to advise them that such and such quantities sent by him are from the mine of my said brother. This would be very excellent. It is also necessary that all the depositions be proceeded with, beginning with Mr. P. Reithes, and others.

Neither ought the Guadalcazar and Lagunillas matter to suffer delay, lest they apply there for the title deed, &c., &c. Nevertheless, I believe that, as in the documents relative to the matter, (*expediente*,) it (the mine) is denounced at Rio Verde, it is necessary to say that the denouncement was made at both places, for whatever may occur, (*por los fines que pudieran e. m'eniarse*;) because to deny that which was made at Rio Verde is to deny all the other documents.

The affair will go very well if all be done quickly and with tact; but one false step will send us rolling to the deepest abysses of hell. Firmness and courage, two qualities which you possess, and we will laugh at the world.

It would not be bad to know in what disposition Dn. Diego finds himself in regard to our matter, and (to know) what things he can say.

In fine, I leave all to your care, whilst I observe what is going on here. You may expect letters by every mail; by none will I fail to write, although I may have nothing to say.

Who is the person that you said you would leave me recommended to for all that might happen? Do not forget to tell me it, because I do not know who I can avail myself of here. What kind of a chicken is Mr. Pablo de la Barrera, who is always talking politics to me, and thinks that I am a secret agent of the Yankee government? Write to me at length, and tell me how the matter progresses; and if you wish for any delay, say so, in order that by some contrivance the agents may be delayed.

This will be carried by the hands of Mr. Correa. This afternoon I am going to see Guzman, to advise him that the agents will be here in one day more.

Yours, affectionately, &c.,

J. C. G.

[*A rubric.*]

The two men who come have no kind of elasticity, so that there is no counting upon them except as *enemies*.

[L. T., No. 11.]

S. L. POTOSI, November 13, 1851.

MY ESTEEMED FRIEND: I received your esteemed favor of the 8th in due time, the which I now have the pleasure of answering.

The allusion I made to the two thousand dollars, which you say you have not received, was in consequence of hearing Davies say at table "that he had purchased a bill of exchange for that amount, drawn by Mr. Pando against Mr. D. de la Lastra, and in favor of Mr. Verastegui." I asked no questions; but I did suppose (knowing that you had written to Mr. P., asking money of him for the business) that this amount was for that object.

To-day I have learned that the bills of exchange, drawn as above said, were two of \$2,000 each in favor of Mr. J. M. Verastegui, and that Mr. D. purchased only one of them. You say that you have not received this money; it is, consequently, clear that you are not the same person; and now that I know the initials, I see they do not correspond to yours; but the simple statement of Mr. D. caused me to suppose it might be you.

In regard to my brother, I believe that, before your departure for Rio Verde, I read to you

a letter from Mexico, wherein I was informed that the American consul had said that he was in Washington. I have received no letters from him; but I am satisfied that if it be true, (as I hope,) it will not be long before we shall have him with us, because you already know him, and know that he is a man who loses no time. I wrote him by the mail of yesterday; but I am sure my letter will arrive too late, because another reason for his not losing a single moment in coming is, he knows I have no funds to defray the necessary expenses.

Yesterday I received a letter from Mears, dated 5th instant, and in answer to mine of 27th. He says he will set out immediately, (as I advise him to do;) consequently he will not delay long. He says that, besides the documentary evidence (*documentos comprobativos*) he has obtained from the government of that State in proof of both claims, (*los dos negocios*,) he also has some witnesses who are ready to go and testify in the United States.

He asks me for the same kind of documents of this government for the Minister of Relations, the which, he says, you can obtain; but it appears to me that this is already done. He says, also, that he is willing to pay the expenses.

Now you see that my letter had its effect, and it will be the cause of our coming out triumphantly.

I do not see how Mr. Pando can say that the business is lost, when it is evident that we have gained it; and the only misfortune that I foresee is, that the funds will come to us too late; but neither you nor I are to be blamed for this. Although it be for nothing else than his own interest's sake, he ought to advance what is necessary for Guadalcazar. Apropos of Guadalcazar, I believe that the Licentiate Sousa told me that Mr. Olavida was here: if it be true, what shall we do if the commissioners apply to him?

I have learned that that silver which Mr. P. sent to the mint was sent in '47, and not in '46, and was from a mineral district contiguous to Jalpan. The receipt that you gave me says it was in '46. I know positively that the agent will apply to the mint, and I know not how we shall be able to remedy this discrepancy.

Yesterday I received letters from Mexico, dated the 8th, in which they tell me "the secretary of the legation left yesterday for Matamoras." That he is coming to S. Luis is certain, because Marriner expects him to-day. I do not know what object takes him to Matamoras; or it may only be a deception to conceal his mission here.

I have had a short interview with Mr. Guzman to advise him that the agent is about to arrive; he manifested great complacency, and in-all (he was) on our side. My many occupations yesterday (it being post day for Mexico) have not permitted to see Mr. Barragan, but to-day I think of doing so.

What you tell me about the recommendation of General P. to Mr. S., for the purpose of securing the evidence in regard to the connexion with the house of P. G., is entirely new to me. Who is Mr. S.; and in what manner can that evidence be secured? I am ready to remain at my post, and to take as many steps as may be necessary; but I ought to know first how far I may open my bosom to General P. What have you told him about the business? The Licentiate S. and Mr. C. ought to be with you. It is absolutely necessary that the latter remain with you, because, at your side, he would be a pillar to support the edifice; but away from there I am afraid he will only serve to throw it down. Tell me the exact position (situation) of my brother's mines; their distance from Rio Verde and from Lagunillas, &c., &c. Here young Amador, who knows or believes that the business is legitimate, (legal,) says that he has heard the said mines spoken of, and that, if I desire it, he will give his deposition before the commissioners, and will say that he assayed ores from the same at the request of Mr. Correa, and that he knew they were destroyed by fire in October, 1846—an act, doubtless, of the guerrillas or evil-doers. He is interested in my giving him employment in the tin negotiation; and, as I have offered it him, he will do whatever I may desire.

But this letter has already become too long. Do not fail to write me, and inform me of all that happens, and I will take good care to do the same.

Regards to Mr. Sousa, and command your affectionate friend and servant,

J. C. G.
[A rubric.]

Mr. MANUEL VERASTEGUI.

[A. J. H., No. 32.]

[L. T., No. 15.]

