



S P E E C H

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David Paul Brown,

BEFORE THE

COURT OF SESSIONS IN NEW YORK,

UPON THE

TRIAL OF DR. FROST

FOR MANSLAUGHTER.

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DECEMBER 13, 1837.

PHILADELPHIA:
ROBB, PILE & MELROY, PRINTERS,
LODGE STREET, BETWEEN SECOND AND DOCK.
1859.

TO THE

GENTLEMEN OF THE NEW YORK BAR,

ALIKE DISTINGUISHED FOR THEIR LEARNING, THEIR HOSPITALITY
AND THEIR COURTESY, THIS SPEECH IS

Dedicated,

BY THEIR GRATEFUL GUEST AND SINCERE FRIEND,

DAVID PAUL BROWN.

Speech.

WITH DEFERENCE TO THE COURT :—

AFTER a long and perilous voyage, GENTLEMEN OF THE JURY, we have at length steered our little barque into a safe harbor, where we may venture to cast anchor—where, with your favor, we may ride securely—laugh at the billows and defy the storm. If, may it please your honors, my learned colleague has felt himself called upon to express his gratitude to the Court, for favors conferred upon *him*, what must be *my* obligations, for the kindness, the courtesy, the unmerited distinctions, bestowed so freely, upon a comparative stranger, in *my* person? My acknowledgment shall consist, not in vain thanks, but in acceptance bounteous—in other words, I shall endeavor to discharge the debt by facilitating the labors of the Court, and requiting benefits by desert.

In approaching the consideration of this cause, I must be allowed to congratulate my brethren of the bar, here and elsewhere, upon the certainty that their professional engagements and emoluments shall never cease, so long as medical science and its professors shall continue to flourish—may they, therefore, (I say it with all my heart,) be immortal. From the time of Hippocrates down to this moment, the feuds and bickerings, the private quarrels, and open hostilities among the Medical Family, have been such as to form a proverb—a by-word and reproach. If such be their *intestine* dissensions and divisions, you may readily imagine how deadly and destructive must the conflict be, when the whole of this irritable race, in their aggregate of fury, come into direct collision with an *opposing* system. How terrible the concussion! how appalling the result!

Some opinion may be formed of the relentless nature of this strife, from the daily display of vindictiveness to which you have been the unwilling witnesses. The trial by wager of battle, now grown obsolete even in England, where it so long prevailed, however brutal in its character, was less offensive to the eye of justice, than the course here adopted by these “potent, grave and reverend seignors.” Their business, rightly understood, is to cure, and not to kill: but they have inverted, by practice, the philosophy of their science, and here magnanimously unite, (almost the only union they have ever been guilty of,) for the philanthropic and gener-

ous purpose of offering up an unoffending victim upon the altar of vengeance. We are informed upon classic authority, which the ripe and ready memory of the Court will at once recognize—I think the account is contained in Herodotus, though it has also found its way into other authors—that a wonderful artist, of Greece, constructed a Brazen Bull, of such curious and exquisite workmanship as to astonish every beholder. This bull he presented to Phalaris, his Sovereign, assuring him at the same time, that if heated, and a human being placed within it, the dying groans of the victim would resemble the roaring of a bull, and thus render the illusion complete. “It is well,” said the monarch, even more shocked at his cruelty than delighted with his skill, “it is well—the bull shall be heated, and you yourself shall be placed inside of it, for it is most fit that the artificers of death should die.” Shall I point the story—can you not make the application? This prosecution is the Brazen Bull—the Medical Faculty are the inventors—you, Gentlemen of the Jury, are the Sovereign—the defendant is the intended victim, and I boldly ask you to imitate the example of Royal justice to which I have referred—to protect the innocent, and doom the artificers of death—to *death*.

Why should they thus attempt hunting down a fellow citizen struggling in self defence, in a tribunal of justice? Why should the defendant's rights be entirely disregarded, and the adherents of these opposing systems

be permitted to hack each others' daggers in his breast? Does such a course, to say nothing of justice or charity, redound to the credit of the Medical Faculty? Does it improve our estimation of their learning or their talents? Dwells there such rage in heavenly minds? Persecution ever defeats its object—the bruised and broken flower is more redolent than when flourishing on its parent stem, and the virtues of the Aloe tree are rendered more apparent by the perfume which it imparts even to the axe that fells it. The glorious temple of Christianity is founded in persecution, and its fabric is cemented and sustained by the blood of Martyrs, and of the Prince of Martyrs, the Redeemer of the World. Still how natural does it seem to oppress the humble, to trample upon the fallen—how tempting to the foot of arrogance and ambition is every thing that may form a ladder to their lofty hopes.

The struggle in which the Medical Faculty is here engaged is not regulated by sympathies, or charity, or humanity—it is a struggle for self—they are determined to bear no rival near their throne—whole hecatombs shall perish that they may prosper, and when they have once succeeded in obtaining a sort of sovereign sway in the land, wo unto all who shall oppose resistance to their overweening strength.

Having thus adverted to what must have forced itself upon the attention of the most casual observer, and which, in the temple of justice, should not be allowed

to pass without remark and unqualified reprobation, we come now to the consideration of those points in this cause, which, although much more pertinent to the issue, will, I fear, exert a less vital influence, upon its decision, than those subjects which I have thus briefly adverted to, and unhesitatingly condemned. Let it be established—I say it once for all—that a body of physicians are the only individuals authorized to prescribe—to cure or to kill—and you create a despotism, the pernicious results of which exceed all imagination. They shall make their own terms with you—the rich and the poor shall be alike subject to their sway, and the instance which the testimony has exhibited of a Physician who exacted from a patient racked with disease and pain, and balancing as it were upon the pivot of destiny, a fee of five dollars as an inducement to a visit, will not be a solitary or a startling instance, but be rendered familiar from its frequency, and almost laudable from its moderation.

Without further prelude, let us inquire what is the indictment. It contains three counts. The first charging the defendant with having produced the death of the deceased, wilfully, maliciously and feloniously, by administering a certain drug or herb, called lobelia; and by also administering cayenne pepper, and applying the steam bath.

The second count charges the defendant with producing death by the medicines.

The third count charges him with causing death, by the bath and some of the medicines combined in the prior counts.

The law of New York, under which this indictment is framed, provides for four degrees of manslaughter, and to which particular degree this prosecution is directed, it is our business to ascertain, and no information has been given.

Such then is the indictment—the chart by which we have steered. It charges the defendant, you perceive, with felonious homicide, and it is founded upon statutory provisions, upon the subject of manslaughter, contained in the revised code of the laws of New York. For what earthly purpose those provisions were framed, I confess my inability to perceive ; at common law, all the offences embraced by them are clearly prohibited and punished, and that which was plain before, is rendered somewhat doubtful and mysterious, by this legislative effort to improve it. Philosophy, however, teaches us not to increase evils by unavailing regret, but rather to overcome by boldly confronting them : I, therefore, address myself to my task.

