

JOHN G. FARNSWORTH,

RECEIVER OF THE

BANKERS' <sup>AND</sup> MERCHANTS' TELEGRAPH CO.

*VS.*

WESTERN UNION TELEGRAPH CO.

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ROBERT G. INGERSOLL'S

Opening Speech to the Jury,

DELIVERED MAY 21st, 1886.

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MR. INGERSOLL. May it please the Court—Gentlemen of the Jury: The duty has fallen on me to tell you this story. It is a long story, and you will have to bear with me while I tell it. I think, after you thoroughly understand our side and the facts as we understand them, it will very much lighten your labor in coming to a conclusion after you have heard the testimony; because, if you know the framework, if you know what is claimed substantially by both parties in this case, you will understand more readily the evidence and its relevancy as it is given.

In order that you may have a thorough understanding, I shall, at some length, tell you the facts.

This is a case between the Receiver of the Bankers' and Merchants' Telegraph Company on the one side, and the Western Union Telegraph Company on the other. Some time in the year 1881 the corporation known as the Bankers' and Merchants' Telegraph Company was organized. It proceeded to build a telegraph line between New York and Washington, by way of Philadelphia and Baltimore. That line was operated with some considerable success. It was mortgaged for \$300,000, that amount being just about the value of the entire property. Until the year 1883 the line from here to Washington constituted the entire plant of the Bankers' and Merchants' Telegraph Company.

In the year 1880, another telegraph company was organized, called the American Rapid Telegraph Company, and that com-

pany built lines between here and Washington, as well as between New York and Boston, reaching such cities as Hartford, New Haven and Providence; also between here and Buffalo, going through the principal cities in the State of New York; also a line to the oil region, in Pennsylvania; also a line from New York to Pittsburgh, and thence from Pittsburgh by way of Newcastle to Cleveland, Ohio. So that in 1883 the Rapid Telegraph Company owned the lines that I have in outline described. I will present to you before I get through this opening a map which will show the two systems, the one owned by the Rapid Company, and the other owned by the Bankers' and Merchants'. The original Bankers' and Merchants' Company, allow me to say in passing, was a successful company, when it had only a line between here and Washington. It was really making money. At that time the Rapid, although a much larger system, was losing money, and in the year 1883 it had lost in the neighborhood of \$117,000; so that the persons who owned the Rapid, the persons who had built that system, became tired of operating it, and, in 1883, an arrangement was made between the Bankers' and Merchants' and the American Rapid to put the two systems under one control. It will be claimed upon the other side that this was a kind of fraud, and that the Rapid Company was in some way overreached. With that, gentlemen, we have nothing to do. The persons now before you, the persons now asking damages in this case, had nothing whatever to do with any of those contracts; nothing whatever to do with the construction of the Rapid or of the Bankers' and Merchants'; nothing whatever to do with the making of the contracts that I shall hereafter allude to, bearing date the 28th and 29th of August, 1883. But a contract was made, and that is sufficient for me to state now. By virtue of which the control of the Rapid Company passed into the control of the Bankers' and Merchants', or both companies were controlled by substantially the same officers. The President of the Bankers' and Merchants' became the President of the Rapid; the General Manager of the one became the General Manager of the other, the Treasurer of the one the Treasurer of the other and most of the officers were the same. There was a little difference in the boards of direction; other-



wise they were the same. This happened in the Fall of 1883. At that time the two companies were absolutely put together for economic reasons, having really but one set of officers. They were substantially the same. They avoided in this way the payment of double rent in all the towns and cities where their lines reached, and, so far as I know, the object thus to be attained was desirable; at least, it was done. At about the same time the Bankers' and Merchants' Company began to extend its system. Right here I might as well explain a matter that will come up hereafter. At that time the American Rapid people wanted to put their property into the hands of the Bankers' and Merchants'. They had failed to make their property pay and had entailed upon themselves a loss in that one year of \$117,000. There was, besides, a floating debt of over \$100,000, and they had by that time satisfied themselves that they did not understand the business. So they were anxious to get other parties to operate the line, and they were anxious not to lose any lien they had upon their property. At that time no bonds had been issued upon the American Rapid system. All the money had been raised by issuing and selling stock. As I remember, not a single bond had been issued.