S. LUIS POTOSI, November 15, 1851.

FRIEND HALSEY: Your kind favor of 8th inst. came to hand in due course of mail; and, in answer, I would beg of you the further kindness to inform me *what were those few queries put to you by Mr. Smith, and your answers to same.*

You must understand that my principal object is to know the course that gentleman is pursuing in regard to my brother's business, so as to procure what evidence may be necessary.

I trust that you will have no objection in gratifying my request, thus conferring a favor upon one who is willing to reciprocate it at any time.

I am sorry you have no newspapers, as I am perfectly ignorant of what is going on in the civilized world.

I remain yours truly,

J. C. GARDINER.
[A rubric.]

Señor Don A. J. HALSEY,
Gran Sociedad, Mejico.

P. S.—I learn my brother has arrived at Mexico. Is it true?

[Postmarked San Luis Potosi, November 15.]

[L. T., No. 12.]

S. LUIS POTOSI, December 15, 1851.

MY ESTEEMED FRIEND: I wrote you yesterday, remitting a document (or collection of documents—*espediente*) in order that through you the certification of the prefect of G. be obtained, because I cannot leave S. Luis to attend to it. The government is taking very energetic steps, and information has already been asked at R. V., L., and Gr. There seems to be some alarm at this last place on the part of some friendly persons. I have already written to dissipate those fears; but if you can do so (by) giving assurances that the — exist, do it, in order that, now that the documents (*espedientes*) are returned for the correction and the signature of the prefect. they be not taken possession of (or retained—*recogidos*) by the timid persons.

I have seen Mr. Fernandez to-day, and I have satisfied him that that money shall be paid. It is necessary to have patience; we will arrange all according to his desires.

I beg you not to lose a moment in sending me all the papers I asked of you. I also pray you to destroy all the useless papers that you have.

Be lively, and see how much is done there and in L. on the part of the government.

Your affectionate friend,

J. C. G.
[A rubric.]

From Guadr. they write much alarmed. It is absolutely necessary, if you can, to disperse this unfounded fear.

S. D. MANUEL VERASTEGUI, *Rio Verde.*

[L. T., No. 13.]

denounced the mines in 1844, he went to Michoacan to regulate some mines he had there, leaving him in charge of the business, (*asunto*,) because I strongly suspect that the agent desires and *can* prove that in 1844 my brother was in Michoacan. This is very essential, and do not permit it to escape your memory.

Mr. S. has given me to-day some documents from Mears. I believe that without the (proof of the) existence of the mines, they will be of not much value.

Do not neglect on any account to send me the documents I ask for, and arrange the matter in regard to the purchase of mules, because B. does not wish to do anything. In fine, the good result depends on quick despatch. So I have nothing more to recommend to you now.

Know that your friend appreciates you.

J. C. G.

[*A rubric.*]

I forgot to tell you that I have been informed that the agent desires to make a judicial investigation, (*averiguacion sumaria*,) and will endeavor to make it a criminal business, and alleges the treaty of extradition between both nations. This is not yet ratified on the part of Mexico, and what the bugaboo (*coco*) desires is to create fear; but "let him throw that bone to another dog." I give Guzman notice of all that takes place.

I have revised the deposition of P., and all that it says in respect to the mines, individuals, dates, amounts, &c., &c., is regulated according to the documents (*espediente*) at Washington; and, although it appears to be a simple statement, each one of its assertions strongly corroborates all that is contained in the claim (*reclamo*) there in Washington, because even the name of Diaz, the engines (*maquinas*) from Durango, the eleven pieces of silver, and the dates, all are scrupulously regulated according to the documents in the case (*espediente*.) Have it executed as it is written.

[*A rubric.*]

[L. T., No. 14.]

The business which was first presented in my brother's name, on account of the reasons already explained, had to be withdrawn, and it has been lately presented in the name of Mr. John H. Mears alone; and it is necessary, because it is agreeable to the interests of *all*, that the agents as well of Mr. P. as of Mr. V. should receive instructions to the effect that they claim only the $\frac{1}{4}$ part of \$171,000 of the claim of Mears, and consequently the proportion which belongs to that share, because the increase made upon the amount of \$171,000 belongs to individuals that it was necessary to employ and interest to defend the business.

It would be well to do this as soon as possible.

[L. T., No. 2.]

S L. POTOSI, January 12, 1851, [1852.]

MY ESTEEMED FRIEND: I am informed of what you tell me in your letter of the 10th, which does not surprise me in the least, because I had already suspected such a result. In what brain, half organized, could the silly idea arise that the claims were to be deducted from the indemnity which is to be paid to Mexico?

Read to those gentlemen the treaty of Guadalupe Hidalgo, and you will see that Mexico does not pay *one cent*. But how comes it that they have not yet seen the Monitor of the 19th of May? Go to! go to! those gentlemen have ideas which cause laughter. My friend, the business is already gained there, (at Washington:) and, unless you depose unfavorably, a new

cause will be formed in March, which is the second term, when the jury will meet. The deposition which you send me, as a copy of that which you will make, cannot nor ought not to be thus, because if so, you contradict yourself: 1st, because the books are certified to by you, and the amount is not seventy-one thousand dollars, as you say, but \$171,400; 2d, because those same books say that the mines are in the "Huasteca" range of mountains, jurisdiction of "Lagunillas." So that if your present depositions be compared with the certificates that you gave then as prefect, this same discrepancy would accuse you of perjury. I believe that the mines being on the line between Queretaro and San Luis, and the reducing establishments (*haciendas*) in San Luis, and this being stated in your deposition, as also in that of Pando, all difficulties will be removed without saying anything of forgeries, because in reality there has been none, as I learned yesterday from Mexico; and Mr. Reyes, in spite of his teeth, (*por mal que le pese*,) cannot deny his signature if it be presented him; and much less can the Minister for Foreign Affairs and Mr. Rosas, whose certificates accompany those documents, do so.

Doubtless you were somewhat nervous when you wrote me that you would advise my brother to place himself in safety, and that I [also] should do so. Do you by chance believe that we are so timid and such fools to fear when there is no danger? Instead of placing myself in "safety," I leave to-morrow for Mexico, where, on my arrival, I shall present myself to General Arista; and in regard to my brother, do not believe that his friends there are like the persons of whom you gave me such guarantees here.