The District Attorney, unwilling to rely upon any one degree of manslaughter, has converted this act, embracing four degrees, into a sort of sweep-net, in some one of the meshes of which he expects to ensnare, or entangle and secure the defendant. I have called upon him, as I had the right to do, to state his specific charge, in order

that time might not be unprofitably employed, in attacking where there is no resistance, or resisting where there is no attack. This he has declined, as he had no right to do, and thereby subjected me to the necessity of travelling through the four orders of manslaughter, for the purpose of showing the defendant's entire innocence of all; or rather, to speak more technically and critically, for the purpose of showing that he has not been proved guilty of any. (Mr. Phenix here rose and said, that he should rely upon the 19th section of the Law, and maintain that the defendant had been guilty of manslaughter in the fourth degree.)

The fourth degree of manslaughter is embraced in the general clause, it is all that the defendant can be guilty of, and I deny that he is guilty of that—this, therefore, forms the only legitimate issue between the Commonwealth and myself.

We set out on the part of the defendant by averring that no act of mankind can be criminally punishable, without being accompanied either actively or constructively by a corrupt motive. In other words, that the heart is alone the abode of crime, the act and the motive must cohere,—in no case is the act alone punishable, and there is but one class of cases in which the motive or agreement to do an unlawful act, or to do a lawful act in an unlawful manner, is subject to the criminal penalties of the law, and that is the class to which conspiracies belong. The law there interposes

as it were by anticipation to forestall the offender ere yet he come to fall. To crop crime in its germ or in its very bud, and thereby to prevent its growing into a luxuriant and pernicious harvest, and finally spreading ruin and disaster around. This is the doctrine in regard to illegal combinations—but as respects individuals, the maxim is “Non est crimen voluntas sine perpetratione.”

In saying that there must be an actual or constructive corruption of design, we may be inferred to mean, that where there is a culpable negligence or a gross want of skill, in a case like the present, the law may imply an evil design, and thereby render it criminal. If, therefore, in the present case it should appear that the ingredients as charged in the indictment were *not* administered, or if administered that they did *not* produce death, or if they did produce death, that there was no criminal neglect or culpable ignorance, the prosecution rests without its pillow, and the defendant must be *acquitted*.

This is certainly presenting the question in the most favorable shape for the Commonwealth.

The defendant hereby assumes upon the evidence—to negative, or disprove the charge, whereas he has the right to call upon the District Attorney to establish clearly or beyond the reach of a reasonable doubt—the allegation of guilt—and without this the case can neither be embraced by the statute nor the common law.

In 1 Hale's Pleas of the Crown, 429, this doctrine will be found—no higher authority can be required—“If a physician give a poison without intent of doing any bodily hurt, but with intent to cure or prevent disease, and contrary to the expectation of the physician, it kills him, this is no homicide—and the like of a surgeon—and I hold their opinions to be erroneous that think, if he be no licensed surgeon or physician that occasions this mischance—then it is felony; for physic and salves were before licensed physicians and surgeons, and therefore, if they be not licensed according to the statute, they are subject to the penalties of the statute, but God forbid, that any mischance of that kind should make any person not licensed guilty of murder or manslaughter.”—Sir Wm. Blackstone concurs in the doctrine—and in Butchell's case, 2 C. & P. 632, it was ruled, that it made no difference whether the party was a regular or irregular physician, Baron Hallock adding, that in remote parts of the country many persons could be left to die if irregular surgeons were not allowed to practise—and in Long's case, 4 C. & P. 398, Parke, J., observed, “that whether the party was licensed or unlicensed, is of no consequence, except in regard to his liability to pecuniary penalties for acting contrary to acts of parliament.”

It is not my intention here to discuss the merits of the indictment—they are subjects of law, and belong to the Court. For although it is perfectly true as the

Court has taken occasion to tell you, that you are the judges both of law and fact, it never has yet been necessary for me in the course of my humble practice to enjoin upon the jury the propriety of disregarding the opinion of an enlightened judicial tribunal—and I trust it never will be. I have no greater fears of the Court than I have of the jury, upon this or any other subject when rightly understood—and I trust therefore you will listen with all proper attention to the learning and wisdom which may fall from the bench—yielding to it not a servile, but a rational and conscientious obedience, not surrendering the exercise of your own mental faculties, but allowing them to be enlightened, invigorated and enlarged by the genial influence of superior science and experience.

The Court and the jury appear to the greatest advantage, and best discharge their respective duty while mutually borrowing and imparting aid to each other—and it is thus, and thus only, that the advantages of criminal jurisprudence can be fully enjoyed or preserved.

Let us concede for the sake of the argument, that the ingredients as specified in the indictment were administered by the defendant to the deceased in the manner and form as charged. The proof scarcely warrants the concession, but I wish to avoid all higgling and chaffering about trifles, and to come at once to the attractive metal of this case. The only two inquiries then will be—

First. Did the medicines thus administered produce death?

We have no wish to charge others with that offence, of which we deny our guilt. But if regular physicians are not to be considered the only class privileged to kill, it really would appear that Dr. Cheeseman, one of the witnesses, most earnest and eager in this prosecution, can hardly escape censure. I know that when the patient dies, the doctor is generally in the wrong, as when a cause is lost, its loss is often attributed to the lawyer; but making all allowance for this want of generosity or charity on the part of those who are writhing under the affliction of a painful bereavement or remediless injury, there is still much to condemn even with an impartial observer, in the deportment of Dr. Cheeseman, as unquestionably established by the evidence. He is certainly entitled to no favorable consideration from *us*, as his mind seems to be imbued and embittered with the most extraordinary prejudice from the first to the last against the individual now upon his trial. A man who had never done him any wrong, who cheerfully relinquished the patient into his hands, who prudently communicated or caused to be communicated to him the course of treatment previously resorted to. In requital for all which, without any personal knowledge of the defendant, the doctor expresses the opinion that he has fallen into dangerous hands, and leaves the patient to die while he runs after a consult-

ing physician to serve him (Dr. Cheeseman) in the amiable capacity of a witness rather than an adviser. What cause had he for suspicion—unconscious of wrong, what should alarm him—

Why should the innocent
Tremble and quake with fear,—the guilty fear,
For cowardice and guilt appal each other,—
But virtue ever wears a lion's heart
Beneath the downy plumage of the dove.

