Hon John J. Bradley
with the respects of
M. Graham

SUMMING UP

OF

No. 5.

JOHN GRAHAM, ESQ.,

TO THE JURY, ON THE PART OF THE DEFENCE,

ON THE

TRIAL OF WILLIAM M. TWEED,

IN THE COURT OF OYER AND TERMINER OF THE COUNTY OF NEW YORK.

JANUARY 30, 1873.

NEW YORK:
POOLE & MACLAUCHLAN, PRINTERS,
205–213 EAST 12TH STREET.
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May it Please the Court:

GENTLEMEN OF THE JURY:

I have been suffering from severe indisposition for upwards of a week, and have had to patch myself up from day to day, to enable me to attend here. I do not know that I am in the best condition, physical or mental, to assume the discharge of the duty cast upon me by the indulgent consideration of my learned associates. Under any circumstances, it would be better performed by any one of them than by me; but if I am able to present myself to the public at all, I do not feel at liberty, no matter what may be the consequences to my own personal health, to refuse to appear at the tap of the drum, to speak for my client. Whatever imperfections may exhibit themselves in my performance to-day I hope will be treated with charity by you, and will in no way redound to his prejudice.

After a troublous time we have at last arrived near the close of this case. We are now before *you*, Jurors,—a right guaranteed to us by the Constitution of our State; a right, in all cases in which it has been heretofore enjoyed, proclaimed by that solemn instrument to be inviolate forever. Up to this point you may be said to have been simply spectators and listeners; but at this point your responsibility commences, and you are aroused from comparative inertness to activity. You are the arbiters of the facts in this case. Their decision rests upon your deliberations. The law has reasoned wisely, in its distribution of duties in our courts of justice, that it is not well to have the same mind generate the law and determine its applicability to the disputed issues of fact. The stoicism demanded of the Bench, though *nominally*, is not, *in the strict sense of the term*, to be looked for in the conduct of the jury. If it were possible to exemplify, *practically*, the rules of law,

in their application to occurrences daily transpiring, the greatest cruelty and injustice would often be the result. The old adage is, and no one will question its verity: "Extreme right is extreme wrong,"—*summum jus, summa injuria.*

The learned Story, one of the greatest luminaries that ever graced the judicial sky, has left behind him some sentences; not written for a day, but for all time; embodying a clear expression of some of the offices which devolve upon you, constituting a jury of the people. I read, if the Court please, from the 2d of Story, on the Constitution of the United States, section 1780:

"The great object of a trial by jury in criminal cases is, to guard against a spirit of oppression and tyranny on the part of rulers, and against a spirit of violence and vindictiveness on the part of the people. Indeed it is often more important to guard against the latter than the former," *for*, for some cause or other, *when the people, as a body, assume to take the law into their own hands, through their passions and their prejudices, they degenerate into a mob and a rabble.* "The sympathies of all mankind are enlisted against the revenge and fury of a single despot, and every attempt will be made to screen his victims. *But how difficult is it to escape from the vengeance of an indignant people, roused to hatred by unfounded calumnies, or stimulaled to cruelty by bitter political enmities or unmeasured jealousies? The appeal for safety can, under such circumstances, scarcely be made by innocence in any other manner, than by the severe control of Courts of Justice, and by the firm and impartial verdict of a jury sworn to do right, and guided solely by legal evidence and a sense of duty.* In such a course there is a double security against the prejudices of judges, who may partake of the wishes and opinions of the government, and *against the passions of the multitude who may demand their victim with a clamorous precipitancy.* So long, indeed, as this palladium remains sacred and inviolable, the liberties of a free Government cannot wholly fall. But to give it real efficiency it must be preserved in its purity and dignity, and not, with a view to slight inconveniences, or imaginary burthens, be put into

the hands of those who are incapable of estimating its worth, or are too inert, or too ignorant, or too imbecile to wield its potent armor." An excited populace are more to be feared than a single individual, whatever his position!

I desire also, in this connection, to invite the attention of the Court, in your hearing, to the 1st of Greenleaf on Evidence, Section 13 a, as containing one of the plainest expositions of the standard by which a jury are to discharge their duty, in the disposition of the evidence in a case like this, to be found in the English language. In this section the learned author, if the Court please, draws a distinction between the duty which a jury have to perform in *civil* and in *criminal* cases, and shows that the principle of performance on which their action in criminal cases rests, differs entirely from the rule which regulates their action in civil cases.

"In civil cases, where the mischief of an erroneous conclusion is not deemed remediless, it is not necessary that the minds of the jurors be freed from all doubt; it is their duty to decide in favor of the party on whose side the weight of evidence preponderates, and according to the reasonable probability of truth. *But in criminal cases, because of the more serious and irreparable nature of the consequences of a wrong decision, the jurors are required to be satisfied, beyond any reasonable doubt, of the guilt of the accused, or it is their duty to acquit him ;*—the charge not being proved by that higher degree of evidence which the law demands. In civil cases, it is sufficient if the evidence, on the whole, agrees with and supports the hypothesis which it is adduced to prove." Now mark this: "*But in criminal cases it must exclude every other hypothesis but that of the guilt of the party.* In both cases a verdict may well be founded upon circumstances alone; and these often lead to a conclusion far more satisfactory than direct evidence can produce."

So that the principle upon which you are to decide the issues in this case is not upon which side of the controversy the evidence preponderates, but does the evidence lead your minds to such a conclusion as to exclude every other hypothesis but that it may be the object of the

prosecution to sustain, and the design of the defence to overthrow.

I call the attention of the Court, also, in your hearing, Gentlemen of the Jury, to the obligation of your oaths as it is defined in the case of Bushell, 6 State Trials, 1006. Here will be discovered as perfect a definition of the manner in which you are to redeem your oaths, and of the obligation which rests upon you under them, as could possibly be stated in language. In this case a whole jury were imprisoned by a court. They sat as jurors upon the trial of Penn and Mead, indicted in the 20th Charles II., 1670, in the Court of Sessions for London, for getting up a tumultuous assemblage. Not being willing to be bound by the instruction of the Court upon matters of fact, but supposing that, under the constitution of England, those matters under their oaths were committed to their hands, contrary to the strong indication of the Court as to how they should find upon the facts, they rendered a verdict of acquittal. The verdict was scarcely rendered before they were summoned to the bar, and each man was fined forty marks, and for non-payment of the fine was committed to prison. A writ of *habeas corpus* was procured, returnable before Vaughan, Chief Justice of the Common Pleas, which resulted in establishing their right to a discharge. In drawing the distinction between the duty of a *witness* under his oath, and that of a *juror* under his oath, Chief Justice Vaughan uses this language: "And by the way I must here note, that the verdict of a jury and evidence of a witness are very different things, in the truth and falsehood of them; a witness swears but to what he hath heard or seen, generally or more largely, to what hath fallen under his senses. But *a juryman swears to what he can infer and conclude from the testimony of such witnesses, by the act and force of his understanding, to be the fact inquired after*, which differs nothing in the reason, though much in the punishment, from what a judge, out of various cases considered by him, infers to be the law in the question before him."

Precisely as a judge ransacks his books, goes over volume after volume, and, in view of all his research, determines what the law is on a given point, as the result of his

own judgment, so you, in passing upon the facts in a given case, draw your own conclusions and inferences from the testimony placed before you, by the act and force of your own understanding. You have the right to interpret the facts for yourselves. That is the nature of your oaths. In no other way can you redeem the obligations by which you have bound yourselves to act as jurors in a particular controversy.

If the learned counsel for the prosecution will not consider it *personal*, for I do not utter anything on this occasion in the spirit of personality, I will draw your attention, in their hearing, to an extract from the opening speech of the Attorney General, Sir Francis Bacon, on the trial of the Earl of Somerset (2 State Trials, 970), 14 James I., 1616, in the Court of the Lord High Steward of England. The Earl and Countess of Somerset were charged with being accessories to a murder. The Countess pleaded guilty. The Earl went to trial and was condemned, but he received the grace of the crown, as well as his wife, in a pardon. In opening the case against the Earl to the Court, the Attorney General said—and this is a safe rule for all prosecuting counsel to adopt:

"As for the manner of the evidence, *the king*, our master, *who*, amongst other his virtues, *excelleth in that virtue of the imperial throne which is justice*, hath given us command, that we should not expatiate, nor make invectives, but materially pursue the evidence, as it conduceth to the point in question: a matter, that, though we are glad of so good a warrant, yet we should have done of ourselves; *for far be it from us by any strains of wit or arts to seek to play prizes or to blazon our names in blood, or to carry the day otherwise than upon sure grounds;* we shall carry the lanthorn of justice (which is the evidence) before your eyes upright, and so be able to save it from being put out with any ground of evasion or vain defence, *not doubting at all but that the evidence itself will carry that force, as it shall need no advantage or aggravation.*"

That is the sum and substance of their (the counsel for the prosecution) duty, to carry the lantern of evidence fairly before you, and to prevent its being put out by any undue or improper influence.

In the same speech this sentiment occurs: "I will speak," says Sir Francis, "somewhat of the nature and greatness of the offence, which is now to be tried, *not to weigh down my Lord with the greatness of it*, but rather, contrarywise, *to show that a great offence needs a great proof*." If it is necessary to magnify an offence in a court of justice, it is not to create prejudice, it is not to weigh down the accused—it is to show that a corresponding duty rests upon the prosecution, to sustain a great offence by the introduction and exhibition of great proof.

If that is the theory of the present prosecution, if they charge that Mr. Tweed has been guilty of a great offence, you ought to exact from them great proof; for according to the sentiment of Sir Francis Bacon, a great offence can be properly sustained in a court of justice in no other way than by proof commensurate with its magnitude. I will hereafter show you that while they have magnified and aggravated the offence, the proof upon which they rest, instead of being great proof, is entirely disproportioned to the dimensions of their own charge.