I know that your fear arises from what B., who sees things under an exaggerated aspect, has written you. But pay attention to nothing of that kind. Rest assured that if that which I tell you be done, the government of the United States will remain tranquil, and will not call you to an account, (*reclamará á V.*,) nor any one else. I will answer for this. I now tell you that to-morrow I leave for Mexico, where I will see the President, and then I will go to Washington, where I know men better than I do here, and where we are sustained. If you pluck up a little courage, and show those pusillanimous ragamuffins how foolish they are in their conjectures, you will be able to succeed in getting them to make the depositions, and Mr. Davies, who will leave for Washington at the end of this month, can take them with him. Think well of it, and you will perceive that I am right in all that I have said. As it cannot be proved that M. has forged any signatures, it does not appear to me to be prudent to alarm him; but I will tell him what you write as your opinion, not mine.

I have the denouncement of the mine, and shall take it to Washington, as well as other *papers* that I have; and I assure you that they cannot harm a hair of my head until a new cause be formed, and then, if you send me by Mr. Davies the papers I have asked, I will be answerable for the victory; but if not, will make the matter a contentious [contested] one; because, I repeat it, the business does not rest on the false basis that you imagine [it does.]

You already know that I speak with all the frankness that is due when I communicate with a person who ought to *know* it all. You will do all that prudence dictates to you. I see but one road.

Know that I appreciate, and am your faithful servant,

J. C. G.

DON MANUEL VERASTEGUI.

P. S.—In Mexico I shall address a communication to the Minister of Relations, in order that depositions be taken at Rio Verde, Lagunillas, also at Guadalcazar, in order that they may go officially to Washington; therefore make you the necessary preparations.

[L. T., No. 3.]

QUERETARO, *January* 18, 1851, [1852.]

MY ESTEEMED FRIEND: I have the pleasure of announcing to you that I have arrived at this place in good health, and from which I think I shall depart in the diligence of to-morrow (Monday) for Mexico.

In this city I am going to protest immediately against the manner in which the investigation made by the agent and Mr. Peredo has been conducted, they availing themselves of miserable subterfuges in order that everybody should depose against [us:] such as the ingenious lie they have kindled (circulated) that this claim is to be paid out of the indemnity which the United States have to pay to Mexico, and at the same time their having selected your personal and political enemies to declare against.

The title deed to the mines, which I take with me, will be certified to by the minister in Mexico. Of this I have not the least doubt, and I advise you of it in order it may serve you as a guide in your deposition. Do not allow yourself to be cheated by what any timid fools may tell you, and do you proceed with the same energy as before. My brother in W. will also protest; and thus you see all will have to be begun anew; add to this that the business is already concluded there, and you will see that all goes perfectly well.

Courage, energy, and constancy. I shall be in Mexico, at most, four days, and shall leave immediately for Vera Cruz, from whence I shall go to Washington.

Don't trust in B. Remember that I always mistrusted him, as I also did G., notwithstanding the reiterated assurances you gave me of them. I am never deceived in my judgments [of men,] and we must only count upon what we can do ourselves. The secretary is here, and will continue on to Mexico in a few days. He is doubtless investigating as to whether the mines are in this State or not. But as they are on the dividing line, it will be labor lost to prove the contrary in Washington. Let what I have said be attended to there, and I repeat, I will be answerable with my head for all.

Know that your deposition, as also the rough draught you made me, is bad; nor can it go thus, because, if so, you overturn the edifice.

Know that your friend appreciates you.

J. C. G. [*A rubric.*]

DON MANUEL VERASTEGUI.

P. S.—Remember also that my brother was expelled from the State.

[L. T., No. 10.]

WASHINGTON, *September* 1, 1852.

[In the original, "Washington, September 1ro. de 1852."]

MY DEAR SIR: I inform you that Mr. José Anto. & Co. are yet in this city, with the laudable but frustrated object of accriminating my brother in his business against this government; and those gentlemen having made up their account "without reckoning with the landlord," "they came for wool and have got sheared themselves." Their own imprudence has been their ruin; because they have permitted themselves to say that they have a claim against this government belonging to one Aguirre, and that they expected in recompense for their services, as denouncers, that this government would not only pay this claim of Mr. A., but would fill their pockets with Yankee gold. Here we see they have shown the cloven foot, and will not only lose, by their imprudence, the said claim (which is a pity,) but they have discredited themselves, and, instead of their golden illusions, they only get \$1 25 a day, the price always paid to witnesses.

This frightful reality has set them howling, and caused contentions among themselves—so much so, that one of them has presented himself to the government and has declared the plan of persecution.

The business is now more contentious than ever, and neither is the devil capable of understanding it. As regards all here, we are so well entrenched that we fear nothing.

I also inform you that Mr. José Anto. is forming a process (collecting evidence) in order, when he arrives at S. Luis, to institute a criminal suit against you, and he expresses himself in the most malevolent terms against you. I was right in always saying to you that, notwithstanding his protests of friendship, this man was your mortal enemy. See how you conduct yourself towards that fellow, because he is capable of everything.

About the 15th of this month a commission, named by my brother and the government, will leave for the purpose of making an examination of the mines in person, the which I inform you of for your guidance. We shall then meet. In this quarter nothing remains, nor will remain, undone. Do you the same there.

Before the commission arrive you will receive letters from me.

I suppose you will have received my former letters, and that Mr. Cuesta has paid you the amount he had in his possession.

Your affectionate

LOSCAR. [*A rubric.*]

MR. MANUEL VERASTEGUI, *Rio Verde.*

[L. T., No. 9.]

WASHINGTON, September 8, 1852.

MY DEAR SIR AND FRIEND: This is understood to be an addition to my letter of the 1st, in order to inform you that Mr. José Anto. presented to-day, in the court, a correspondence which he says took place between him and yourself in December last, of which we have a copy. This correspondence not only refers to the appointment of Theofilo Ramirez as preceptor, and to the pension of Jato, &c., but also to the business of G., and explains the reason of your acting so singularly. But let that pass; you believed the business militated against the treasury of Mexico, but now you must be convinced that I have always told you the truth, because you now see that the remaining indemnity of a little over three millions has been paid to Mexico without any deduction, and that what B. told you, that the forty-five thousand dollars which remained over, after paying the claims, would be given to Mexico, is not so; because, although Rosas asked for it, this cabinet denied him. Add to this what the Congress has now decreed, that "If Mexico do not deliver Tehuantepec up, *they will go and take it;*" and be you *fools* and defend the Yankees. Friend, you never believed me, and now you will see to your sorrow that B. was deceived, and he deceived you. He deeply regrets. See now in whom you place your confidence—in a man who has delivered *private letters* unto a *foreign tribunal*, notwithstanding you tell him in yours of the 25th December not to tell me anything, because the separation ought to be gradual, &c. Trust in your countrymen, and you will do well. We are here in order that this government shall not demand you; and notwithstanding you acted badly, we will repay your treatment with generosity. Place all your confidence in me, because I never have deceived you, and when we meet we will talk things over; above all things, prudence and secrecy; and if it can be done, collect all the documents you can, because we are in want of them.