Dr. Cheeseman is, I understand, a physician of some eminence—he is a man of unquestionable respectability—but the current of prejudice has with him overcome all the kindlier feelings of his nature, and induced him in this case, in which a young man is engaged in a holy struggle, not for life, it is true, but for liberty and reputation, without which life is nothing, to volunteer as ungenerous and pernicious a sentiment, as ever tainted the atmosphere of justice from the lips of a witness. I regret to speak harshly of this gentleman. I regret more that he should deserve it; but I trust I shall ever advance fearlessly against any opponent, where duty points and leads the way. It has fallen to my lot, in the course of my professional career, to examine many distinguished physicians, and to be present at the examination of more, and, although they may have been some exceptions, I am proud and happy to say, that their testimony has generally been characterized by a tenderness and humanity towards the accused, which it

might be supposed would naturally be inspired, by a science which necessarily and daily enlists all the sympathies and charities of the human heart, from the habitual contemplation of human suffering and wo.

Dr. Cheeseman, called in, as he says, while the patient was in articulo mortis, never having seen him before, without making inquiries into his complaint or his treatment, ventures unhesitatingly to say, that the disease of which he died was *not* typhus fever, although he cannot tell what it *was*; and pretty plainly implies, that the medicines administered by the defendant caused the death of the patient. How ungenerous! how unjust! The patient dies under the assiduous efforts of the defendant to restore him. Gentlemen adopting an opposite system, are employed; they reject every thing that is incompatible with what is called regular practice; and the enemy becoming the judge, Dr. Frost is to be condemned. Why, upon this principle, the good Samaritan himself might have been indicted, had the wounded traveller died upon his hands. How would Dr. Cheeseman, or any other of this learned faculty, be content to abide by such a test. In the most successful practice *some* will be lost. The Doctor's *prescription* cannot withstand the *fiat* of fate. The disease may be mistaken—the remedies of course misapplied, the calculations of the physician defeated by latent and adverse causes, the constitution misunderstood. A thousand accidents or contingencies may

operate to resist the most consummate skill. What then—is a medical gentleman, entertaining opposite, or different views of practice, to pronounce condemnation upon the course thus adopted. Some physicians resort to bleeding in almost *all* cases, *others* in scarcely any. Some administer calomel freely, others not at all. Some refuse cold drinks to a patient under the parching influence of a fever. Others stuff, and surround him with ice. Some in cases of cholera, particularly, introduce foreign substances into the veins. Others hold it to be certain death. Some adopt cathartics. Others emetics. Each, in short, has his favorite mode of expelling disease, and each, to a certain extent, at least, condemns the other. Is it then fair, is it honorable, that the temple of justice should be converted into a bloody arena, and that the dignified professors of an illustrious science should here publicly engage, in brutal degladiation, in *ostensible* support of their *several* theories, but *actually* to the destruction of them *all*?

But to return to the inquiry. Did the intended remedy produce or cause death?

Before we examine the treatment, let us turn our attention to the state and circumstances of the deceased for a few days prior to his entering the Infirmary of the defendant. On the evening of Monday, preceding the Thursday on which he applied to Dr. Frost, for it was his own voluntary application, Tiberius J. French was engaged at a convivial party, where he indiscreetly, I

do not say improperly, indulged himself. Next morning while at breakfast, with Mr. Whiting, he complained of serious indisposition and spoke of his imprudence the night before. His disease still continued, and on Thursday morning had very considerably increased. The cause of its exacerbation, as was stated by himself to Mr. Whiting, was his having been employed on Wednesday night till midnight in drawing a Will for a dying man in a cold chamber, which had affected him so much that in his own words he was only able to write a few lines at a time. On Thursday afternoon he resolved to go to the Infirmary, disease no doubt having taken a deep root in his system, for when he left Mr. Whiting's he was almost unable to walk, and appeared, as the witness said, to "drag himself along." He seemed to have inherited a preference for the Thomsonian system, as his mother it appears in her life-time entertained very favorable impressions of it. He consulted his brother, left his brother's office, and on the evening of Thursday we find him at the Infirmary. In what condition is he there? In the presence of the sister of the defendant he draws nearer and nearer to a large coal fire, and finally to express the severity of the chill under which he labors, he tells her, that it appeared as though if he were to lay himself upon the coals they would scarcely heat him. This is the individual who was said to be the picture of health. At that time, at least, it was a *melancholy* picture. The icy fingers of disease,

if not of death, were already grappling with his vital energies.

I have said that it was his own voluntary choice to place himself at this infirmary—that no inducements were held out and no persuasions resorted to : and I further maintain it was a most judicious choice. He left his boarding-house, where he could have had but scanty attendance, with an occasional visit from a physician of five or ten minutes in a day, with no nursing, or perhaps what is worse, bad nursing, and he places himself in an establishment where he is the very focus of attention, and has nurses around him of whom an Emperor might be proud :—the mother of Mr. Frost, Mrs. Rae, Mr. Roleston, and last and most important, Miss Frost herself.

“ Oh ! Weman,—in our hours of ease,
 Uncertain, coy, and hard to please,
 And variable as the shade
 By the light quivering aspen made ;
 When pain and anguish ring the brow,
 A ministering angel thou.”

This is the lady to whom Ulysses French expressed such unbounded gratitude, and whom he has attempted so abundantly to requite by the conviction of her brother. This is what I suppose they call paying a debt in kind—she watches *night* after *night* in sleepless anxiety on the pillow of anguish and subsequent death—and to repay these attentions, Ulysses D. French watches

day after *day*, with equal vigilance, to convict the defendant of gross ignorance or culpable neglect.

I entertain the kindest feelings towards the witness, Mr. French, his deportment towards his brother was every thing it should have been. I speak its true character when I say it was *fraternal*; it is at the same time a consolation and an honor to him, and he may rejoice in its remembrance, when the vanities of this world shall have passed away. Still, it is a subject of unfeigned regret, though certainly not without its excuse—that he should so far have permitted the storm of feeling, or of passion, or of prejudice, to sway or swerve his mind from its true moorings, as to compel him, apparently at least, to unite with this prosecution and to join in that hue and cry which has for its object the destruction of the defendant.

I have shown you the condition in which the deceased came into the Infirmary, and suggested the reasons by which he was probably influenced. It has been said from the symptoms described, that Doctor Frost was doubtful whether he labored under an idiopathic, or symptomatic fever; in simple words, whether the fever was of that character which precedes Small Pox, or was Typhus Fever, he, however, settled down upon the opinion that it was Typhus, that "*ungenteel* disease," which, as Doctor Manly says, never assails the aristocracy—but riots alone among poverty and rags. The learned professor, therefore, I suppose, infers, that as Mr. French

was a *gentleman*, Dr. F. must have been mistaken. It is true Dr. M. never saw the patient in his life, and therefore, merely relies upon a sort of sweeping theory, and even in that theory, I will show you, runs a-foul of some of his professional brethren. Dr. Smith, of Rochester, who appears not to know that there is more than one class of Typhus Fever according to modern science, and who would seem to consider it rather a *genteel and gentle* disease, says that in its ordinary course, it would not kill under one month, and in many cases not under three months.—And when I asked him to explain how it happened that in the year 1812, the Typhus Fever devastated the United States from Maine to Georgia, and almost invariably terminated life in less than a week, he chivalrously got rid of the difficulty by declaring the disease then so called, was not Typhus Fever, thereby routing the whole phalanx of regular physicians.