As to *Confessions*, if the Court please, I submit this principle. The prosecution themselves have introduced fifty-five certificates of audit. Every one of them contains the fact that the Board audited and allowed the claims, they professed to audit and allow, at a certain amount. It is true the counsel for the prosecution asked Mr. Storrs: "Did you ever hear of this Board meeting after the adoption of this resolution which has been produced?" It is true they put the same question to Mr. Lynes. It is true they asked, *seriatim*, Mr. Davidson, Mr. Keyser, and Mr. Garvey the same question; but, having introduced into the testimony these certificates of the Board, purporting to be the action of the Board, *as a Board*, after that time, showing that Mr. Tweed acted as one of them and participated in their acts, they have concluded themselves from denying the truth of the fact, unless the circumstances, *proved generally*, show these documents to be false, or they have given evidence directly with that view and upon that point. It is not enough that five persons never heard of a meeting of the Board of Audit, to overthrow the positive testimony on the face of the certificates, that this Board

of Audit did meet and audit and allow the claims presented to them in a manner, at all events to all appearance, conforming to the duty imposed upon them by law. We consequently maintain that under the proof, *as it now stands*, the prosecution are not at liberty to insist before the Court and Jury, so far as the meeting of this Board of Audit is concerned in the regular auditing and allowing of the claims they assume to establish, that there was no such meeting, or that they can question the verity of any declaration or assertion contained in the Certificates of Audit.

As to the (alleged) *Offences* I have a few words to say. I refer the Court to two decisions in the 3d of Lansing. The People *vs.* Burnside, page 74, and The Same *vs.* Eddy, page 80.* The Court will be kind enough, in instructing

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* These authorities had been frequently referred to and dwelt upon in the course of the different proceedings against Mr. Tweed, and were considered so familiar as to dispense with more than a general reference to them.

The People *vs.* Burnside arose as follows: The Railroad Commissioners for the Town of Oneonta had sold its Railroad Stock for less than par, upon credit, in violation of an act of the Legislature allowing them to sell for cash, not less than par, &c. The County Judge held that their offices became vacant under an act of the Legislature providing "that in case any Commissioner under the said act (of 1857) *shall refuse or wilfully neglect to perform any part of the duties specefied therein, &c., his office shall thereupon become vacant:*" and appointed Commissioners for the Town in their stead.

A Certiorari was issued to review the action of the County Judge, who held that the Relators "had refused or wilfully neglected to perform their duties as Commissioners for the Town of Oneonta in selling or disposing of the capital stock of said Railroad Company owned by said Town, on credit, whereby the office of such Commissioners had become and was thereby declared vacant." The Supreme Court for the Third Department, at General Term, reversed the action of the County Judge, and speaking per Miller, P. J., used this language: "The County Judge made an order whereby he declared the offices held by the Relators vacant, and appointed other Commissioners in their places, upon the ground that they had *wilfully neglected or refused to perform their duties, in selling or disposing of the stock* held by the town *on credit*. The wilful neglect and refusal upon which the order was based was that the Commissioners had *done an act* in violation of their duty, and had been guilty of *misfeasance* in office, and was not upon the ground of a *refusal to perform* or a *wilful nonfeasance*. In this, I think that the County Judge committed an error. In order to make out a case within the provisions of the section cited, there must be *an absolute refusal* or a *wilful neglect to perform some duty* imposed by the act. The statute

the jury, to carry in its memory or bear in mind the matters now stated, which I think are a fair exposition of the structure of the indictment. To convict under the first count, *which charges an absolute neglect to audit*, the jury must find that the bill presented by Keyser & Co. to the Board of Audit, or by whoever else may be named in the first count of each set of counts, was a *truthful* bill, the first count in each set of counts of the indictment charging that the duty of auditing was withheld from a *truthful* bill. Assuming they had a truthful bill, the duty of auditing is averred in reference to such a bill, and the neglect to audit is predicated of such a bill. There can be no conviction, therefore, under any of the first counts of any of these sets, unless the prosecution make the concession, or the jury find from the evidence, that in each and every instance the bills presented were *truthful*, *real*, *actual* bills.

To convict under the second count of each of these sets, the jury would have to find that the bill presented was *radically false*, was wholly manufactured; that the defendants did not know it; and that they, nevertheless, proceeded to audit and allow such a bill, when *radically untrue*, having no knowledge whether it was true or false.

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evidently was not intended to punish the Commissioners for *positive acts done* by them in violation of law, but for contumacy, in *refusing to obey the mandate of the law*, and for *wilfully and unlawfully neglecting to do what was required* by the plain terms and import of the statute. While the language of the provision cited negatives the idea that it was intended to authorize an appointment of new Commissioners as a mere consequence of *a wrongful act*, it is quite manifest that it was not designed to embrace a case where there was a mere breach of duty. Such an interpretation would be *extending the statute by construction beyond what its language imports;* and if such had been the intention, certainly it would have contained a provision to that effect." Again: "Although the proceedings before the County Judge were regular, and within his jurisdiction, yet as he exceeded his authority in declaring the offices of the Commissioners vacant, *for a cause not provided for, and not within the spirit and meaning of the law*, they must be reversed."

The People *vs.* Eddy was a review by the same General Term upon a similar writ of a similar order by the same Judge, in relation to Railroad Commissioners for the Town of Milford. In that case, however, it appeared that the Commissioners had been *offered*, and *refused* to sell the stock *for cash*, for its par value, and had, notwithstanding, attempted to sell it conditionally *on credit*. This was held to be a *nonfeasance*, and the order was affirmed.

To convict under the third count of each of these sets the jury must find that a bill *partially false* was presented to the Board of Audit; that the defendants, the three members of the Board, knew it to be false to the extent to which the indictment alleges it was false; and that, notwithstanding, they audited and allowed it at its full amount.

To warrant a conviction under the fourth count of each of these sets, the jury must find that the bill certified to was a *radically false bill;* that the Board of Audit knew it to be such a bill; and that, with that knowledge of its radical falsity, they certified to its being a claim against this County.

Under the authorities in the 3d of Lansing, pages 74 and 80, the Court will find that *misfeasance* can never be used to prove *nonfeasance.* In the opinion of Justice Miller, nonfeasance is said to be contumacy, a refusal to act upon the mandate of the law at all. Misfeasance is an assumption of action under the law, but an abuse, in the name of the law, of the duty the law intended to be discharged. The distinction is stated there as clearly as it can be. *Misfeasance* cannot be resorted to to show *nonfeasance*, for *nonfeasance* is a position of contumacy towards the law and an absolute refusal or declension to assume the duty, *either* in a fair *or* an unfair way, which the law has created against the public officer.

It is hardly possible to present the doctrine with more conciseness and perspicuousness than is done by Justice Miller in the first of the decisions referred to.

My learned brother Burrill, in a report he sent me last night of yesterday's proceedings (being absent myself from Court yesterday owing to indisposition) to enable me to respond to Mr. Peckham's address, called my attention to an occurrence, which if I did not know it was an occurrence, because vouched for by a gentleman of his veracity, I should be willing to believe had not actually taken place. That learned counsel (Mr. Peckham) reconciled it to his sense of propriety to make an *argument* to, and an attempt to make an *impression* upon this Jury, because Mr. Tweed had not been called as a witness in his own behalf. In reference to that, let me call the attention of

the Court to the remarks of Justice Allen, in the Court of Appeals, in Ruloff *v.* The People; 45 New York Reports, 221; who substantially says that no man of understanding will, unless under very extraordinary circumstances, dare to call his client as a witness in a court of justice in a criminal proceeding, although the Legislature has given him the opportunity of taking the stand if so inclined. I mean to say that any lawyer, practising in a criminal court, who would allow his client to take the stand as a witness, unless under very peculiar circumstances, at least so far as the Bar of this city is concerned, would be effectually and totally destroyed as a practising counsel.

In the Ruloff case the learned Judge, at the trial, in charging the jury, alluded twice to the fact that Ruloff had not been upon the stand in his own behalf, and the Court of Appeals held that that would have been a fatal exception, unless, as he did before he submitted the case to the jury, he had qualified his previous allusion, by telling the jury that they were not at liberty to draw any inference from the non-appearance of the accused as a witness in his own behalf. Justice Allen says: "A question is presented by the exception to the comments of the Judge, upon the fact that the prisoner had not availed himself of the privilege of being sworn and giving evidence in his own behalf. By statute (Chap. 678, of the Laws of 1869), persons upon trial for crime may, at their own request, but not otherwise, be deemed competent witnesses. *The act may be regarded as of doubtful propriety, and many regard it as unwise, and as subjecting a person on trial to a severe if not cruel test. If sworn, his testimony will be treated as of but little value, will be subjected to those tests which detract from the weight of evidence given under peculiar inducements to pervert the truth when the truth would be unfavorable, and he will, under the law as now understood and interpreted, be subjected to the cross-examination of the prosecuting officer, and made to testify to any and all matters relevant to the issue, or his own credibility and character, and under pretence of impeaching him as a witness, all the incidents of his life brought to bear with great force against him.* He will be examined under the embarrassments incident

to his position, depriving him of his self-possession and necessarily greatly interfering with his capacity to do himself and the truth justice, if he is really desirous to speak the truth. These embarrassments will more seriously affect the innocent than the guilty and hardened in crime."

"*Discreet counsel will hesitate before advising a client charged with high crimes to be a witness for himself, under all the disadvantages surrounding him.* If, with this statute in force, the fact that he is not sworn can be used against him, and suspicion be made to assume the form and have the force of evidence, and circumstances, however slightly tending to prove guilt, be made conclusive of the fact, then the individual is morally coerced, although not actually compelled to be a witness against himself."

Again the learned Justice says: "The Legislature foresaw some of the evils and dangers that might result from the passage of this act, and did what could be done to prevent them by enacting that the neglect or refusal of the accused to testify should not create a presumption against him. *Neither the prosecuting officer nor the judge has the right to allude to the fact that a person has not availed himself of this statute, and it would be the duty of the court promptly to interrupt a prosecuting counsel who should so far forget himself and the duties of his office, as to attempt to make use of the fact in any way to the prejudice of a person on trial. An allusion by the Judge to the fact, unexplained, cannot but be prejudicial to a person on trial, and a provision intended for his benefit will prove a trap and a snare.*" Again, the learned Justice says: "But the Judge, upon his attention being called to his remarks, did say to the jury that there was no law requiring the prisoner to be sworn, and there was no inference to be drawn against him from the fact of his not being sworn. Inasmuch as the error of this part of the charge was that by its general terms it authorized an inference to the prejudice of the prisoner, rather than a direct statement of an erroneous proposition, we are of the opinion that the error was cured by the subsequent explanation."