Yours,

LOSCAR. [*A rubric.*]

MR. MANUEL VERASTEGUI.

[L. T., No. 1.]—(TRANSLATION.)

"Deposition of Pando."

I, the citizen ———, first constitutional alcalde of this city of Rio Verde, State of San Luis Potosi, [certify that on this day, on the petition of the Licentiate D., ——— as attorney in fact*] of the [D.*] American citizen, J. C. Gardiner, I ordered Don José de Pando to appear, in order that he might depose what he knows concerning the mining operations which the petitioner's brother, Dr. G. A. Gardiner, carried on in this State; and the said Joseph (*José*) de Pando having appeared, and being by me duly and legally sworn, deposed and said: That he knew the said Dr. G. A. Gardiner in 1844, when he came to this State from Michoacan; that the said G. brought letters of recommendation to deponent from Morelia and Guanajuato, and told him (deponent) that his object in visiting this State was to see the old mines of the "*Sierra de la Huasteca*," of which he, [the*] Mr. G., had very favorable accounts. As the deponent had worked these mines in times past, he was enabled to give Mr. G. all the information he asked for; and from his questions, deponent at once knew that he was a man of great knowledge in mining affairs. Deponent knows that the said G. A. G. deposited with Mr. James (*Santiago*) P. Gomez, a merchant residing then in this State, the sum of \$60,000, and a letter of credit from Count Perez Galvez, who also gave the said Mr. G. a letter of recommendation to Mr. Gomez.

Although the said mines were found in a state of entire abandonment, full of water and dirt, and Mr. Gardiner, when he had denounced them, as he did, was invested with all the rights of lawful owner of them, nevertheless, as deponent always kept a laborer engaged at the mouth of the adit of San Andres, Mr. G. entered into an agreement with deponent; and this latter did, by means of a writing drawn up at that time, (1844,) cede to him (G.) all his rights thereto. A short time after the first labors were begun in these mines, I think that Mr. Gardiner went to Michoacan for the purpose of arranging his affairs in that State, which I believe consisted in shares in some mines, and deponent remained in charge of his affairs. These mines of the *Sierra*, as I have already said, were completely abandoned, full of dirt and water. In order to clean them, he was obliged to employ many persons, and I believe he imported an engine from Durango. This, it appears to me, took place in November, 1844, because in that month, or in December, speaking with Narciso Diaz about these mines, he told me that he had brought these engines from Durango. These mines had three principal shafts and one adit: the 1st, of Dolores, was about 300 *varas* in depth; the 2d, of la Trinidad, about 200 or 300 *varas*; and the 3d, of San José, about 200 *varas*; the adit of S. Andres was about 300 *varas* in length, full of extensive works. The chief richness of these mines consisted more in the great quantity of ore which was taken out than in its quality. The principal vein was from 8 to 12 *varas* in breadth, and, although it contained a good deal of native silver, the principal ore was the red sulphuret of silver.

In 1845 the said G. A. Gardiner came to see me, with the intention that I should get up a company of persons who would advance capital, (*aviadores*,) and that I should supply the money he might want on the faith of the first ore taken out. In this there was not much difficulty, because, besides the entire confidence I had in the said Mr. G., we had our capital perfectly secure with the English machinery which he had in the mines, the mining tools, and the large quantity of ore which there was out of the mine. The persons who associated themselves with me in this speculation were Messrs. (here let the names of the [6*] individuals follow.)

From time to time we continued to advance large sums, the first being \$10,000. The

* The words marked with an asterisk and enclosed in brackets are erased in the original.

others were not so much in cash, but consisted of articles for the use of, and consumption in, the mines and reducing establishment, (*hacienda*)—such as quicksilver, powder, iron, steel, salt, &c., &c. Deponent calculates that the least sum which Mr. Gardiner could have spent to get this business into operation would be about \$300,000, because in the reducing establishment alone he had about sixty drag-mills, (*arrastrés*,) water-mill, sundry German and Spanish smelting furnaces, as well as barrels for the refining (reducing) by quicksilver, by means of amalgamation, and the utensils for the boiler process, (*calderas*;) and all this was needed in the large establishments which the said Gardiner erected. Large mule-yards were also constructed; grain-stores; and I myself purchased for this establishment (*empresa*) from the estate of [Dona Juana Barragan de Gutierrez] [Luisa Bustamente*] 500 mules (here the number) in this way, (here the date.)

Amongst many other things which I saw in the hacienda I noticed that Gardiner had built a hospital for the workmen—an idea which seemed unusual to me, but in keeping with his enterprising spirit and habits as a business man.

There was also established a large pay (*tienda de raya*) store, provided with everything required for the laborers. This was supplied by Don Joseph (*José*) Correa and Dn., &c., &c., and these individuals also furnished quicksilver, salt, powder, and candles, &c., &c.

I suppose that, at a low figure, this reducing establishment must have cost Mr. Gardiner some ninety thousand dollars. This Mr. Correa and his partners, being frightened, I suppose, by the enormous outlay which Gardiner was making, wished to make sure of their debts, and offered to purchase a share (1-24) of his mines for \$25,000; but Gardiner told me that he had refused the offer. Deponent also states that, towards the middle of 1846, he authorized James (*Santiago*) P. Gomez to offer to said Gardiner \$150,000 for the quarter part of his undertaking, which offer was also refused. This offer was not made for deponent alone, but in the name of parties who advanced capital.

The first silver which deponent received from these mines, through Mr. Gomez, was in December, '45, when they received about eleven thousand and some more dollars in silver. In 1846 I received the following parcels: [here let the parcels follow.]

At the time of the invasion of the mountaineers, (*serranos*,) in ———, all my books were burnt or stolen; for it is public and notorious that even the government archives did not escape; so that, to procure these accounts of the parcels of silver, I have been obliged to apply to the mint of S. Luis Potosi for the copies which I annex to this deposition.