Dr. Manly does not exactly concur in this—particularly in regard to the grades or classes of typhus. He acknowledges the Typhus Mitior—and the Typhus Gravior—under which head he ranks what he calls the Congestive Typhus—and the latter or severer disease according to his experience might kill a man in from three days to a week. The disease of which Tiberius G. French died—was exactly what Dr. Manly calls Congestive Typhus—Dr. Rogers, who conducted the post mortem examination, establishes this almost beyond question. When, after four days, he raised the

body, not as that of Lazarus was raised, to reanimate it, but to furnish evidence *against* the living, he says—“I found that the internal parts exhibited great vascularity—the right lung was ruptured—a quantity of serous fluid was effused through that lung, and the appearance of the external coats of the stomach was more vascular than ordinary,” &c., &c., all evidence of congestion. The ingenious mode of reasoning, by which the medical faculty support this charge is, first, to deny that it is Typhus Fever at all, without being able to say what *was* the technical character of the fever—having never, let it be remembered, seen the patient until the disease and the victim were both spent,—and, in the second place, they attempt showing that Typhus Fever would require from one to three months to destroy life. What is the corollary of such reasoning? certainly not that the patient necessarily died of the treatment, but that the disease, whether typhus or not, was, I mean no pun, of a *graver* order than the common typhus, and therefore probably embraced by the class of cases referred to by the venerable Dr. Gilbert Smith and Dr. Manly, as speedily terminating life.

If these views be sound, every thing is left in doubt as to the cause of death. There is not a physician out of the many examined already, always excepting the perspicacious Dr. Cheeseman, who pretends to the ability to determine upon the specific character of the disease, from only seeing a patient in the last hour of

his life, much less, four days after death. Dr. Joseph Smith, the consulting physician, who, as a witness, was a model of manliness and propriety, repudiates and rejects the idea altogether, except in certain cases where the fever is merely symptomatic, as in cases of small pox, measles, &c., and the exact character of the disease is rendered manifest by cutaneous eruptions, and by other unequivocal signs.

To strengthen the suggestion, that not the disease but the treatment produced the death, two other witnesses were called, Dr. Rogers, a distinguished surgeon, and Mr. Chilton, a chemist, who is also dignified by the title of Doctor. Indeed, it is worthy of remark, in passing, that while these learned pundits are so frugal in dispensing medical honors, even in name, to the Thomsonians, there is scarcely a private in their battalion that you would not take for a field marshal at least. Titles are squandered with the most lavish and unsparing hand. Every dentist among them, every chemist, every bleeder, is a doctor; and those only who are among the obscure and the missing, are their patients. For *those*, gentlemen of the jury, we have looked, and looked in vain. How, and why is this? On one side we have given you the ocular proof of the beneficial results attendant upon our practice. We have examined *scores* of *living* witnesses, all of whom have been reclaimed from the jaws of the tomb—some, after an express abandonment by the regular physician,

by the botanical system. We have given them *practice*, they have answered by *theory*. We have produced *our patients*—where are *theirs*? Am I not authorized to conclude that *they* are beyond the reach of a subpoena; and, that before they can be produced, the Doctors must condescend to dig, aye, to DIG for them?

Well, still let us hear the Doctors: Dr. Rogers, as I have said, conducted the post mortem examination. He removed the stomach and part of the intestines, with the liquid they contained, which he subsequently confided to the analysis of Dr. Chilton. This learned and scientific gentleman, so far as it appears in testimony, never examined the brain, or the heart, those two great seats and citadels of life. His search is directed only to lobelia, and accordingly the stomach is his spoil. Well, sir, what did it contain? The answer is, I handed it over to Dr. Chilton, and he detected lobelia!—Heaven save the mark!—But let us turn to Dr. Chilton, and look to *his* account:—What did you do, Sir? I applied tests to the contents of the stomach, after having first evaporated the liquid to dryness. Well, Sir, what did you find? I found about 75 grains of vegetable matter; and, I think, but am not prepared to swear, there was lobelia among it. What test did you apply? I tasted it, and I thought it tasted like tobacco.—Mirabile Dictu!—Such is the evidence upon which this prosecution is to be sustained.

It is perfectly well settled, that of all earthly tests

the vegetable tests are the most imperfect; and that of all vegetable tests, that of taste is the most illusory and fallacious. Supposing the chemist to speak sooth in this,—why the extract from a quid of tobacco, or the mere decoction of a pinch of snuff, or the saliva from a segar, would settle the fate of a physician, if found in the stomach of a patient.

But we are told by those learned Thebans, and that too with a sneer, that we pursue a system laid down by one Sam Thomson, who sprung from an obscure corner of the State of Massachusetts, and whose father was a farmer. Why gentlemen, who was it that shed the brightest lustre upon the vast science of astronomy? one Dave Rittenhouse, a native of Pennsylvania, who followed the plough. Who was it that tore the lightning from heaven, and the sceptre from tyrants? one Ben Franklin, a printer's boy, who protected himself against the inclemency of the winter by exercise alone, and lived upon a single roll of bread a day. Who was it, when the veteran armies of Great Britain faltered and fled, in the Indian war, safely conducted the retreat, and secured the remnant of the army, though he had "never set a squadron in the field, nor the division of a battle knew more than a spinster?" one George Washington, a Virginia planter.