So that, on this decision of the Court of Appeals, every man of you would be perjured, if you indulged a single

atom of prejudice against William M. Tweed, because he did not take the witness-stand before you. I would not have consented to participate in this trial, under existing circumstances, if I had supposed that notwithstanding the advice he received from his advocates, he was or would be willing to place himself in a position of that description. You must remember, Gentlemen of the Jury, that when Mr. Tweed, or any one else, places himself under the wing of counsel, he must abide by their instructions, or they must leave him to his fate. He can make a sacrifice of himself, but he must not expect to make a sacrifice of his advocates. They defend him upon their oaths. They concert between themselves what is the most for his advantage. The medicine they prescribe for him he must take, or else call in other physicians.

As I understand from the remarks of the Court, there are two issues to be decided by this Jury. I have read over some of the interlocutory expressions of the Court during the trial, since the evidence closed, to ascertain where we are. There are two issues to be presented to you, Gentlemen of the Jury, by the Court. The first is in reference to the three first counts in each set of counts in this indictment, an indictment containing fifty-five sets of counts, in all two hundred and twenty counts. Did Mr. Tweed neglect to audit? Was he guilty of a wilful neglect to audit a matter which, under the Act of April 26th, 1870, as a public officer, taking upon himself official relations, under that Act, he was bound to audit? If right in the views I have expressed to the Court, that question can only be submitted to you on the first count. The second and third counts allege the *misfeasance* as the *neglect* to audit, and such a question cannot be submitted to you on those counts under the decisions in the 3d of Lansing, already cited. The question of auditing, or not auditing, in reference to wilful neglect, must be submitted to the jury under the first count, which charges that neglect as to a truthful bill to which the Board of Audit owed a duty of some description under the statute in question.

The second issue is, did Mr. Tweed—and this is in the fourth count of each set of counts—corruptly certify—for that is the language of the count—did he knowingly, un-

lawfully, and corruptly certify, as a member of this Board of Audit, that the particular claim was a just and true claim against the County of New York? I will show you as I pass, that, beyond this rotten, perjured Garvey, there is not a particle of testimony to establish the charge of corruption against him.

Let us for a moment, Gentlemen of the Jury, take a view of the present *status* of Mr. Tweed in this Court. He starts, in a prosecution like this, with the legal presumption thrown around him that he is guiltless and innocent of all crime. The law requires him to prove nothing in his favor, until something is proved against him by the prosecution, upon which a juror has a right to rest a verdict. When any fact is proved against him in a court of justice by witnesses who can be believed, if that fact is sufficient to create criminality against him, he must meet it by contradictory proof. If his counsel tell him, as they tell him here, that no such perjurer as Garvey can call upon him for a response in the way of a defence, he has a right to follow that advice, and his counsel have a right to tell a jury of the country *that*, and *why* he followed it.

Another legal presumption attaching to Mr. Tweed, this day, or which attached to him at the outset of this trial, and still attaches to him unless it has been overborne by proof, is that he is a man of good character. You have heard a great deal against him; so you have against President Grant. There is no man upon that jury, who, if he was called to prove the character of General Grant, would not have to say that he had read as much against him as for him, and unless it was because of his personal and political preference for him, he would have to say that his judgment was equally divided as to whether General Grant was a man of good or bad character. Look at the charges heaped upon him within the last six or nine months. You would suppose that no State prison in the land contained a worse man, if those charges are true; and that only goes to show you what calumnies the animosities and hostilities of people will invent when they resolve to accomplish the destruction of an individual. Take the case of Governor Hoffman. Who has been more reviled by the public press than that man? Those who know him in private life, if

they were called to sustain his character in a court of justice, would come forward in a solid phalanx and tell you that he was a man of unblemished reputation. Yet if you were to form your judgment upon his character as you have gained it from newspaper animadversions upon him in connection with his public duties, and, upon your oaths, were asked to declare it, you would have to say that a worse man than Governor Hoffman in or out of office never drew breath in the great State in which we live. Have these same darts passed at him (pointing to Mr. Tweed)? Has this same bow sent its arrows at him? In his private relations, that man is as unspotted and spotless as either of those distinguished personages. He has no worse character before this public than they have, and put upon him in the very same way in which the bad reputations, assigned to them, have been fastened to them. What else is there in reference to Mr. Tweed? He has stood his ground like a Roman. Others ran. Others hid. Others could not be found, but here he is, like a Roman! He has met the laws of his country thus far. He will meet them until "the crack of doom." Interviewers have annoyed him, have dogged him from place to place. They have tried, by their inflammatory falsehoods, to compel him to leave your city, but here he is to-day in your hands, for weal or for woe, and his not fleeing, when he had all the chance and all the inducements, under the circumstances, other men could have, is an argument in favor of his innocence. It is a strong addition to his cause and his defence upon this occasion.

Another consideration to be indulged is this: Who pretends that William M. Tweed cannot pay back to the County of New York every dollar that may be recovered from him in the civil actions brought against him? He has given a million dollars security—a larger amount than he is charged with abstracting. If the County of New York, or the People of the State in their behalf, recover that amount from him, it will be made good to the County. They talk of this, on the side of the People, as though it was a loss, an absolute loss to the County; as though Mr. Tweed had got the money and was now irresponsible, and could not return it. Let me tell you that every farthing

of that money will go back, if these civil actions result in a recovery against him. He is able to respond. He has given security, and no loss can occur.

Mr. Tremain: There is not a word of evidence as to the ability of Mr. Tweed to respond. It is totally irrelevant to the issue.

Mr. Burrill: Mr. Peckham alluded to it.

Mr. Graham: Yes, sir; and in the opening too. Mr. Peckham charged that the reason why they discontinued the Board of Supervisors and resolved this matter into the hands of this Board of three, was *that three could be bought up easier than the Board of Supervisors.* That is in his opening, and I will read it if the Court desires it—that they procured legislation so as to have fewer persons to buy in this Board of Audit than they would have had to buy if they had continued the Board of Supervisors.

The Court: I don't see anything in that on the subject of Mr. Tweed's property. There is no evidence on the subject of what property Mr. Tweed has.

Mr. Graham: There is no evidence that he has not sufficient property to respond.

The Court: That you are free to say,—that there is no evidence that he has not.

Mr. Graham: Then that is evidence that he has. They have not attempted or offered to show anything against his perfect responsibility, or ability to pay back this money.

Another consideration before I leave this subject. Has this prosecution shown to you that these claims were not before the Board of Supervisors? Where is that proof? Have they introduced any minutes of the Board to show that these bills were not before it? I have looked for it in vain, and if there is any I would like the counsel now to state it. Have they shown you, except by assumption

and rhetoric, that every one of these claims did not pass before a Board of Supervisors of some sort.

Mr. Tremain: I hope you will not construe my silence into an admission that there is no such evidence. At the proper time I will answer you.

Mr. Graham: Very well, I will take it then, just now, as *politeness.*

A few words as to the good faith of this *auditing*, constituting the *first* of the issues, as I understand it, the Court will submit to you. One ground the prosecution meant to take, which we think we have completely headed off, *is* that the claims, embraced in the certificates of audit, were untrue, manifestly fictitious, because not verified by affidavits pursuant to a rule of the Comptroller's office. It has been law in the Comptroller's office for a number of years, a law made by the Comptroller himself, that before claims were paid, the parties in whose favor they were presented should make affidavits verifying them. I have never heard of any provision of *public* law which required that, but I have understood always that it was a rule originating with the Comptroller himself; and however much it may have been observed in reference to claims against the city, the evidence of Mr. Lynes, their own witness, is that no suspicion is to be indulged against these certificates of audit, because the claims embraced in them were not sworn to—that in reference to claims against the County, that practice had been virtually abandoned anterior to 1870, and unobserved, unless in exceptional instances, for several years, as I think he said upon the stand, prior to the year 1870. Thus any attempt to impeach the good faith of these certificates, on the ground that the claims embraced in them were not verified by affidavit, must fail; for the affidavit since 1868 or 1869 has rather been the *exception*, and the *rule* has been that such claims, particularly where the individuals presenting them were known, should be audited and paid as a matter of course, without any verification whatever.

Garvey says he did not know Mr. Tweed in the transactions he had with Watson and Woodward, except from

what Mr. Tweed told him in 1867, when, in some three instances, he says, he paid Mr. Tweed fifteen per cent. of the amount of his bills, and was then told by him to do the business after that with Woodward, and that whatever arrangement he made with Woodward would be satisfactory to him, and all right. Accepting the statement of Garvey, he confesses that he did not know Mr. Tweed, in any transaction about his claims at all, after 1867. He confines the manufacturing of the bills to Watson and Woodward. If they got up the bills, one being the County Auditor and the other the Assistant Clerk to the Board of Supervisors,—if Garvey is not believed, as to the conversation with Mr. Tweed in 1867—and Mr. Tweed put his name on the face of the bills, relying upon Watson and Woodward vouching for their genuineness and correctness, then, as the Court itself has stated in one of its interlocutory expressions, Mr. Tweed had the right to rely upon them, or to take what they said in support of the bills, and if he acted upon what they told him, if he did not know to the contrary, he would be justified in so doing. So, you will remember, Mr. Davidson confined the transaction between him and Woodward, to Woodward alone, and in no way implicated Mr. Tweed. So you will remember Mr. Keyser, who says he made up his last bills in the office of the Clerk of the Board of Supervisors, in the presence of Watson, Woodward and the clerk who officiated there as amanuensis, in no way connects Mr. Tweed with the preparation or getting up of the bills, or pretends that he had any knowledge of the circumstances under which it occurred. So that the case stands thus: Davidson implicates nobody but Woodward. Keyser implicates nobody but Watson, Woodward and this clerk who did the writing, as I understand it, whenever there was any writing to do, although Keyser says that he mainly got up his own bills either at his residence or at his store. Garvey connects nobody with his transactions, but Watson and Woodward, except as he endeavors to implicate Mr. Tweed by the conversation he pretends to have had with him in 1867.