The deponent adds, that, without fear of being mistaken, he can positively state that this undertaking would have become the most magnificent of its kind which had been established in the country; and if Mr. Gardiner had not been expelled in October, 1846, in a very short time he would have made an immense fortune; for already, from May of that year, he had begun to work the *hacienda* with some advantage. As a miner, the deponent states positively that but few persons could have inspired more confidence in their mining enterprises than the said G. A. Gardiner; for not only does he possess a very exact knowledge of all its branches, but enters into his speculations with a tact and calculation which surprises one. Besides, his good conduct, honesty, and high honor in all his transactions, even the most trifling, gained for him in a short time the confidence of every one.

With much sorrow he learned of his expulsion; and much greater was my surprise when they assured me that either marauding troops of the government, or *guerrillas*, had destroyed all his property. I know that, at the lowest calculation, the stock of ore on hand in the *hacienda* of San Cristobal, in a state of amalgamation when it was destroyed, could not be less than \$130,000: because in that same month (October) Mr. Gomez told me that he knew from the refiner himself that the consignments in that month would not be less than \$50,000, which did not so turn out because of the destruction of this undertaking.

Deponent further swears, that the losses suffered by Mr. G., because of his expulsion, are

not calculable, and that it is his opinion that half a million of dollars would hardly cover his losses in money, and pay for his labors and sufferings. Deponent thinks it his duty to add, that he does not suppose the government ordered the destruction of this enterprise, but that it was the work of some scoundrels who wished to avenge some injury upon Mr. Gardiner because he was an American. Deponent has visited these mines since their destruction, and he is satisfied that all is ruined; that, for want of timbers, (*adimes*,) the walls have fallen in; and that in these, as well as in the *hacienda*, there does not remain a trace of what the undertaking was before its destruction.

Deponent further swears that he and his partners became creditors for about \$180,000, but they were paid by instalments; and that at the period of Mr. G.'s expulsion there only remained the sum of 42,800 and some dollars, part of which was a debt of Mr. Mears. [And this sum was in part owing from Mr. J. H. Mears, whose quicksilver mines of S. Diego had also been supplied with capital upon the recommendation and endorsement of said Gardiner; so these gentlemen made and signed a joint obligation to pay me the amount there stated, which obligation I sold and endorsed to Don Diego de la Lastra, a Spanish merchant in Tampico, and this gentleman sent the same to his minister at Washington, in order that he should recover the amount from the claim of the said Gardiner, and John H. Mears.*]

Deponent also states that he knows that said Mears had not and has not any interest in the Gardiner mines, [and that Mears had none in the said mines in the Sierra belonging to Gardiner.*]

Deponent adds that Gomez, referred to in this deposition, went in 1850 to Guadalcazar upon his own business, and afterwards went to the mines of Sonora, to the placers known as the *planchas de plata*, near the S. Ignacio river, and among the Apache nation; that he knows that said gentleman, although he was agent in many matters for Mr. Gardiner, never made any advances to said mines, but was a sort of agent and banker of Mr. Gardiner.

He also declares that he knows positively that Mr. G. was the sole and only owner of this undertaking, and never had any partnership with any one, although he owed large sums which were lent under bond. Deponent also thinks that Mr. Gardiner did not make much use of the letter of credit from Señor P. Galvez; for he knew afterwards that this letter was a sort of speculation of the said Señor P. Galvez, and that this arrangement of the letter of credit was a private affair between them, and that Gardiner could not make use of this credit unless he paid an exorbitant rate of usury; which, although Gardiner yielded to it at first because he had not sufficient capital, he afterwards refused to do so when he found in Rio Verde that deponent and his associates agreed to advance it to him at a moderate rate, [of 2 per cent. per month.*] Deponent further swears that his name is, as stated, Joseph (*José*) del Pando, a native of ———, and ——— years of age, by profession merchant and miner, and that for ——— years he has lived in Rio Verde, where he now resides; that he is neither agent nor attorney of said Gardiner, and that he never was a partner in the mines of said gentleman; [that the said debt he had against said Gardiner he has sold, as stated, to Mr. Diego de la Lastra, and he has therefore no interest, direct or contingent, in said claim;*] that he has seen by the newspapers the sum paid to said Gardiner for his [expul*] losses suffered in consequence of his expulsion, and he believes, and it is his opinion, that the United States government have in no way overrated the matter; but, on the contrary, he thinks, in view of the sufferings and losses which said Mr. G. sustained, that half a million of dollars would not be too much; and he signed this with me, the judge, and in presence of the usual witnesses, &c., &c.

(Let the certificate of the judge, according to the copy you have, here come in. In making this and other depositions, you must look over the various memoranda which you have, and let the judge certify also that it was certainly in 1846 that Rio Verde was invaded by the mountaineers, and that they burned the archives; in fine, let everything be straight.)

Certificate of the Judge.

I, the above-named judge, before whom the foregoing deposition was taken, certify that I am not the agent nor attorney of the claimant, nor of any person interested in his claim, and that I have no interest, direct or contingent, in it. I certify also that I know the deponent, (deponent,) and that his oath is worthy of all credit, and that this deposition has been written in my presence by the clerk N. H., and that the said clerk has no interest in this claim as agent, attorney, director, or in any other capacity; and that I have read this deposition to the deponent, who ratifies it in all its parts. In testimony of which, I give the present, in ———, the ———, 1851, in the presence of the assisting witnesses.

Annexed to the draft of the deposition of Pando there is found a printed copy of the "Rules and Orders" of the commissioners appointed under the act of 3d of March, 1849, entitled "An act to carry into effect certain stipulations of the treaty between the United States of America and the republic of Mexico of the 2d of February, 1848." On the top margin of which the following words are written in pencil, in the handwriting of J. C. Gardiner:

"I do not translate the articles marked on the margin, because they relate to claims of the year 1839."

The articles referred to are the fifth article of the second order, the second resolution which follows it, and the 6th, 7th, and 8th articles "relating to testimony and proofs."

The extract from article XV of the treaty between the United States and the republic of Mexico of 2d February, 1848, (contained in the same pamphlet,) is marked on the margin with ink.

Note by the Reporter.—The "agents" referred to in No. 6, under date of November 9, 1851, are Mr. George W. Slacum, of Alexandria, Virginia, and Mr. Bowes. They are also meant by the "two men" referred to in No. 6, under date of November 10; and Mr. Slacum is the "agent" referred to in other parts of the letters.