Who was it that shed the brightest halo around the brightest reign that the world ever knew, the reign of Elizabeth—the Age of the Raleighs—the Burleighs—

the Bacons and the Sydneys,—why it was one Ben Jonson, a quondam apprentice to a bricklayer; and one Will Shakspeare, a peasant boy, and shrewdly suspected of poaching upon his neighbor's deer. Or passing from astromony, philosophy and poetry, to *law*; who was it that rose from low beginnings, to be Lord Chief Justice of England? one Charley Abbot, whose father was a barber. Who was it that rose to be Lord High Chancellor of England? one Jack Copley, whose father was an American painter. Who was it that became the brightest star in the Judicial constellation of Great Britain? one Phil Yorke, whose father no man knew. Or passing to a still further illustration—who was it that subjugated three-fourths of Europe, and confident against the world in arms, made the Autocrat of all the Russias tremble upon his throne? one Napoleon, who rose from the station of a corporal to such consummate power, to such dazzling heights, as to enable him to look down upon emperors, kings, princes, and the potentates of the Earth, while he unmade them. Let us hear, therefore, no more of one *Sam Thomson*—for although I do not mean to say that there never was a great man among the “wealthy, curled darlings of the nation,” yet I do mean to say, and all history sustains the assertion, that luxury and affluence are calculated to enfeeble the mind, and that those therefore who are great in despite of them, would probably be much greater if removed from their influence. It is a well known fact among gentle-

men of the turf, that blooded horses, who for years have been permitted to browse and career on broken, irregular and mountainous pastures, have acquired a much greater muscular strength, and in Sportsmen's phrase, better bottom, than those who are fed upon a level surface—the application of this, although a physical illustration, is not difficult. Men whose lives have been an uninterrupted course of difficulty, a perfect up-hill work, acquire in time a self-dependence, a self-sufficiency, and a promptitude in every emergency, which those who have been accustomed to stand for fame on their forefathers' feet, or to lean for all pleasure upon another's breast—never have known and never can know.

I throw out of consideration, therefore, the name and the birth-place of the founder of this system, and proceed to inquire into his works. By his fruits you shall know him. “Do men gather grapes from thorns or figs from thistles?” His notion is, that all disease is the result of a want of vital power, producing or allowing obstructions in the system, which nature cannot from her weakness, *without assistance remove*. He further contends that *fever* is not disease, but the effort, or to speak more accurately, the evidence of the effort of nature to expel disease—and he strengthens this position by alleging that chills are the enemies of man resulting in death, unless *superseded* or *overcome*, and that they invariably precede a fever, which fever

at the same time manifests the severity of the *attack*, and the power and extent of natural resistance—that by the relief or diminution of obstructions you aid the fever and assist *nature*, and in the same proportion diminish the power of the *disease*, until finally the obstruction being entirely removed by the reproduction of vital power, and the restoration of the equilibrium of the system, the body is restored to a sound and pristine state.

Now you may call this Thomsonianism or what you please, it smacks much of philosophy, and it has been followed by practical results of the most beneficial nature to which it may *triumphantly appeal*. The only objection to it seems to be that it is *new*.

Why this extraordinary objection to every thing like innovation, as if nothing could prove good unless it were encrusted or sanctioned by time. The celebrated Dr. Harvey, one of the most distinguished of the medical school, uses language upon this subject which is particularly applicable. Thus he speak—“By what unaccountable perversity in our frame does it appear, that we set ourselves so much against any thing that is new? Can any one behold without scorn, such drones of physicians, who, after the space of so many hundred years’ experience and practice of their predecessors, have not detected one single medicine that has the least force directly to prevent, to oppose, or to expel a continued fever. Should any by a more sedulous ob-

servation, pretend to make the least step towards the discovery of such remedies, their hatred and envy would swell against him, as a legion of devils against virtue. The whole society will dart their malice at him, and torture him with all the calumnies imaginable, without sticking at any thing that would destroy him root and branch; for he who professes to be a reformer of the art of physic, must resolve to run the hazard of the martyrdom of his reputation, life and estate."

It is a mistake, Sir, to suppose, as the court seem to suppose from their course of inquiries, that according to this system, there is but *one* remedy for *all* diseases.

There is one remedy for the root or trunk of all diseases, and as when the axe is applied to the body of the tree, the branches share in the fate of the parent stock, and are felled with it; so when the obstruction from which diseases in their various phases and branches spring is eradicated from the system, nature again assumes her empire, and peace and harmony, and salubrity prevail where rebellion and discord and disease had previously existed. But there are seventy different kinds of medicine embraced by the Thomsonian materia medica, possessed of emetic, diaphoretic, stimulating, sedative and other properties, all of which may be applied in judicious adaptation either severally or in compounds, according to the nature of the disease or the constitution or necessities of the patient.

This is a plain, rational common sense theory, and

with the practical illustrations of its utility which we have supplied from thousands of living witnesses, it is neither to be contemned or rejected. The Thomsonian system is not to be put down by the *sneering* system, and especially by those who are *paid* for sneering. It was never the design of the great Creator of Earth and Heaven, if such a worm as I am may be allowed to imagine what were the inscrutable designs of the *Omniscient*, that recourse should be had to the vast and innumerable compounds of mineral, vegetable and poisonous substances embraced by the materia medica of the regular faculty, in order to effectuate the cure of his creatures.

Indians live to a great age, even though subjected as they are to the greatest exposure. Their only medicines are herbs. Sickness with them is less fatal than with us, and this would appear to lead to the conclusion that more patients die of the *doctor* than the *disease*. But if this were not true, if death were more rife among them, they at least are not subjected to a living and prolonged death, as is the result of calomel, arsenic, antimony, and other mineral poisons.

But, say our adversaries, if the system of Thomson be good, lobelia is possessed of *poisonous* properties, and therefore may be supposed in this instance to have caused death. This is strange and inconsistent doctrine coming from that quarter. But it is as unsound and untrue as strange and inconsistent; there is not a

man of them that has ever known it to produce death, and I challenge the District Attorney, and his colleague to boot, to turn to any portion of the testimony by which it so appears. Doctor Smith, of *Rochester*, is the only one of all the witnesses who approaches any thing like such a result, and he states that he knew it to have killed a lady who at first had a slight fever, and who told him she took lobelia from a bottle which he the doctor saw on the table.

In the first place this is no testimony at all, as the Court intimated, being mere hearsay at the best. In the second place, it was the communication of a deranged woman, though in a supposed lucid interval; and in the third place, the doctor saw the patient in the close of her life,—appears to know very little of her disease, and of consequence relies more upon fancy than upon facts for his conclusions,—of all medical or judicial tests the most feeble and unsatisfactory.

Now, having shown the state of the patient, and the probable nature of the disease, what were the prescriptions, and the course of treatment adopted by the defendant, as in distinct proof upon this occasion. For the regular consecutive course let us refer to that testimony to which we must all delight to turn—the testimony of Elizabeth Frost. [A portion of the testimony of Miss Frost, describing symptoms and applications was here read.]