Is the evidence distinct, as to when Mr. Tweed wrote

his name on the face of the bills? Do the prosecution show when that took place? I have not been able to see any direct evidence of that description. We are left to infer the *time* from the other evidence in the case. If Mr. Tweed did it, before the bill received any other approval, Watson's stamp is not falsified, which was, "Examined by me and found correct." It is immaterial for the purposes of guilt or innocence, whether Mr. Tweed put his name on the face of the bill *before* or *after* the stamp was affixed. In either instance, the stamp is the declaration of Watson, not disproved by any evidence in this case, except by that of such a man as Garvey, that he had examined the bill and found it to be correct. If Watson examined it after Mr. Tweed had put his name on the face of it, and found it to be correct, that proves it was correct when Mr. Tweed put his name there, and shows that Watson did not rely upon his name being there; but that he examined the bill, nevertheless, for himself, and, upon his own examination, became satisfied that it was a proper bill. If Mr. Tweed put his name on the face of the bill after the stamp, then surely his act is defended against all aspersion or imputation. In *seven* instances out of *ten*, being the number of the Keyser vouchers, which are the only vouchers claimed to be in existence or which have been introduced in evidence, Mr. Tweed's name simply appears upon the face of the bill, with sometimes "Chn." added. In *one* instance, his name does not appear upon the bill at all. In *two* instances, under the handwriting of Woodward, who writes a certificate that the *foregoing bill is correct*, or *that the above bill is correct*, he (Mr. Tweed) appears to have adopted and assented to that statement. It reads from the pronoun *we* as though the certificate had been put there before either he or Woodward signed. Those are the only instances of that kind, and the fact, I submit to you, that the certificate is in the handwriting of Woodward, unless the Court shall charge you absolutely that the law is the other way, does not exclude the idea that, after Mr. Tweed had put his simple name on the bill, a certificate was written over it. We do not say *feloniously*, because Mr. Woodward might have supposed the signature of Mr. Tweed meant to indicate

that, so far as he was concerned, the foregoing bill, or whatever it was, was correct. Let me ask you this: Seven of these vouchers have Mr. Tweed's name upon the face of the bill—two of them have his name on the face of the bills, under a certificate that they were correct, in the handwriting of Mr. Woodward. If Mr. Tweed had merely intended to notch the seven bills as he received them, so as to show that they had been in his hands, and, when he came to act upon them, as a member of the Board of Supervisors, or a member of the Board of Audit, or in any other capacity, prevent the substitution of a spurious bill in their place, what better could he have done? A paper is handed to me to-day, which, if you please, I have not time to read. In order to prevent the substitution of another in its place hereafter, and the assertion of somebody that the paper substituted is the one I originally received, I put my name on it, meaning thereby, not to certify to it, not to signify my approval of it in any way, but to indicate that it had been already in my hands. That is a fair illustration. Is Mr. Tweed proved to have done more?

Upon this point of the good faith of the *auditing*, did not Hall and Connolly have as much to do with it as Mr. Tweed? They signed the certificates of audit. You will observe that if he is guilty, they must be guilty. He did no more than they did. They, if you please, did no more than he did; but if they were willing to join in the doing of the same act, if they are assumed to be innocent, does not that go to show that he is entitled to be relieved of criminality, at least, so far as it bears upon his alleged bad faith, in putting out these certificates? The theory of the prosecution is, and it is important you should keep it in view, that Mr. Tweed initiated this crime—that he initiated it by putting his name to the face of the bills—and that, without that, the crime would have stopped. That theory is overthrown by the consideration that Hall and Connolly join in the certificates. If that was the effect of Mr. Tweed putting his name to the bills, how came they to audit the bills and concur in a certificate that they had audited and allowed them? That demonstrates that the claim of the prosecution has nothing to

rest upon but the ingenuity of counsel. The crime they allege went on just as well without Mr. Tweed's name as with it. You must recollect his name is not on *one* bill at all. *There* (producing it) is the original bill. Their argument is this: That Hall and Connolly assumed, from his name being on the bill, that it had been presented to the Board of Supervisors anterior to the 26th of April, 1870, and that that was the initiation of the crime; that it was upon that foundation the crime was carried on to perfection. If, in every instance, that were so, they might have some plausibility for their ground. *Here* is an instance in which the crime, they allege, went on, though it was not initiated by the signature of Mr. Tweed, or the appearance of his name on the face of the bill. If we strike one circumstance out of their theory, it falls to the ground. That is their theory, and if every voucher does not conform to it, then it has no foundation in reason.

Let me pass to the *second* issue, which we suppose will be submitted to you by the Court, and that is, the charge of *corruption*. I have said all my time permits me to say, in reference to the good faith of the *auditing*. I repeat, there is nothing against Mr. Tweed but Garvey's testimony, that he, when he dealt with Woodward, in 1870, dealt with Mr. Tweed, because, in the year 1867, Mr. Tweed told him not to have further intercourse with him, but to make his arrangements with Woodward, and whatever they were, he would abide by them. That is the meaning of the testimony Garvey gave. Let us come to the *second* issue, the charge of corruption. In reference to that, if the prosecution had not introduced Garvey, their case would have been one of *circumstantial* evidence entirely. His is the clinching evidence in the case! It is out of that splinter—for what is it but a splinter—they seek to obtain the wood with which to build the bridge on which to carry this gigantic prosecution over the river. Circumstances, you know, are independent. They are like two shores, separated by something intervening. To connect circumstance with circumstance, you must have some link to pass over the chasm, or some bridge over which you can carry the deduction from *one* circumstance to *another*,

and so carry along the deductions, until you reach the result sought to be accomplished by the whole chain.

This was a case of circumstantial evidence, without Garvey, and so the prosecution feel. They will not give him up. Why, if I were to ask the counsel to give up his evidence, they would think I was insane. They have no testimony against Mr. Tweed but that of Garvey, and what he states positively, turns upon his own credibility as a witness. The chain of circumstances upon which they rely, without Garvey, is, *first*, that Mr. Tweed's name appears upon the face of the original bills. I have shown you that, in *one* instance out of *ten* existing vouchers, it does not; *second*, that it appears to the certificates of audit; *third*, that on the days on which Woodward made deposits in the Broadway Bank, he deposited a check to the credit of Mr. Tweed, which they claim was a debit to the warrant or check, whatever it was, he deposited on those days. If he deposited the check of Garvey, they say that on the same day he deposited a check to Mr. Tweed's credit, and that that check was paid out of the proceeds of the check of Garvey, or whatever check he deposited on the same day. This would not be enough to sustain a case, certainly, against Mr. Tweed. No jury would infer guilt from this, for this is what you have to infer from these three circumstances, unless you have Garvey. If you take the three circumstances,—that Mr. Tweed's name appears upon the face of the bill, to the certificates of audit and that on the days Woodward made a deposit, for himself, he made a deposit to the credit of Mr. Tweed;—to find Mr. Tweed guilty, you would have to infer from these three circumstances what? That Mr. Tweed was connected with the circumstances under which the bills were got up under the alleged arrangements with Watson and Woodward; that he was a party to the arrangement; that he put his name to the original bill under it; that this was done before the statement of principal and interest, the blank certificate of audit, the order of the Comptroller for the warrant, and the warrant were attached; and that the Woodward deposits to his credit were known by him to be a part of the proceeds of the plunder, under the original arrangement as to inflating or

manufacturing (as pretended) the claims to be passed by the Board of Audit. You would have to infer, from these three circumstances, every one of these facts—the most important of them being, that when Woodward made a deposit to the credit of Mr. Tweed, the latter knew that the money came from the proceeds of the check Woodward deposited to his own credit, whether received from Garvey or not.

Who is safe under circumstances like these? Suppose I come to you and pay a bill of fifty dollars. Will you ask an affidavit from me that I did not steal it? I deposit money to your credit, both of us dealing in the same Bank, which I may have acquired criminally, without any knowledge on your part as to how I got it; are you to be held responsible, criminally, for receiving the money? Why, in order to convict of the crime of receiving stolen goods, the law is particular to exact proof of guilty knowledge on the part of the receiver; that when he received the stolen property, he knew it to have been gained feloniously or as the result of a theft. I remember a very distinguished lawyer telling me of an occurrence which happened to himself some years ago. I do not suppose he will find fault with me for relating the anecdote. He was employed to defend two celebrated criminals. They were criminals who did not care to appear in the neighborhood of his office, in —— Street, for they were "spotted" by every detective, and, if seen there, would have been followed and driven out of the street. On one occasion they went to his office to pay him his fee, previous to the trial of the indictment against them; and on that very day, taking advantage of their presence in —— Street knowing that they could prove they were there on legitimate business, they picked somebody's pocket of about ten times the amount of the fee. They were seen there by the detectives, who, when the crime became known, went to them and wanted to know what they were doing there. Their reply was: "Why, we went down to Mr. ——'s office, to pay him a counsel fee." The detectives went to Mr. ——, who said, "O, yes; on such a day they did pay me such a fee." They took advantage of being there on legitimate business to commit a crime, which replen-

ished their purse to nine or ten times the amount they paid out. Yet this is the theory of the prosecution. You must infer from three innocent circumstances that Mr. Tweed is guilty, from the crown of his head to the soles of his feet.

We maintain that Garvey, who is used to connect him with Watson and Woodward, is unworthy of belief, and that nothing but circumstances after all are before the jury, and that they are these *three* circumstances, which I will repeat again. Without Garvey, you must convict him, if you convict him at all, upon the fact, that his name appeared on the face of the original bill; upon the fact that he signed the Certificates of Audit; and that on the days on which Woodward made a deposit in the Broadway Bank, he deposited a check to his credit.