Each of the following words, printed between brackets, is added by the translator to complete the sense, viz: "giving, see, to do so, of them, the agents, in Rio Verde, he was, situation, by, circulated at Washington, also, contested, us, of men, collecting evidence."

On Thursday, the 28th of April, the progress of the trial was arrested in consequence of the illness of Alexander Borland, one of the jurors. Mr. Borland was able to come to court on the following Monday; but it being deemed imprudent for him to sit, the jury was adjourned over until Wednesday, 4th May.

The counsel for the defendant having objected to the admissibility of John Charles Gardiner's letters, it was agreed not to postpone the argument on the admissibility of the evidence till the re-assembling of the jury, but to argue that question on Tuesday the 2d of May. The argument was accordingly commenced on that day, continued throughout Wednesday, and concluded on Thursday, 4th May. On Friday, 5th of May, the Court delivered its opinion, excluding the evidence, except the dates of No. 6, No. 11, and certain passages in No. 4 and No. 11.

On Thursday, the 12th of May, it was stated to the court that the witness, John Charles Gardiner, desired to make an explanation.

John Charles Gardiner recalled.

"MR. BRADLEY. The witness desires to make an explanation in regard to the dates and portions of the letters marked 'L. T.' which were admitted in evidence, and the petition to the prefect of Rio Verde, Domingo Chaves, and his decree thereon.

"The WITNESS. When I was called to the stand the other day, I was unable to say whether the letter dated the 9th and 10th of November was mine or not. I did not, at that time, regard the dates on it, or I could have positively denied it. The letter resembles my handwriting very much; but on the 9th and 10th of November I am confident I was at Lagunillas, and not in San Luis Potosi, from which the letter is dated.

"Mr. BRADLEY. State, if you please, whether you have any papers in the handwriting of anybody else which very nearly resembles your own.

"The DISTRICT ATTORNEY. I suppose that when a witness is put upon the stand at his own instance to explain, he must make his explanation without examination by the counsel.

"The COURT. The evidence of the defence must now be confined to the rebutting evidence of the United States.

"Mr. BRADLEY. I submit to the court that the witness has a right to state whether he has in his possession any papers in the handwriting of anybody else connected with the correspondence offered in evidence by the prosecution, so like his own that it would lead him to doubt.

"The DISTRICT ATTORNEY objected.

"The COURT. The evidence must be strictly confined to the rebutting evidence of the prosecution."

A discussion of some length here ensued with reference to the offer, by the defence, of certain letters stated to be in the possession of the witness, and alleged to have been written by José Vincent Verastegui, which closely resembled the witness's own handwriting; after which the Court made the following decision:

"The COURT. The Court is of opinion that those letters cannot be received at all. The defence may ask any question which has not been put and answered before, if it have reference strictly to the rebutting evidence of the United States. You cannot go beyond that. The letters marked 'L. T.' were first introduced by the testimony of Colonel Thomas. They were introduced as rebutting evidence by the United States, so far as his evidence was proof. Supposing the character of the witness had been attacked by some one who said that he was not worthy of belief, I presume that it would hardly be contended that he should not be allowed an opportunity to explain. The defence may ask the question; but they must confine themselves, as I have already stated, to the rebutting evidence of the prosecution.

"Mr. BRADLEY. [Handing witness his petition, and the decree of the prefect of Rio Verde thereon.] Is the body of that paper in your handwriting; and if not, in whose handwriting is it?

"The DISTRICT ATTORNEY. The Court said that you could not ask any question which had been asked before. That question was put to him before, and he replied that he did not remember.

"Mr. BRADLEY. Cannot he put himself right now?

"The COURT. You cannot refer to the letters said to have been written by José Vincent Verastegui.

"Mr. MAY. If you say that those letters are in the handwriting of Vincent Verastegui, we will bring persons to prove that there is no such person living.

"Mr. BRADLEY. [To witness.] State, if you please, in whose handwriting the body of that paper is, to the best of your information.

"ANSWER. I believe it to be in the handwriting of José Vincent Verastegui, the nephew of Manuel Verastegui. I think my signature is genuine. His writing is so similar to mine that it is difficult to tell them apart.

"QUESTION. In whose handwriting is the letter of the 9th and 10th of November, marked 'L. T. No. 6?'

"The DISTRICT ATTORNEY. I understood the Court to say that they were not to ask questions about the letter.

"The COURT. I referred to the letters of Vincent Verastegui.

"The WITNESS. I believe that letter to be in the same handwriting as the body of the petition—that is, in the handwriting of José Vincent Verastegui.

"Question. Have you any papers or writings written by the same José Vincent Verastegui?

"The DISTRICT ATTORNEY. Is that within the ruling of the Court?

"The COURT. You cannot make any inquiry at all about those letters.

"Mr. BRADLEY. When we come to look at the contents of the letters, we will see whether they are evidence or not. [Handing witness a letter.] What is the date of that letter?

"ANSWER. November 1st.

"Mr. BRADLEY. That is the date which I showed Dr. Davis, and which he said was the 'tenth.'

"The WITNESS. *Primero* is always made with a figure '1' and an 'o.'"

VI.—ADVERTISEMENT OF HENRY MAY, CHIEF OF THE SENATE COMMISSION, AND CORRESPONDENCE OF E. W. ABBOTT WITH HIM.

Translation of a placard posted in the public places of the town of Lagunillas, Mexico, entitled "Aviso al Publico."

The subscriber offers a reward of \$500 to the person who may give him exact and circumstantial information in regard to the silver mine and refinery which it is said belonged to Dr. George A. Gardiner, and which he worked in the years of 1844 to 1846, and which were situated "on a branch of the Sierra Madre, opposite Cerro Gordo, in the Sierra de la Huasteca, jurisdiction of Lagunillas, in the department of Rio Verde, State of San Luis Potosi," &c.

HENRY MAY

RIO VERDE, December 1, 1852.

LAGUNILLIAS, MEXICO, December 14, 1852.

SIR: The undersigned has read a notice, entitled "Aviso al Publico," published at Rio Verde, December 1, 1852, and signed "Enrique May," offering "a reward of five hundred dollars to any person who can give exact and circumstantial information in regard to the silver mine and refinery which it is said belonged to Dr. George A. Gardnier, and were worked on his account during the years 1844 to 1846," situated in the Huasteca range of mountains, in the jurisdiction of Lagunillas, republic of Mexico.