Thus it appears, that repeated doses of composition

tea, as it is called, made up of harmless ingredients, were administered to him on the evening of the day upon which he entered the establishment; that he was then put to bed. The next day he took more tea, and took a vapor bath, which was continued for about ten minutes, tea being administered during its continuance; then he was carefully covered with blankets—conveyed to the bed, and shortly after took a dose of lobelia, and in fifteen or twenty minutes after that another dose. Occasionally he seemed relieved, and then again relapsed. On Monday a powerful dose, as it has been called, of lobelia was given; this for a time relieved him. On the evening after the arrival of Dr. Davids and Ulysses French, he got worse, and it would seem from that time until Tuesday evening, when he died, the disease continued to increase. On the afternoon of the last day, the symptoms seemed, however, more favorable, a gentle perspiration suffused the whole frame. There seemed to be a point where nature made one final effort to throw off disease with some signs of success—when, unluckily, owing to the fears of the brother, Dr. Cheeseman was called in. If the course pursued by Dr. Cheeseman has been correctly stated by the witnesses, if my views of medical treatment be correct, there was much in it to condemn. I will consider its excuse presently. The clothes were thrown off, the last applications removed, the fire extinguished, the windows thrown open, the doors

fanned—and an instantaneous and violent change thus produced in the temperature, the body exposed to the influence of the air, the night damp and bleak.

We do not mean to say that this course was adopted by Dr. Cheeseman from any malevolent or uncharitable purpose. Heaven forbid! But I will ask whether the sudden check of perspiration, attendant upon such treatment, and operating upon a weak frame already having suffered from two relapses, must not necessarily have been followed by pernicious effects. I have always been so taught, and appeal to the medical faculty, for the correctness of the instruction. Dr. Manly however informs us, that although ordinarily the check of perspiration may be dangerous, yet it is not so much so, if at all so, while the patient is under the influence of medicine—in as much as I understood the learned Doctor, the medicine forms a counteracting power, which resists external attacks upon the system. There is some philosophy in this—but might not even the conflict between the medicine and the atmosphere, prove fatal to the patient, where life is reduced to so low an ebb, as in the case of Tiberius G. French? In such a condition

That death and nature did contend about him,
Whether he lived or died.

They say, however, that the facts were not so—that Dr. Cheeseman did not expose the body, and subject

it to the influence of a chilly atmosphere.—It is true there is some slight variance in the testimony, but there is substantial consistency, with circumstantial variety which ever characterise the highest order of evidence. Dr. Metcalf, Miss Rae, and Mrs. Frost, although they refer in their testimony to different parts in this last sad scene, each one having witnessed but a portion of it, in the effect of their *combined* testimony leave no question upon this subject. Pardon me while I show you how entirely they agree. Dr. Metcalf says, that when Dr. Cheeseman came in first, he threw off the coverlet, opened the doors, and went away after examining the patient's tongue—that when Dr. Cheeseman returned with Dr. Sweet, he threw off all the bed covering, raised the sheet to examine the stomach of the patient, and permitted him so to remain for an improper length of time—the windows were opened front and back, as were the room doors and hall doors. Before Dr. Cheeseman came in, the witness examined the patient and found him in a gentle perspiration, equally diffused all over—thinks to check a perspiration in this way must prove fatal.

Miss Rae states, that when the bell rang she let in Dr. Cheeseman and Mr. French—she opened chamber door half way—Dr. Cheeseman opened it all the way—went to bedside, said he was afraid the patient was too warm—threw off the top comforter. Dr. Cheeseman then went for Dr. Smith, and in about fifteen minutes they

came in. Dr. Cheeseman then took all the clothes off of patient down to the feet—the sheet was then raised and the chest of patient was exposed. Dr. Cheeseman then ordered witness to put out the fire—he then ordered the windows to be let down, which was accordingly done. Dr. Sweet and Dr. Cheeseman then retired, and subsequently Dr. C. came in and ordered the warm applications to be removed from the feet—the back and front windows were open. The witness then withdrew, and upon coming in again found the patient in a chill, and in a few minutes after he was seized with convulsions, of which he died.

Mrs. Phebe Frost, states, that she was present on the evening French died—found him, upon examination, in a moderate perspiration—that after Dr. Cheeseman came in the room was cool—the doors were opened—they appeared to be about to strip the patient and the witness turned her back. It was a damp foggy evening—the room was made too cool for a person in health—shortly after patient went into spasms and didn't remain long.

Some attempt, it is true, has been made to contradict these witnesses, but unavailingly. It will be found that they are entirely corroborated by those who profess to oppose them.

One thing is certain from the testimony—and it accords with my theory, and with the Thomsonian system, that a chill immediately followed this expo-

sure, and that chill terminated in *death*. This, at least, is a fact, and facts are said to be stubborn things. You have here presented to you, cause and effect—a cause that ceases to be doubtful from the nature of the effect, and the rapidity with which it followed. The abstract hypotheses, therefore, of distinguished members of the faculty, though respectable for their authority, lose all their charm, when tested by actual observation and experience—yet who shall say, notwithstanding these facts, that Dr. Cheeseman killed the patient,

Whose tongue soe'er speaks false,
Not truly speaks—who speaks not truly, lies.

We *say* that he acted up to the best of his skill and ability. If mistaken, the motive should justify the means. It would indeed have been a proud triumph of science, had the learned physician redeemed the deceased from the cold embrace of death.—But is he to be censured or *indicted* for his failure—certainly not. “In great attempts 'tis glorious e'en to fail.” And what attempt is greater than that which is directed to the preservation of human life.

But do you not perceive, gentlemen of the Jury, that all that is thus justly said in behalf of Dr. Cheeseman, operates equally in defence of Dr. Frost. No man doubts but that his remedies were prescribed with a view to the restoration of his patient.—Suppose those

remedies failed ; suppose even they produced death ; is there nothing in a criminal case, in the motive, in the design, with which they are administered, calculated to protect the defendant. If not, wo be unto all the professors of the healing art. The terrors of their responsibility shall unfit them for its due discharge, and they shall either in spite of fate, save the life of their patient, or sacrifice their *own*. Let that be once understood to be the law, and whole hecatombs shall perish, without one helping or alleviating hand. Let that once be understood to be the law, and then show the diploma, that shall prove a panoply against indictments like *this*. Upon this branch of the argument I am the advocate of all physicians, without regard to systems. Systems will ascertain their respective levels, from unequivocal manifestations of public opinion—but the principle I here contend for, is salutary, and necessary to *all*—is salutary and necessary to the *public*, upon which all must depend for support. It is not as I have said, by persecution, that the one is to be exalted or the other degraded. When did genuine talent, or conscious worth descend to means like this? During the trial of this very cause, one of the brightest luminaries of medical science, in the person of the venerable and lamented PHYSICK, has sunk beneath the horizon of the world, to rise, it is to be hoped, in brighter and in purer realms.—Whence while among us, was his lustre derived—not from breaking down, but from building up—not

from crushing his supposed inferiors, for if that were the case, his foot would have been planted upon the necks of nine-tenths of his profession ; but from assisting and stimulating and enlightening all, and borrowing assistance and stimulus, and light from all. The truly great man becomes “in men’s despite a monarch.” He is not merely illustrious from the insignificance of those by whom he is surrounded, but he shines in reflected as well as original brightness.