If the jury come to the conclusion that Garvey is not worthy of belief, and that they must decide this as a case of *circumstantial* evidence, I ask the Court to charge these propositions to them, as matter of law. They will not be disputed, because drawn from the very best authorities and familiar to every lawyer. First—Each circumstance must be established, beyond all doubt, as if it was the sole issue in the case. One doubtful circumstance cannot borrow from another. Each circumstance has to be upheld as though it was the sole issue in the case. Second—The circumstances must be consistent with themselves. Third—They must be consistent with the principal fact sought to be made out, which in this case is Mr. Tweed's guilt. Fourth—They must raise a presumption of that guilt. This is their affirmative or positive force. Lastly—They must exclude, to a moral certainty, every other hypothesis but that single one. This is their *negative* or *exclusive* force. You will remember, Gentlemen of the Jury, the text of Mr. Greenleaf. It is not enough that the circumstances are consistent with the hypothesis of Mr. Tweed's guilt. They must exclude every other hypothesis but that of his guilt. The law, in its mercy, does not like to lap human gore. It does not fatten upon depriving those it assumes to protect of their liberty, nor does it delight to feast upon their life's blood. Whether it visits a criminal

with loss of life or liberty, it requires him to be condemned upon proof admitting of no doubt. Its boasted maxim is, that it is better ninety-nine guilty men should go scot free, than that its ermine should be stained or soiled by a wrong to one innocent person. Instead of the deductions from these three circumstances, being as the prosecution allege, we say they are these, and no others: First, that Mr. Tweed put his name on the original bill properly. That is the legal presumption. They charge he did it in a spirit of crime. They must prove it. Second, that he signed the certificates of audit in good faith. Third, that the money passed to his credit by Woodward was the payment of a debt. Upon this point, I desire to call the attention of this Court to 1 Greenleaf on Evidence. If I draw my check in your favor, the law does not consider me as giving you the money, but as paying you money I owed you. If I, John Graham, say to my banker by my check, pay to the order of John Smith such an amount of money, the law presumes I am his debtor; but they want here to reverse this presumption, and because William M. Tweed received a check from Woodward, payable to his order, infer he received it as a part of the booty gained from the treasury of this County.

I request the Court to take a note of this authority, in which the law is stated, as well as it can be, and stated, as I contend, in two sentences—1 Greenleaf on Evidence, § 38: "But *the mere delivery* of money, by one to another, or *of a bank check*, or the transfer of stock, unexplained, *is presumptive evidence of the payment of an antecedent debt and not of a loan.* The same presumption arises upon the *payment of an order or draft for money*, namely, *that it was drawn upon funds of the drawer in the hands of the drawee.*" Have they given you, Gentlemen of the Jury, a particle of evidence to show that on the days on which Woodward drew these checks to the order of Mr. Tweed, he did not owe him money? Did they call Woodward? They put wings under his arms, and compelled him to fly away, by getting up indictments against him, probably of the character of those found against Garvey. Who advised the Grand Jury of your County to indict him for forgery? Who was their legal adviser in that ini-

quity, in which (according to the Court *) the want of criminality stands out as palpably and plainly as the sun now shining around you? Who really fathered those indictments? The same brains suggested them that suggested those against Woodward. He, like a sensible man, when he saw the storm coming and that there was no place to which he could flee for shelter, took himself beyond the jurisdiction of our Courts, and there I hope he will stay, until this unhallowed tempest has passed over.

As to Garvey's credibility, he being an *accomplice*, I ask attention to these considerations. The prosecution having failed upon their *circumstantial* evidence—their case not presumptively proved, that is, by presumptive evidence, they resort to Garvey, the principal actor in the frauds he is connected with, or by his own tongue connects himself with, to prove that Mr. Tweed referred him to Woodward, as his agent or representative, after 1867, to arrange and receive the amounts of corrupt percentage from or on his (Garvey's) bills. This is intended to identify Mr. Tweed, *criminally*, with Watson's and Woodward's transactions with Garvey. I said I would refer to Garvey's evidence on Mayor Hall's trial on this point, when I first alluded to it, and this is the only reference I shall make to it. When he was examined upon the trial of Mayor Hall, he was ready to spit out all he knew against Mr. Tweed, just as he was here. He did not need questions to be put to him. He answered the prosecution sometimes in answers covering almost half a printed page. We have the evidence to show it. He went on in narrative form, as soon as he was started by a question, not even requiring distinct questions to be put to him, to draw out the details. On the trial of Mayor Hall he testified that he had these transactions with Mr. Tweed in 1867, *as to the fifteen per cent.* He said that towards the close of the year 1867, in consequence of a miss he made, in dropping one of the packages containing a payment on the floor when Mr. McLean was present, he made no more

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* The Court ridiculed the idea of the indictments against Garvey being justified, when the effort was made, on his cross-examination, to use them as a means of impeaching him, or destroying his credibility as a witness.

payments to Mr. Tweed, but after that did the business with Woodward. Whether, in his answer, he meant to imply that Mr. Tweed told him anything, or whether he meant that Woodward appeared after that for the purpose of standing in the place of Mr. Tweed, is for you to say. His evidence was, that late in the year 1867 Woodward transacted the business with him, without saying that he was referred to him for that purpose. On this trial, nearly a year after that, feeling that the evidence he had given upon the Mayor's trial was not sufficiently damaging to Mr. Tweed, he hammers out his previous answer, and makes him say to him: "Hereafter, whatever you have got to do, do it with Woodward; any arrangement you make with him is satisfactory to me." That is not the precise language, but the substance. If, when he first told the story, he omitted to tell how he came to transact the business with Woodward, and nearly a year after that says it was by Mr. Tweed's positive direction, and all for the purpose of convicting Mr. Tweed, where is the jury who would hesitate to believe that he had added to his previous answer, because the story originally told was not sufficient to accomplish his object. You will remember the testimony upon this point on the trial of the Mayor, because it has been carefully read to you.

As to the adoption of an *accomplice* as a witness, I cite to the Court the case of The People *vs.* Whipple, 9 Cowen R. 707, and I do it with greater pleasure and the more respect because the judge who presided at that trial was, for a long series of years, the president of my *alma mater*. A more estimable man I never knew, and I became, during my sojourn in the institution, from which I graduated under his auspices, almost as much attached to him as though he had been my own father. I allude to the Honorable William A. Duer, brother of the celebrated John Duer. The Court will remember this case. It grew out of the murder by Strang, the paramour of the wife, of the husband Mr. Whipple. Strang was convicted upon the indictment for murder against him, and, immediately after his conviction, he was sought to be introduced as a witness against Mrs. Whipple, whom he had led off to her destruction, to establish the fact that she had been an

accessory to his crime. The motion to admit him as a witness was denied; and Judge Duer took the ground, which, at all events, I think I never, in my researches, have found combated, that no prosecuting officer, without the sanction of the Court, could by his own act give an equitable title to a pardon to any criminal; that, in the introduction of an accomplice as a witness, the co-operation of the Court was necessary, in order to legalize the act of the public prosecutor. In remarking upon the evidence of accomplices, he makes an extract from the 1st of Chitty's Criminal Law, proving how lightly the testimony of an accomplice is viewed. He thus expressed himself: "The evidence of accomplices has at all times been admitted, either from a principle of public policy or from judicial necessity, or from both. They are, no doubt, requisite as witnesses in particular cases; but it has been well observed that in a regular system of administrative justice they are liable to great objections."

You would as soon hear of an intimacy between an Emperor and one of his postilions, as between William M. Tweed and this man Garvey, at the time Garvey says he unbosomed himself to him. Talking to a lackey like Garvey, in the way he makes him talk to him! Who held a higher position in your State than William M. Tweed at that time? It was almost a proverb, that in the palm of his right hand he carried the government, not only of your city, but of your State. When did he descend from that lofty pedestal to talk to one so meanly and basely his inferior as this man Garvey, in the manner he says he talked to him? He tell that lackey, "You will have to put up to buy a legislative committee!" He talk in that way to a lackey like that! Why, Garvey would not have dared to go near him, unless he had first obtained permission from somebody. The learned counsel, in his opening to the Jury, said, "Nobody takes Tweed for a fool." Yes, they do, if they ask you to believe the testimony of Garvey on that subject is true. Mr. Tweed was a man who had to keep himself behind doors. You could not pass his office without seeing a line both ways on the street, extending along the block. There was a crowd there all the time. He had to be guarded and denied, and yet, according to

this miserable lackey, he could go into his presence whenever he saw fit, and Mr. Tweed would tell him what to do in the way of crime, and they would talk together freely about crime, as though they were on the same social and moral grade.

Of this extract from Chitty, Judge Duer says:—"The law, says one of the ablest and most useful modern writers upon criminal jurisprudence, confesses its weakness by calling in the assistance of those by whom it has been broken. It offers a premium to treachery, and destroys the last virtue which clings to the degraded transgressor." The last virtue of a criminal is fidelity to his associates, and when he parts with that, if he only knew what remained for him, he would not be long in resorting to it, the taking of his own life by his own hands. No man can be more infamous this day than Garvey has made himself by his conduct here, and if you hold, as manhood does not forbid us to hold, that there should be fidelity among thieves, throwing off that last virtue, which attaches to an accomplice in crime, deprives him of all respect, either for his person or his veracity.

It is said, and this is another point I wish to present to the Court, *that Garvey is confirmed.* How is he confirmed? He takes documents he knows are in being, and weaves his story around them. Cannot any man acquire that kind of confirmation? Is there one fact to which he has sworn as to which he is confirmed in any way, except by the documents he weaves into his testimony, to impart character to it.