The undersigned has lately examined said mine and refinery, and will give the following information, should it be deemed sufficient for the reward offered in the notice "Aviso al Publico:"

First. He will accurately describe the locality of the mines and refinery, their direction from Lagunillas, and the time necessary to occupy in visiting them, and the place where guides can be readily procured to point them out.

Second. He will give direct information where may be found the original archives at present containing the *title deed* which placed Dr. George A. Gardnier in possession of the mines, said deed including Gardnier's *petition denouncing the mines*; also an *accurate survey* of them by the official surveyor, and the *decree of the judge* giving Dr. Gardnier possession of the property all of which is *signed by the parties*, and fully authenticated according to the requirements of the law regulating mining operations in Mexico.

Third. The subscriber will also exhibit to Mr. May, or the other members of the commission, specimens of the ores, just brought by himself and companions, from the mines in question.

The favor of an immediate reply is respectfully solicited.

Your obedient servant,

E. W. ABBOTT.

TO HENRY MAY, Esq.,

Present at Lagunillias, State of San Luis Potosi, Mexico.

LAGUNILLAS, *December 14, 1852.*

SIR: I have received your note of this date, and filed it among the papers of our commission, for such uses as may be made of it either by our government or by Dr. Gardiner.

The advertisement published over my name, to which you refer, offers a reward for information about that mine which was the subject of Dr. Gardiner's claim at Washington. It is specially described in the original papers filed there by him; and the advertisement copies the words used therein.

We have no instructions or inclination to look for or examine any other mine than that described in the original papers above referred to, unless the description therein given should be mistaken in some unimportant point; and the promised reward will be paid to any one who will show us that mine.

If you are prepared to do so, you are requested to notify us at once, and to show us an authority from Dr. Gardiner for this purpose, and a written admission on his part that the mine you show to us is the same which formed the subject of his claim.

Your obedient servant,

HENRY MAY,

Chief of Commission.

Mr. E. W. ABBOTT.

LAGUNILLAS, *December 14, 1852.*

SIR: Your note, in reply to my communication of this morning, has surprised me, by an intimation contained therein that I had referred to other mines than those upon which Dr. Gardnier's claim is founded, and which are "specially described in the original papers" filed by him at Washington.

The mines examined by me, and to which I referred, are those pointed out to Captain J. S. Slocum and myself by Dr. Gardnier, as the same described at Washington; and the title deed I mentioned as giving him possession of them, contains the identical names by which they are now known to the miners.

The proposition, on my part, was to place in possession of the commission such information in regard to Dr. Gardnier's mines as I supposed the notice "Aviso al Publico" called for; and it was my intention to clearly indicate this in the note of this morning.

This note, and the former one, are individual acts, and I must respectfully decline asking Dr. Gardnier to become a party to them, any further than has already been done in the statement that the mines and refineries mentioned are the same as pointed out by Dr. Gardnier himself as basing his claim, and as directed to us by the original deed.

Your obedient servant,

E. W. ABBOTT.

HENRY MAY, Esq.,

Chief of Commission.

Captain Barry examined on the 23d of March.

"Mr. MAY. I will ask you if you know anything of a handbill being posted in the town of Rio Verde?

"ANSWER. Yes; I saw it. * * * I saw copies of this handbill first in Rio Verde, and next in Lagunillas. I saw it posted on the alcalde's house, and at entrances by the gates.

"QUESTION. You say you saw a number of these posted in the town of Rio Verde. Were they in public and conspicuous places?

"ANSWER. Yes, sir, around the plazas and other conspicuous places.

"QUESTION. For what length of time did you see it?

"ANSWER. A whole week.

"QUESTION. Did you see the people reading it?

"ANSWER. Yes; great numbers. It appeared to attract considerable attention.

"QUESTION. You again saw it, I understand, in the town of Lagunillas?

"ANSWER. Yes.

"QUESTION. Did you see more than one there?

"ANSWER. Yes.

"QUESTION. In what sort of places?

"ANSWER. I saw one posted in the alcalde's house, or, at least, his office. I suppose he resided there. I saw another on the public plaza, on the side of the wall, near a gate leading to the church.

"QUESTION. Do you know where a person named José Pando lived in the town of Lagunillas?

"ANSWER. Yes, sir.

"QUESTION. Where did he reside?

"ANSWER. He resided on the plaza.

"QUESTION. How far from the office of the alcalde?

"ANSWER. Right opposite the plaza. I cannot be certain about the width of the plaza, but think it was about eighty yards off.

"QUESTION. Did you know him personally?

"ANSWER. I did.

"QUESTION. Did you see him there on your first visit?

"ANSWER. I did.

"QUESTION. Did you see him more than once?

"ANSWER. Yes; I saw him several times.

"QUESTION. Did you converse with him?

"ANSWER. I did converse with him; he gave me information.

"Mr. BRADLEY. That won't do, sir.

"Mr. MAY. Never mind what he said; they won't allow that. I will ask you whether it was at that house, on your second visit, that you saw the friends of Dr. Gardiner?

"ANSWER. Yes; it was at the same house.

"QUESTION. Who did you see there?

"ANSWER. I saw Edward W. Abbott and Mr. Slocum.

"QUESTION. Were they residing at that house?

"ANSWER. They were, all the time I saw them. I saw them in the house, and walking in and out.

"QUESTION. Did you see Gardiner?

"ANSWER. I did not."

Captain Hunter examined on the 24th of March.

“MR. MAY. Did you see any handbills stuck up over my name; if so, in what places?”

“ANSWER. I saw them in both Lagunillas and Rio Verde; they were in a public square there.”

Captain Doubleday examined on the 8th of April.

“MR. MAY. I will ask you if you saw anything of a handbill posted in the town of Rio Verde?”

“ANSWER. Yes, sir.

“QUESTION. Was that handbill signed by my name in Spanish?”

“ANSWER. It was.

“QUESTION. Was it posted in conspicuous places?”

“ANSWER. I saw it posted in a great many conspicuous places in Rio Verde, and also in Lagunillas.

“QUESTION. Did it appear to attract observation?”

“ANSWER. A number of persons were reading it in both places.

“QUESTION. Do you know of anybody applying for the reward which was offered by that handbill?”

“ANSWER. A letter was received from a Mr. Abbott.

“QUESTION. Was there any other application?”

“ANSWER. There was no other.

“QUESTION. Did you hear of any other notice being taken of that handbill, or of any other person applying, except in the case of that letter?”

“ANSWER. I did not.”

Mr. Partridge recalled on the 9th of April.