If the medicine produced death—which no human being has said, or can say, though *you* are asked to draw that inference from the evidence—then and then only arises the question—

Secondly.—Was there gross ignorance—or culpable neglect on the part of the defendant—*Lata Culpa*—or *Crassa Negligentia* in the language of the law.

If the medicine did not produce death—or expedite death—ignorance in administering it, is no subject of punishment under this indictment—and if it did produce death, and there was competent skill in administering it, it is but mischance, and certainly no felony, the design being salutary. I repeat it, this doctrine is essential not only to the Doctor—but to the patient—it is doctrine founded in universal policy. If a Physician is to answer for the effect of his medicines : and if skill is to be determined by the life or death of his patient ; medical science as it has always been admitted to be, the most uncertain of *all* sciences, so will it be the

most dangerous; not a man among the regular or irregular practitioners, is safe. This is a subject to be reflected upon; no man will be willing to place his reputation and liberty in jeopardy, however urgent the occasion, by prescribing in a dangerous disease in which prescriptions are most required, if this is to be the standard by which his practice is to be tested and adjudged. It is, to be sure, the case only of Richard Frost to-day; but it shall exhibit a more shining mark to-morrow. The result is that patients will be allowed to die without an effort to save them; unless the law shall be considered as involving the further absurdity of coercing medical attendance, at the same time that it punishes its want of success. The pernicious operation of this doctrine would be measureless; in future no old woman will dare to give a dose of camomile tea, for fear, that by the remotest probability it may produce death: or death may ensue. Nay, it would, to refine upon the doctrine, be tantamount to suicide to take medicine yourself without the intervention of medical aid; if death were to be the consequence. It would be *felo de se*, and the rites of christian burial should be withheld, and in the place thereof

“ You should in ground unsanctified be lodged
Till the last trumpet.”

I have contended under the first proposed point of inquiry, that the medicine did not produce death; and

if it did, I contend under the second head of my argument, that it was administered with competent skill, and care. Not skill and care according to an opposing system ; which deems nothing skilful without a diploma—nothing careful that does not conform to its own practice. To be *skilful*, according to the views of some, you must give *poisons*, and to be *careful* you must pay your patients flying visits only—and, at least, be certain to be paid beforehand. In this sense Dr. Frost has neither skill nor care. His medicines were harmless—he remained almost constantly by the bedside of his young friend, and so far from exacting payment in advance, the only compensation or reward for his services that he has ever received—IS THIS PROSECUTION!—It is, to be sure, more than he expected, but gratitude is bountiful—it is more than he deserved, but generosity is munificent.

To resume the consideration of this point—there was, I maintain, neither ignorance nor neglect. His education and his prior practice were such as to authorize a conscientious man to administer medicine. No, say our adversaries, he was originally a Locksmith ! Suppose he was—does that render him less competent, with fair opportunities of instruction, of understanding the wards and intricacies and mysteries of the physical system ? Many a Locksmith might make a physician, though, from the specimen afforded, it is certainly not every Physician that would make a Locksmith. “Honor and shame

from no condition rise.” No rational man will pretend to compare the science of Medicine with that of the Law, in point of the requisite diversified accomplishments, and yet I can recal to your Honor’s memory one of many instances in which a poor unlettered country boy, having driven his load of hay into the city of Philadelphia, and being attracted by youthful curiosity or driven by force of character, into the Courts of Justice, was so captivated by forensic eloquence as to abandon his rustic vocation and devote himself at once to the Law. In a few short years where do we find him? On the very pinnacle of professional glory, looking down upon those who, standing for fame on their forefathers’ feet, had presumed to look down upon him. That man was William Lewis—a profound lawyer—an unequalled advocate.

Recorder.—I knew him well, and he merited all you have said.

Well then, Sir, let us not be taunted with the *Locksmith*. Upwards of five years ago Dr. Frost commenced his preparatory studies. He directed his attention to various medical authors, and at length became a student under Dr. Sweet, an experienced physician connected with the Thomsonian system. After continuing in the office of his preceptor for about a year, he opened an Infirmary himself, and for three years and more has been in an active and successful practice—I think I may say successful, for it does not

appear that he has lost a single patient. How many he has saved this court room shall testify. Ignorance is not to be inferred from the want of a diploma—from the limited extent of his library—his great study was the book of Nature—

An institute

Of Laws Eternal—whose unaltered page

No time can change—no copier can corrupt.

Practice and observation were his study, experience his preceptor—and are all these to be broken down in order that mere theory may be kept up? But let us cast an eye at the evidence his career affords.

Dr. Metcalf, who has been a physician for upwards of ten years, is of opinion that the course pursued by Dr. Frost, as he understood it, was judicious,—and he also states the character of Dr. Sweet, with whom Frost studied, for skill and science—and the course of examination to which candidates for admission to practice are subjected before the board of medical censors.

Leonard Kerby states the case of several cures of scarlet fever in his family by Dr. Frost, some years ago.

Andrew Lockwood lost two children by measles and scarlet fever, while under the treatment of regular physicians. Subsequently two others were taken with the same diseases, and despairing of the regular practice, Dr. Frost was sent for, and both the little sufferers were speedily restored to health.

Valentine Kerby testifies, that he has employed Frost repeatedly in his family—for his wife, his children and himself. In one instance Dr. Anderson attended a child for inflammation of lungs—it got worse—he thought it would not live, and called in Dr. Frost. Under Frost's treatment the child got better. The regular physician afterwards called and said "continue the drops." He didn't know Frost had been there. Instead of continuing the drops he continued the Thomsonian system, which cured the child, and the regular physician took the *credit* of it.

I say then, there is no manifestation of culpable neglect, or gross ignorance. The suggestion of rashness which may be embraced either by the term neglect or ignorance, should be weighed with great caution—in the language of Judge Brice in the Maryland trial, which has been more than once referred to: "Physicians are often obliged to exercise a discretion which to by-standers and unskilful persons may appear rash and unfeeling; but which may, nevertheless, be dictated by the soundest judgment and the kindest feelings toward the patient, and an anxious desire to promote his recovery. To use the language of Lord Hale, 'God forbid that a failure should subject the unfortunate practitioner to a criminal prosecution, when he has done the best he could to effect a cure.'"

Thus, Sir, I have considered, first, the question, whether the medicines or the course of treatment com-

bined, produced the death of the deceased. And in the second place, I have bestowed some attention upon the allegation of gross ignorance and culpable neglect. If the prosecution has not succeeded in establishing to the entire satisfaction of the Jury, the affirmative of both propositions, it is impossible, legally speaking, that the defendant can be convicted:—that is, if the treatment did not produce death, however ignorant or unskilful or neglectful it may have been, no conviction can ensue. For let it be remembered, that the ignorance and neglect are connected with the treatment, and not relied upon as substantive or independent grounds of accusation.