On this point of *confirmation*, I refer the Court to 2 Russell on Crimes, pp. 962, 963, 964, American Edition of 1857. One of the cases mentioned there is where a party, engaged with others in the commission of a burglary, testified to the fact of the thieves taking a ladder from certain premises to use in the crime, and it was proved by another witness that the ladder was so taken away. It was proposed to call other witnesses to confirm the accomplice, as to the *mode* in which the burglary was committed. The court excluded the offer, remarking that such confirmation was no confirmation at all. To amount to corroboration, the evidence must reach to some fact testified to

by the accomplice, connecting the party on trial with the crime imputed to him. Without that, it is the story of the accomplice woven around circumstances, which he could easily adopt into his narrative to give the semblance of corroboration to it. Another case mentioned there is where the prisoner was indicted for stealing a lamb. Its fleece was found in the field where it had been kept. It was held that that was an insufficient confirmation of the accomplice, who had testified that he assisted the prisoner in stealing the lamb. That fact could well exist, and yet the accused be innocent. It was a circumstance from which confirmation could be drawn, although it did not establish guilt at all. To corroborate the testimony of an accomplice, it must be as to some fact in his story, disconnected from circumstances he could manufacture or familiarize himself with, and interweave with it, to give it the semblance of truth. The Court will undoubtedly charge you, Gentlemen of the Jury, for it is law, that you have the right to believe Garvey though he is not corroborated. I do not deny that as a proposition of law. You have the physical right to believe any person you please, but I apprehend I am talking to sensible men, and that you are not going to do under the sanction of your oaths, what you cannot find any higher justification for, than the physical right. I apprehend you will say to yourselves when you retire, Garvey is infamous, he is steeped in disgrace to his very eyes—he is as black as midnight—and, on his own naked, unsupported, uncorroborated and unconfirmed testimony, we will never consent to find a verdict of guilt, either against Mr. Tweed or anybody else. If, however, you choose to take his testimony, you have the right to do it, and find a verdict against Mr. Tweed accordingly. I do not deem it necessary to spend more time upon *that*, and shall therefore proceed, until my time is exhausted, with the further prosecution of my brief.

Fifty-five warrants are embraced in this indictment. Sixteen of them are based upon bills of Keyser & Co. Twenty-seven of them upon bills for which Garvey got the warrants. Seven of them upon bills where Garvey got the warrants, and transferred them to Ingersoll & Co.

That makes fifty bills. One upon a bill where the warrant issued to Ingersoll & Co. Another on a bill where it issued to George S. Miller. Another on a bill where it issued to Charles D. Bollar & Co. Another on a bill where it issued to John McB. Davidson. Another on a bill where it issued to J. O. Seymour, Kennard & Hay. Except the ten Keyser & Co. vouchers, which are here, it is claimed that the forty-five vouchers upon which the other warrants were based, are now lost or missing. Forty-five out of the fifty-five vouchers embraced in the indictment are said to be in this category. The prosecution assert that the reason they have not produced the forty-five warrants is, they were stolen from the custody of the Comptroller, through the medium of a burglary upon his office.

Mr. Tremain: You mean vouchers when you say warrants.

Mr. Graham: Yes, sir; the reason why they have not produced the vouchers upon which the warrants, they say, were issued, is that they were deposited in the County bureau in the Comptroller's office, in a separate place from the warrants, and were removed feloniously from that place through the intervention of a burglary. If you will look at the circumstances of that burglary, you will find that they must have been kept where they were, almost, to be stolen. According to the testimony there were some forty-two pigeon-holes, enclosed with common black walnut doors, common locks, the locks not always kept fasten ed, no particular attention to guarding the key, and so exposed that any person who passed over a long counter which ran first toward the west and then toward the north, could reach the pigeon-holes and remove from them whatever might be desired. You will remember also that two Committees were appointed previous to the 8th of September, 1871, one by the Board of Supervisors and the other by a body of citizens, known as "the Committee of Seventy," whose business it was jointly to investigate the affairs of the Comptroller's office, and that they went on with their investigation from day to day until the 8th of

September, when, in the regular course of business, they demanded the production of these alleged fraudulent vouchers. They went to the Comptroller on that day.

According to the evidence of Mr. Lynes, it would have taken but a moment to get the vouchers if they were in their place. The Comptroller, for some cause or other, put them off until the following Monday, the 11th, and between Friday the 8th of September and Monday morning the 11th of September, a kind of burglary was committed upon the office, by taking out the corner of one of the glasses of the outer door, passing in a hand and turning the knob of the door from the inside, thus gaining access to these pigeon-holes and removing the vouchers from them. It has always been a very strange circumstance to my mind, if the vouchers were not kept back by some person connected with that office, that they were not produced upon the first call, on the Friday preceding the commission of this alleged burglary, either by the Comptroller or somebody else, and that a delay was asked of three days —certainly Mr. Tweed not appearing in the matter, and nobody but a savage would indulge any inference against him—as though for the purpose of allowing them to be removed in the meantime; so that when the committees came back on the Monday following, they could be told they were gone and incapable of production. If Mr. Tweed had consulted his own interests he would have preserved those vouchers, instead of lending himself to their disappearance. He certainly would be in a better condition at this time if they were here, because I have not the slightest doubt in the world that, upon the face of many of the bills attached to them, his name could not be found at all, precisely as in the case of the *one* out of the *ten* vouchers of Keyser & Co., which have been produced. There might be other evidence about them that he had no connection with them in any respect, of which criminality could be predicated. If he went into their destruction in any way, directly or indirectly participated in their disappearance, he consulted his interests worse than I would have suspected him before of doing; for it would be better for him to be confronted with the papers themselves, than to have the mistaken recollection of witnesses,

even where they spoke honestly, substituted in place of the best evidence. Those who are inclined to swear to what was in the vouchers, can now, if they are bad enough, make them contain anything they please, deprive them of all that would go to the benefit of Mr. Tweed, and so damage instead of better his case. I do not propose to wade through the evidence on this point, but to tell you in general terms what the prosecution want you to infer. They want you to infer from the testimony of Lynes, because he originally made up (as I call it) the "voucher record," containing *first* the bill, *then* the statement of principal with interest, *then* the certificates of audit, *then* the order of the Comptroller on the County Auditor (Watson) for the draft or warrant, *then* the draft or warrant as pinned to those papers,—that these missing records were made up in the same way—that they were signed or stamped by Watson, then signed by Connolly, then by Mr. Tweed, then by Hall, that they came back to Lynes, when a number was put to the voucher and to the warrant, a date inserted in the warrant, an entry of the number, date, and general character of the warrant made in the "Audit Book," and transcribed from that into a book known as the "Record of Warrants."

You are asked to conclude that every one of these forty-five missing papers, as alleged, in general appearance and getting up, were precisely the same as the ten Keyser vouchers produced before you. That is a presumption which, upon the evidence, you cannot indulge. Mr. Storrs states that the vouchers he saw, in conjunction with Mayor Hall, he saw about the 10th of July, more than two months before the commission of the burglary. How does that prove they were there on the 11th of September? Mr. Lynes tells us, he did not see any vouchers on the 5th, 6th, 7th, 8th, or 9th of September, 1871, the 9th being Saturday and the missing vouchers being alleged to have been taken on the 11th. Yet they want you to infer that any vouchers that were seen, when no witness saw any after the 5th of September, and only one saw any after the 10th of July, were entirely the same as the ten Keyser warrants, with Mr. Tweed's name on the face of the bills, his subscription to the certificates of audit and all the

other indications and surroundings appearing on the Keyser vouchers; that they were in the appropriate pigeonholes on Saturday night, the 9th of September, 1871, when the office of the Comptroller closed, and that they were feloniously taken, as the result of a burglary, between that night and the following Monday morning. I do not know that the direct charge was uttered, but I understand some very terrible intimations were indulged in upon this point. As to that, I can only say that if Mr. Tweed chose to put himself—beause he must have known that somebody would come forward and undertake to swear what names were in those vouchers—either at the mercy of the mistaken or the perjured statements of witnesses, as to what was in them, instead of being confronted with them themselves, he took a worse course for his personal security than I would have been willing to suppose. I submit to you, Gentlemen of the Jury, in leaving this matter of the lost vouchers, that you have no proof upon which you can find that forty-five of the warrants described in this indictment were based upon vouchers assuming the form of the "Keyser vouchers," the ten vouchers introduced in evidence before you. If I am right in supposing that you will not assume that the vouchers alleged to be lost were got up in the same way as the Keyser vouchers, or that they contained Mr. Tweed's signature as contended for on the part of the prosecution, it is unnecessary to occupy your time by further dilating on that subject. You will not forget that Garvey stated he saw Mr. Tweed's signature in two instances; *only two instances* out of the whole thirty-four vouchers in the Comptroller's office, to the name of Andrew J. Garvey.

Another part of the case you must recollect. The prosecution, not content with introducing the ten Keyser vouchers, and proving the loss and contents of the forty-five missing vouchers, offered all the warrants beyond the fifty-five embraced in the indictment, inclusive of the one hundred and ninety issued by the Board of Audit. Without producing a scintilla of proof against any of them, except *those* issued in the name of Keyser & Co., the *twenty-seven* issued to Garvey, the *seven* issued to Garvey but transferred by him to Ingersoll & Co., and the *one* issued

to John McB. Davidson, they have left the case as to some one hundred and forty of these warrants utterly confessed, and they virtually concede that they represent as many actual vouchers. They prove there were one hundred and ninety in all. They have introduced the whole one hundred and ninety.

Mr. Peckham: No, sir, one hundred and thirty-four is all there are altogether—everything counted.

Mr. Graham: I thought you introduced the whole one hundred and ninety.

Mr. Peckham: No, sir.

Mr. Graham: [Resuming] Then I will take it with the correction of Mr. Peckham. They have introduced all the warrants with which Keyser & Co.'s, Ingersoll and Co.'s, A. J. Garvey's, and E. A. Woodward's names are connected, and those are one hundred and thirty-four in number. Although they had one hundred and thirty-four warrants to attack, under the proof as they fashioned it, out of all those warrants but some fifty became subjects of assault in the evidence. All the rest are to be taken as warrants representing genuine, unquestioned and unquestionable bills.

A word in reference to Mr. Watson. According to the evidence, a bureau known as the County Bureau was organized in the Comptroller's department during the years 1857–1858–1859. Mr. Watson, the County Auditor, was called to preside over that bureau, or to be its head, somewhere about 1863 or 1864, and remained in that position up to 1871, when he died, as you probably all know, a tragical death. He had his neck broken somewhere in the upper part of the island, if my memory serves me, by coming into collision with another vehicle, or by being thrown out of his carriage, his horses having run away. We offered to show, but were prevented by the decision of the Court, that he was a man of good character; that, so far as any action of Mr. Tweed was based upon any identification with him, he had the right to trust him and

assume that whatever he said or did was said or done in perfect good faith.