In answer to a question, put on cross-examination, why the commissioners did not accept Abbott's offer, the witness said:

“We heard that Dr. Gardiner was in Lagunillas; and as the offer was unaccompanied by any authority from him, or any acknowledgment by him that such mine or mines as might be shown to us would be acknowledged as his, we did not choose to accept it.

* * * * *

“QUESTION. Did you want to find any other mines than those worked by Dr. Gardiner, from 1844 to 1846, in the Sierra Huasteca?”

“ANSWER. We understood that his offer was to give us different information, and we had other reasons for refusing it.

“QUESTION. What were those other reasons?”

“ANSWER. We believed the deed to be a fraud.

“QUESTION. Then you went to Mexico to make this investigation with your minds fully made up beforehand that there were no such mines there, and that it was not worth while to look for them?”

“ANSWER. I said no such thing. I said that after the first letter was received from Mr. Abbott, we went to the alcalde's office, and there we saw a title—purporting to be a title—stuck between two pieces of paper, and the manner in which it was put in, and the manner in which it was stained—

“QUESTION. I thought a moment ago, Mr. Partridge, you were ‘not certain’ whether this was before or after the receipt of this letter. Your ‘certainty’ seems to have arrived at last. Were not the reasons of those stains explained to you?”

“ANSWER. They said that water had been thrown upon these papers. The mining title was stained uniformly, as if it had been dipped in acid. That was the reason why we supposed

it was a fraud. Another reason was, from the offer of Mr. Abbott. We thought he might point out a mine which Dr. Gardiner would afterwards deny."

Captain Slocum cross-examined on the 16th of April.

The witness stated that he saw a handbill put up in Lagunillas; that he read it, and took a copy of it.

"QUESTION. Were you at the house of José Pando?"

"ANSWER. Yes.

"QUESTION. Were Captain Hunter, Captain Doubleday, Captain Barry, and the alcalde, there?"

"ANSWER. They were.

"QUESTION. Were you there when some of the commission called?"

"ANSWER. I was.

"QUESTION. Did you see them?"

"ANSWER. I did.

"QUESTION. Did you hear their conversation?"

"ANSWER. I heard them.

"QUESTION. Was Dr. Gardiner with them?"

"ANSWER. He was in the room with me; I heard them talking, but I did not understand anything they said, because the door was ajar, and the language was a foreign language; and unless I am face to face with those who are talking Spanish, I cannot follow them.

"QUESTION. You say Dr. Gardiner was in the room with you?"

"ANSWER. Yes.

"QUESTION. Was he at that time sick?"

"ANSWER. Very sick.

"QUESTION. Were you sick?"

"ANSWER. I was.

"QUESTION. Were you able to go about?"

"ANSWER. Yes, I went out occasionally; I would get up for a few moments, and then go back to bed again.

"QUESTION. Was Dr. Gardiner able to get up?"

"ANSWER. He would sometimes get up; but would not sit up but a few moments at a time.

"QUESTION. Was he able to walk about?"

"ANSWER. I do not think he went out of the house.

"QUESTION. Was he more sick than you?"

"ANSWER. At that time he was, for I was recovering.

"QUESTION. Was he able to go out of the house?"

"ANSWER. I do not recollect.

"QUESTION. Did he go out on the piazza?"

"ANSWER. I do not recollect. I think there was no portico to the house; or, if there was, it certainly was but two or three feet wide, and afforded no shade when the sun was on that side.

"QUESTION. Do you know who wrote the letter signed 'E. W. Abbott?'"

"ANSWER. I do; he wrote it himself.

"QUESTION. Do you know who framed it?"

"ANSWER. I do not know; I think we all made suggestions.

"QUESTION. Was Dr. Gardiner present at the time?"

"ANSWER. He was present, lying on a bed.

"QUESTION. Did he see my reply?"

"ANSWER. He did, and was present when the rejoinder was written.

“QUESTION. Did he take part in preparing that rejoinder?”

“ANSWER. I do not recollect; I know he examined the letter, and knew the substance of the reply.

“QUESTION. Had he seen the handbill at that time?”

“ANSWER. I think he had; or, if he had not, he knew its contents. Colonel Abbott showed it to us.”

E. W. Abbott cross-examined on the 18th of April.

“MR. MAY. (Handing to the witness his letters of December 14, 1852.) Look at the two letters there, bearing your name, and say whether they are in your handwriting?”

“ANSWER. They are in my handwriting.

“QUESTION. Where were they written?”

“ANSWER. In Lagunillas, in the house of José Pando.

“QUESTION. In what room?”

“ANSWER. In the room occupied by Dr. Gardiner.

“QUESTION. Was he present when they were written?”

“ANSWER. He was.

“QUESTION. Did he read them?”

“ANSWER. I read them to him.

“QUESTION. Then he knew their contents. Was he able to walk about at that time?”

“ANSWER. He was not. He had been sick some time before that. I think the day before the commission arrived was the first day he had been able to sit up for some time before.

“QUESTION. There are notes at the bottom of these letters. These notes were read to Dr. Gardiner by you, and you considered them as his individual acts?”

“ANSWER. I read the whole of the letters to him without any suggestion from him.

“QUESTION. Was my reply to your first letter read to him by you?”

“ANSWER. I think it was.

“QUESTION. Did Captain Slocum read it?”

“ANSWER. He read it over my shoulder.

“QUESTION. Did you know of a visit paid by Captain Barry and two of the commissioners to Pando's house?”

“ANSWER. Yes.

“QUESTION. Did they converse with Pando?”

“ANSWER. They did.

“QUESTION. Did you hear the conversation?”

“ANSWER. Very little of it.

“QUESTION. Was not the door partly ajar?”

“ANSWER. It was.

“QUESTION. Which of the gentlemen of the commission spoke to Pando?”

“ANSWER. I do not remember distinctly, but think it was Mr. Partridge. I cannot be sure of it.

“QUESTION. Did you hear a portion of the conversation?”

“ANSWER. I did.

“QUESTION. Were you in front of the house as they crossed the path to go from Pando's house?”

“ANSWER. I do not remember. I might have been.

“QUESTION. I see you wrote the name of Gardiner ‘Gardnier?’

“ANSWER. That may be a mistake of mine.

“QUESTION. Where did you first see this notice offering a reward for the discovery of these mines?”

“ANSWER. It was sent from Rio Verde to Lagunillas. I saw it first at Pando's. It was in a San Luis newspaper. I saw the handbills posted to the same effect.”