There is another matter, that although I trust it is not necessary to be enforced upon your minds, in a case like this, yet it is never utterly to be lost sight of in any criminal case. It is this. That in order to render a verdict of conviction, your minds must be relieved from every thing like reasonable doubt, and that doctrine is applicable, not only to the interpretation of the facts, but to the conclusions of law. It is founded in mercy, it is true, but is not unmixed with justice, and a due regard to the protection of the community. It is better, much better, that ninety-nine guilty men should escape, than that one who is innocent should suffer.

The law does not require a sacrifice. It punishes, it is true, where guilt is clearly shown, but it is not that

justice delights in the groans of the victim; but that society may be preserved from the influence of evil example, and protected from the encroachments of vice. With the benefit of these reflections, it will be for you, the sworn twelve, to say how far it comports with your sense of duty to pronounce a verdict of guilty against the defendant, now upon his trial. My task is accomplished.—Yours, and it is a much more important one, as it affects the character and condition of the defendant, remains to be fulfilled. It is for you to restore him to his reputation, to his family, to his hopes—neither of which he has justly forfeited. It is for you to return him to the affections of a sister, to the arms of an aged and respectable mother; or to consign him to the cells of a Penitentiary, and thereby not only blast his reputation, but also to destroy all those who cling about him, for their consolation and support. This, I may therefore be allowed to say, is a momentous question. It is your province to decide it—and for its decision, you are responsible to yourselves, your country and your God.

Counsel for the State.—MR. PHENIX, MR. GRIFFIN, and MR. WILSON.

For Defendant.—MR. MORRILL and MR. BROWN.

During the trial of the preceding case, in which all the Medical Faculty of New York were enlisted against the Professors of the Thomsonian system, the Newspaper Reporters took a very active part in behalf of the Prosecution, and carried their zeal so far as to supply questions to the District Attorney and his colleagues, and thereby interfered most improperly with the propriety and dignity of a judicial tribunal; this interference at last became so gross as to compel Mr. Brown, though most reluctantly, to bring the subject to the public notice of the Court, which he did in the following brief address:—

Pardon me, MAY IT PLEASE YOUR HONOR, for interrupting the proceedings—I must be pardoned, for I speak under an irresistible impulse, which would seem to carry with it its own excuse. I trust I am neither splenitive nor rash; but that man who can endure the indecorum of such an examination as this, in a Court of Justice, must be lost to all sense of right—to all obligations of duty, to all professional or personal respect. I have endured it until patience is no longer a virtue, and now I feel myself imperatively called upon to express my unqualified reprobation of the course thus pursued. What a scene is this! what a sorry sight is here presented! a respectable young man placed at your bar upon a charge of felonious homicide, surrounded by his parents, by his relatives, his anxious

and sympathetic friends, all absorbed in speechless anxiety; while arrayed on the side of the prosecution, stands the District Attorney, aided by his learned associates, and supported by hosts of willing and eager witnesses, standing, as it were, like greyhounds in the slip. To all this, Sir, I take no objection; it is sanctioned by the law, and the legitimate terrors of the law, we must be, and we are prepared to meet. Yet is not all this enough!—not only is the witness compelled to submit to a rigid examination by the Counsel, but scores of learned and medical professors, desert for a time their own science, and here publicly enlist themselves to the disgrace of justice, beneath the bloody flag of this prosecution. From every quarter of this vast hall, the constables and the tipstaves, and the bystanders are put into requisition, for the purpose of forwarding written communications and interrogatories to the law officers of the district. Is this dignified?—is it decent?—is it honest? Nay, more, Sir—following up this iniquitous example, and converting the liberty of the press, into the licentiousness of the press, the hearts speak, and I will not restrain it—the very stenographers and reporters, to whose industry and skill the community is indebted for the daily notices of this trial, losing sight of the limits of their privilege, also lend their important aid to the learned counsel, and supply them with new inquiries when their own genius may flag. This is bad—very bad, but it is not the

worst feature in this anomalous course. Those stenographers are to report their own questions—they are to report the answers to those questions; both questions and answers are subject to the influence of pre-conceived partizan opinions upon the subject of inquiry, and thus in to-morrow's account of this trial, in the public journals, every thing will be exhibited in the most unfavorable light for the defendant. The printer is the opposite Counsel. If the prisoner is to be offered up as a victim, commit him at once to the mob; hand him over to his concealed or avowed enemies; and, instead of subjecting him to these lingering *torments*, let the work of destruction at once be accomplished. But if this be a *Trial*—if these be the hallowed precincts of justice—if the law, or life, or liberty be more than a name, let not, I beseech you, let not the record of this important issue be stained and blotted by irregularities like these—at all events, may it please the Court, their history shall bear upon its face my humble, but prompt and unequivocal protest.

I am aware, may it please the Court, that this is a bold step upon my part; in behalf of an innocent, and an oppressed man, it becomes me to be bold—and I should be a traitor to my trust—to myself—and to my God, were I capable of weighing mere considerations of personal favor or advancement, in opposition to the solemn convictions of conscientious duty. If I enjoy the applause of my own feelings, I shall not require

that of the world—if I am free from self-reproach—the reproach of others will lose all its terrors.

Here Mr. Phenix rose and contended that he not only had the right to the assistance of the medical gentlemen, and the reporters, but of every individual in the room, who might think proper to communicate information upon the subject of the trial, or to propound inquiries—and he concluded by observing, that the objection of the defendant's counsel arose from fear that the imperfections of the Thomsonian system, and the guilt of the defendant, should become matters of notoriety.

Mr. Brown resumed.—Sir, I am not afraid of any legal course—it is a departure from the law that I deprecate, and fear. There is nothing in the talents of the counsel, great as they are—there is nothing in the prosecution rightly conducted, or in twenty times its stop, that can appal me. Far, very far from it, and I beg leave to tell the learned gentleman, who taunts us with our fears, that he will find much more serious cause for alarm, by looking closely at home. And I tell him further, Sir, so far am I from deeming this cause in peril, that I possess the power at any moment—here in the City's eye, of strangling, yes *strangling* this fondly cherished offspring, of whose infallibility he boasts.

The Court decided that the District Attorney had a right to call in the aid of scientific men, but that it

would be a most indecent exhibition for any one to pass a written question—that “such a proceeding would be a most improper administration of justice.”—The Recorder spoke with considerable warmth, and indirectly rebuked the medical faculty for their disgraceful conduct.