You have already heard that Mr. Davidson confined the getting up of his bill entirely to Woodward. He left with him a bill for some $16,000, went back for his warrant, endorsed it, received a check for the amount of the bill; and now it turns out according to him that the warrant was three times the amount of the bill, but he in no way implicates Mr. Tweed in that alteration. Mr. Keyser has told you how he came to make out his bills, and he has sworn to you that they were correct. Suppose this Board of Audit had called upon him to explain his bills, and he had given the same evidence before them he gave here, and they, having no means of controverting it, in their discretion and in the discharge of their official duty, allowed them. If they had not a perfect right to allow them, at all events they could not have been indicted for so doing. He added this 33⅓ per cent., he says, as a mode of indemnifying himself for loss he sustained, in consequence of the bills remaining unpaid by the County for different periods, varying from four to six years.

Garvey tells a story, which, if it is true, certainly shows him to be utterly unworthy of credit. He says that he got the amount of his bills as they were to be made out, their title, the account to which they were to be charged, and the dates within which the work charged for was to be confined, from Woodward, and that in Woodward's hand he saw the figures of Watson; that he recollects them because they were small figures; and that upon one occasion he appealed to Watson, who told him to do whatever Woodward told him, and whatever he told him was all right. So that this man had only to be ordered, according to his testimony, to render a bill for a certain amount, containing certain items and chargeable to a certain account, to present it accordingly. He tells you that he went to his residence to do this part of the business; that he was, in some instances, three or four hours engaged in getting up the spurious bills; and that sometimes he put in five or six, seven or eight at a time, while on other occasions he only put in two or three, and on one occasion one bill. If that is a correct statement, that he had only

to be ordered by a man who had no control whatever over him, of whom he was entirely independent,—for he was a rich man according to his own admission, worth at that time at least half a million dollars,—he is capable of doing anything in this world. If the crime has only to be suggested to be committed at his hands, without any other motive than self-aggrandizement, I submit to you, upon his own evidence, he. stands impeached in this Court to such an extent as that without some corroboration involving Mr. Tweed in the matters to which he alone testifies, he cannot be credited so as to justify you in finding a verdict of conviction.

Another part of this case shows the daring of this man Garvey! What is writing worth as against him? About November, 1870, when he gave Mr. Tweed, if I remember rightly, the $60,000 receipt, he had been paid by him, if writings are to be believed, in all $147,000, and upwards. We have produced to you the bills in writing on which he was paid this amount, all ship-shape, stating the kind of work, the intervals during which it was done, the places where it was done, the value carried out in figures, according to arithmetic; correctly summed up, arithmetically correct, everything indicating a business transaction; in some instances a check of Mr. Tweed, payable to his order, and endorsed by him; in every instance a receipt to Mr. Tweed in his own handwriting throughout; and notwithstanding that he has the effrontery to come into this Court and tell you that every one of those transactions is just as fraudulent as any of those charged against Mr. Tweed here; that they were mere covers to conceal the real character of the occurrences and relations between him and Mr. Tweed, and used to give an appearance to matters unreal and imaginary. Look at the effect of that evidence. Suppose Garvey receipts me this day for $500, at my office. I call in no witness to see the money paid. The handwriting is confessed. He sues me for the $500. When I come into a court of justice he confronts me with the statement: "You took that receipt out of my hands by holding a pistol to my head; you picked my pocket of it when I was not paying attention to your movements; or there was no transaction between you and me, and I

gave you the receipt without any fact whatever to rest upon." Suppose a living witness had come here and told us that he was present on the day this $60,000 was paid, and saw it paid, and that Mr. Tweed took no receipt. Is that evidence as good as writing? Every voucher to show a receipted bill or the payment of a bill by a check to Garvey for the amount, is stronger than the best oral evidence that could be offered before the jury. The law says that writings are incorruptible. If they are altered, you can discover the change. They cannot be tampered with. They remain the same to-day, to-morrow, and as long as they last, be it long or short; precisely the same as they were when created. Suppose we had produced an oral witness, in every instance in which we have produced a writing, which would be some twelve or more. Suppose we had produced some twelve or more living witnesses to prove in relation to each one of these transactions, what each voucher, connected with it, proves in relation to it. According to the prosecution, if Garvey came into this Court and swore that these twelve or more witnesses testified falsely, and that there was no reality in the transactions to which they pretended to testify, his testimony would be sufficient to surmount all. In considering the testimony, as to the amounts Mr. Tweed paid him for work between 1868 and 1870, some $147,000 in all, look at these vouchers as though they were living witnesses, proving the same facts, *then* ask yourselves the question, if as many witnesses as vouchers were here to contradict the pretence of this man Garvey, could I upon my oath accredit his testimony over theirs. The case in this respect stands stronger and more impregnable in favor of Mr. Tweed upon this incorruptible evidence in the shape of *writings*, which cannot be tampered with, which cannot be altered, which are the same to-day as at the time of their birth—writings which show that Mr. Tweed never received a dollar from Garvey, but gave him a full consideration for all he ever did for him—than if the same fact had been established by as many living witnesses.

You have heard Gentlemen of the Jury, the statement of this man Garvey as to the circumstances under which he left the city. He went over to Hoboken on the Thurs-

day night previous to the day of sailing. He was there without a name. He goes on board the steamer on Saturday morning at an earlier hour than any other passenger. There he is known as MacDonald. He lands on the other side, and there he takes his second name as his only name,—Andrew Jeffers Garvey being his full name. You remember all the facts he testified to on that subject. You remember the evidence he gave in regard to the disposition of his property, just on the eve of his departure, showing that he was an exile, banished by himself, by his own sense of guilt, and that he meant to leave his property in such a condition as that, through the agency of his brother and the instrumentality of his wife, in whose name it was all ultimately to be put, if he was compelled to remain an exile from this country he could remove it to the country in which he should reside.

You have heard his testimony as to what he is worth. On January 1, 1868, he says he was worth $100,000. Mr. Peckham asked him what he was worth in 1867 and 1868. My question to him was, what were you worth on the 1st of January, 1868. He may have been well worth $200,000, in the latter part of 1868, when he was only worth $100,000 on the 1st of January, 1868. Although he had nothing but his occupation as a plasterer to get rich by, he estimated himself upon the stand as worth on the 21st of September, 1871, between $500,000 and $600,000,—not to exceed $600,000. He says on the 1st of January, 1868, he was worth $100,000; and that for three years and eight months after that, he had been accumulating money at the rate of over $100,000 a year. Can that be so? Can it be that, by an honest course of labor between the 1st of January, 1868, and the 21st of September, 1871, Garvey accumulated, upon his previous possessions, at a greater rate annually than $100,000.

Mr. Peckham: I call the attention of the Court to the fact that the gentleman's time is exhausted.

Mr. Field: Does the gentleman begrudge Mr. Graham an opportunity to speak a few words?

Mr. Peckham: No, sir.

The Court: Mr. Graham is also of age.

Mr. Field: I suppose I can address the Court.

The Court: Certainly. You can go on, Mr. Graham, until recess if you wish.

Mr. Graham: [Resuming] You have heard, Gentlemen of the Jury, the testimony as to the circumstances under which this man Garvey returned. His wife sailed for the United States on the 28th of November, 1871. John, his brother, writes him a letter in the latter part of December, 1871, that he had seen Mr. O'Conor, and that he was to come back and state the truth. He left on the 2d of January, and arrived in this city on the 21st of January, 1872. He saw Mr. O'Conor, and had an understanding with him; and as that is important, I will refer to the record itself, to the evidence he gave on the 20th instant. The best evidence of the state of his mind at that time, is his own language. He may have been told that the indictments against him were incapable of being sustained. He may have been informed that the civil suits against him would not be prosecuted. That is not the question. The question is, what constituted his own motive for his conduct. What did he believe in reference to himself? Not what actual danger surrounded him, but what peril, he supposed, he was in at the time he returned to the United States. It is given in his own evidence.

Lest I might omit to allude to an incident hereafter, I will do so now. I was not in Court the day the testimony of Mr. Peckham was given, for I had to leave on that day when the prosecution closed their evidence, and as that for the defence was being called. Garvey had stated in his testimony that he had never seen the Attorney General in his life. I refer to this to show you how unmitigatedly false he is. As I am informed, on the day I left, the junior counsel for the prosecution took the witness stand, and testified that the first time he ever met Garvey was at the house of the Attorney General in the spring of 1872.

My God! is that possible? You are asked, under oath, to shake the hand of defiance in the face of the Almighty, as it were, and believe a man like that. The most palpable fact in the world he cannot be trusted to state. When my associates first told me that Mr. Peckham would contradict that statement of Garvey, I was horrified, and asked them if they could not be mistaken. My brother Burrill said: "I have talked with Mr. Peckham himself, and he says that if he has to go upon the stand, the fact is so, that Garvey had previously seen the Attorney General, and he will have to establish it by his own testimony."

But to resume the matter, to which this is an episode. I put this question to Garvey: "Then you want the jury to understand that there is no arrangement by which any consequences resulting from your testimony you gave on Friday last shall not attach to you?" You will remember that, in the first part of his testimony, he stated there was no arrangement whatever. A short time before that I asked him this question: "Don't you know of any arrangement whereby, in consideration of your giving evidence here, you are not to be proceeded against in a civil action; and, further, are not to be prosecuted on these indictments?" He answered: "No, sir; I do not." Did he then speak of Mr. O'Conor? It was only when I kept him under the harrow, and after I had got him along twenty minutes further, and he saw he was in a corner and driven to desperation, that he came out with the name of Mr. O'Conor. He said: "You asked me about the Attorney General," which was as big a lie as the one he told, when he said he never saw the Attorney General in his life. When he saw he had to own up as to Mr. O'Conor, he gave us to understand that he would have told it before, but that my question was confined to an arrangement with the Attorney General. I asked him the question: "Have you never heard of such a thing—such an arrangement?" to which he answered: "No, sir; there is no such in existence." I answered: "I do not ask you what is in existence." He replied: "I have no arrangement in the world." I asked him: "Have you never heard of such an arrangement?" He replied: "I answer you now, that I have no arrangement." When I

carry him along a little further and drive him into a corner, by putting this question to him: "Then you want the jury to understand that there is no arrangement by which any consequences resulting from your testimony you gave on Friday last shall not attach to you?" His answer was: "No arrangement with whom?" He then saw he had to own up as to Mr. O'Conor, and asked: "No arrangement with whom?" I replied: "With any one?" His answer was: "May I call this an arrangement? I read something to you." I replied: "No, no, Mr. Garvey." His answer was: "There is no arrangement with the Attorney General." I replied: "You know perfectly well with whom I mean—the Attorney General or any person claiming to represent the People?" His answer was: "You did not say that; you said the Attorney General,"—as big a falsehood as any he told, for I never said anything about the Attorney General. I asked him as to any arrangement with any one. He said that no such arrangement was in existence,—that no such arrangement was made in this way. Then I said: "I said that before, but now I say any person." That I put in the form of a question. Then Garvey said: "Mr. O'Conor told me that if I told the truth, and if they were satisfied—understand me, they were to be the judges—that I told the truth, no harm would come to me." I replied: "When did he tell you that?" His answer was "That was in January, 1872."

I replied: "Then what do you mean when you say that you told what you did on Friday last regardless of any consequences to yourself?" His answer was: "Well, I say I did tell the truth." I answered: "What do you mean by that?" His answer was: "Because I know if I don't tell the truth I am gone. I am a lost man if I don't tell the truth,"—that is, if I do not swear up to the expectations of this prosecution I am a lost man, not if I do not tell the truth. His idea of the truth is whatever is necessary to convict Mr. Tweed. Whatever emanates from his brain, if it secures, more certainly, the downfall and disgrace of this man, is his idea of telling the truth, and if he does not condemn him by his tongue he is a lost man. Then the evidence continues: "Who is to de-

termine whether you have told the truth?" "Well, the people, I suppose." "What representative of the people is to decide that question?" "I suppose Mr. O'Conor." "Did he tell you so?" "He did not mention his own name, he said *we*." "That was in January last?" "Yes, sir." "How soon after your return from Europe?" "Only a very few days." He saw Mr. O'Conor three or four times after that time. He is a lost man. He is gone. Liberate Mr. Tweed from this charge, and it is the end of Garvey. I think, if you render a verdict in favor of Mr. Tweed, and the prosecution themselves come to survey the ground over which Garvey has passed, they will be convinced he has deceived them, and will pronounce judgment that he has not told the truth, and is not therefore entitled to be exonerated from the consequences of his statements as promised to him. I put this question to him: "When this agreement, that you say was made with Mr. O'Conor, was entered into, was there any provision in it by which you were to return to the County any money you owed it, or to secure the return of any money to the County, you owed it?" "There was nothing suggested about it at all."

I do not deem it called for, to review at any greater length this evidence, for my learned brother Fullerton, I understand, dissected in a most skilful and anatomical manner yesterday the testimony of these two brothers, leagued together to screen themselves at the expense of the gentleman I represent before you. It seems to me that after the remarks I noticed reported in one of the public papers, as having been uttered by him in reference to their testimony, and after the complete dissection I have understood it received at his hands, any further allusion on my part to these brothers would be entirely unnecessary.

To two things, before I close, you will permit me to allude. One is what transpired in your presence. To it I have a perfect right to refer. In passing upon the credibility of a witness, as the learned Judge upon the Bench will tell you, one of the most important elements in determining whether or not he is to be believed, is the manner in which he gave his evidence upon the stand. The Court

will not say I am wrong when I tell you that, in the admission or rejection of testimony, it has no right to consider the *manner* of the witness, no matter how indecorous, no matter how deficient in propriety. It is to look at an occurrence, in applying legal rules during the progress of the trial, precisely as it transpires. When the case comes to be submitted to you, you have a province which the Court has not, the taking into consideration the manner of the witness upon the stand, in deciding the amount of credit you are willing to award to him.

The incident to which I refer is this: On the second day's cross examination of Garvey you all heard this question put to him: "I ask you to tell me what percentage in the case of each one of these bills is true, and what percentage in the case of each one of these bills is false?" He kept answering that $200,000 and upwards, out of $390,000 and upwards, was the aggregate proportion true. Then I put the question, whether in the case of the twenty-seven bills 33⅓ per cent was genuine, or whether he had enlarged the bills by a different standard of enlargement or exaggeration,—whether, in some instances, the real bill ran down to 20 per cent. and in others ran up to 50 per cent. My learned brother Tremain, in that becoming spirit in which he has desired to help me all through,—the trouble is, he never helps me to advance, but is polite enough to help me in the other direction,—remarked that that was a question which a Philadelphia lawyer would have to be brought in to solve; that there was something in it perfectly unintelligible; that Garvey could not answer it, because he could not understand it. I appeal to you whether every one of you did not understand my question. You have the right to take this into consideration now. The Court cannot do that, because it does not sit to pass upon the credibility of witnesses. It applies the rules of law. It can apply them, whether it personally believes or disbelieves the witness. Finding myself hampered by my learned friend Tremain and then by the witness, Garvey, the Court came to my rescue, and with that terseness and pellucidness for which the Judge upon the Bench is perfectly remarkable,—and I say it in no spirit of flattery, for I have said a hundred times dur-

ing this trial, and publicly, the State of New York does not furnish his superior in ability to pronounce a judgment extemporaneously, with a clearness and plainness of language, which possibly or probably would not be the result of reflection,—he came to my rescue, and put the question himself: "What portion of each one of those bills is false?" telling him virtually to drop this idea of aggregation, not to aggregate the amount of the bills as inflated, but to take the amount of the bills as they really were, and tell the proportion in that way: "The Counsel wants to know from you what part of each bill is false?" I will not stop to read all the evidence as to that. Am I truthful when I say that this is enough for me? When the question was put so plainly that a child, six years of age, would have received a flogging at school, if it had not answered it readily, he still dodged and backed, until I had to give up the attempt to hound him into a corner as absolutely abortive. You have a right to take that occurrence into consideration. The Court will so tell you. It transpired in your presence. The manner of the witness is one of the most important keys to unlock the casket of his bosom. It is the external that denotes the internal man. No eye but that of Omnipotence can ransack the depths of the heart, and drag its secrets to view. It is the outward that tells the inward man. When I put to him, unassisted by the Judge, as plain a question as could have been put, was I able to get an answer from him? Why was that answer kept back? Because all men, who have perjury in their hearts, know they must not go into too much detail. When you find a witness taking the stand and putting his answers in generalities, if he feels there is anything about him to cause you to suspect him, you may be sure he will not descend to particulars.

A word as to the other matter and I close. Said the learned counsel (Mr. Peckham) in his address yesterday afternoon, "Why did they not call Mr. Bradley?" Because the occurrence never took place. If John Garvey and Mr. Bradley were ever in a carriage together at Albany, to prevent the latter being a witness against him, he says he whispered so that he could not hear what he told Mr.

Tweed. He shrank into a whisper, to keep off a listener. I submit to you, Gentlemen of the Jury, that that is a perfect reason why we have not responded to the call of the counsel.

I will conclude, Gentlemen of the Jury, apologizing to the Court and to you for the time I have already consumed. I was not fit to enter upon this duty. I know that I have performed it imperfectly, but I have performed it as well as I could, not only for my client, but for my friend. I own him this day as a friend, and I will never see any period of my life when I will not be ready to make that acknowledgment in this or any other Court, in this or any other place, no matter how public, or how private. You have been told, as I am informed, in the remarks of one of the learned counsel for the prosecution, that the verdict of the People in this matter has already been rendered, and that the only avenue to popular favor, on your part, is in repeating in your conclusion the verdict they have already pronounced against the defendant at the bar. Is this a Court of Justice?

Mr. Peckham: I said no such thing. I was stopped because I followed through the door Mr. Fullerton had opened.

The Court: I must stop that, as I stopped the other side yesterday.

Mr. Graham: [Resuming] Two years have not passed, Gentlemen of the Jury, since this man was walking in the flowery path of high official position, enjoying the highest political eminence commensurate with your State, and not even confined within her borders. It may be said the change he now labors under is the result of unworthiness. Not always so, when you think of the sentiment:

Ita vita hominum est,
Quasi cum ludas tesseris—

the life of a man is as when you play with dice. The throw you are confident will make you to-day is the harbin-

ger of your downfall to-morrow. Revolution is the order of the time. The progressive spirit of the age is restless and uncontrollable. Stability is the exception to this experience. Fortune, like a coquette, is fickle and changeable. Her smiles are often won without an effort, and lost without a fault.

May the humble advocate who now appears before you before he retires from this scene, present to you the picture of the family hearth—the domestic fireside—and call to your contemplation the fond wife eager for the restoration of her husband, and breathing out this moment the fervent prayer that he may be delivered from all impending evil—the noble boys, whose bosoms are pregnant with those aspirations which create the ambition that is to carry them forward in a career of honor and distinction —the tender daughters, whose delicate affections wind themselves closer and closer and with greater tenacity around the form of their parent, in this the heavy hour of his trial and tribulation. A verdict of infamy and disgrace would carry fearful desolation to that fireside. It is true, as a general proposition, you have no right to look at the consequences of your verdict. No doubt the Court will minister that direction to you from the Bench. In one sense you have not. When a regard to those consequences would swerve you from the path of duty, you are to shut your eyes to them; but if there should be any prejudice or bias in your bosoms against my client this day, probably a consideration of that kind may be the means of exorcising it from them. Such considerations have produced righteous verdicts before to-day, and it may be, under their heavenly influence, a result will issue from these proceedings, in complete accord with the solemn obligation under which you act, and in perfect consonance with that Justice which emanates from a Providence, in whose hands are the affairs of Time, and in whose bosom reside the secrets of Eternity.