Thereupon, on the 28th of August, 1883, the stockholders of the American Rapid Company, wishing to give the property into the hands of the Bankers' and Merchants', made a bargain by virtue of which they were to issue three millions of bonds, that being the exact amount of the stock then extant. These three millions of bonds were to be issued apparently as a consideration to the Bankers' and Merchants' for a contract to build about fifteen hundred miles of telegraph in the Western States; but, as a matter of fact, *they were not to build a mile*. But that makes no difference now. Together with that contract was another, to the effect that as soon as these bonds should be issued to the Bankers' and Merchants' they should turn around and swap these bonds for stock, so that all the stockholders in the American Rapid would have bonds instead of stock. In other words, that the Bankers' and Merchants' should have control by virtue of having the stock of the American Rapid; but the former owners of the stock, in place of that stock, should have bonds of the American Rapid, secured by the three million mortgage upon

all the property the company then had or thereafter might acquire. In a little while I will explain that matter, and show you what we expect to establish.

The Bankers' and Merchants' thus having the substantial control of the American Rapid System, concluded about this time to extend its own system in the Western States, and for that purpose they proceeded to make, execute and deliver to the Farmers' Loan and Trust Company a mortgage on all the property then owned by the Bankers' and Merchants' Company and all thereafter to be acquired. The amount of this mortgage was ten million of dollars, to secure ten millions in bonds to be issued by the Bankers' and Merchants' Telegraph Company.

The next thing they did was to make a contract with the American Rapid Telegraph Company that the Bankers' and Merchants' might string additional wires on the poles of the Rapid Company, in consideration that they would pay as rental four dollars per mile per wire, per year. Under that contract, which bears date the 18th of October, 1883, the other contracts that I have mentioned, bearing date the 28th and 29th of August, 1883, the Bankers' and Merchants' people strung about seven thousand miles of wire upon American Rapid poles. In order to make the poles strong enough and good enough to bear from four to six, and in some instances eighteen to twenty additional wires, it was necessary to spend a large amount of money. That amount of money was never charged to the American Rapid Company, nor were the wires charged to the American Rapid Company. They were bought and paid for and by sale of the Bankers' and Merchants' securities. Between seven and eight thousand miles of wire were thus bought and paid for and strung upon poles of the American Rapid by virtue of a contract bearing date October 18th, 1883. And this was done openly in sight. It was known by officers of the American Rapid Company, who had no interest in common with the Bankers' and Merchants' Telegraph Company; known by the vice-president of the American Rapid Company, who not only had no interest in the Bankers' and Merchants', but was hostile to it then and now; and known by bondholders and shareholders. And not only that was known, but from time to time accounts were rendered to the officers of both companies and to persons interested, and in those accounts



thus rendered by the Bankers' and Merchants', the Rapid Company was credited with the amount of rent accruing by virtue of these wires at the rate of four dollars per mile per wire, per year. Under that contract all these wires were strung, and when we have the map I will show you every wire strung under that contract and under that understanding.

The next thing done by the Bankers' and Merchants' Company was to commence building lines in the West. And you will find the gentlemen on the other side claiming in this case that all the lines built in the West were built for and on behalf of the American Rapid Telegraph Company, and that all those lines in fact belong to the American Rapid Company. We shall show you, in the first place, that the Bankers' and Merchants' Company issued these ten millions of bonds, and in the second place that the Bankers' and Merchants' Company made a contract with the Empire Construction Company in the month of September, 1883, to build these Western lines; and by that contract the Empire Construction Company was to be paid in the bonds of the Bankers' and Merchants' Company to be issued under this ten million mortgage. We will show you that there was no other property in the world by which that ten million mortgage could by any possibility be secured, except the wires strung upon the Rapid poles, and the lines to be built in the West by the Bankers' and Merchants' Telegraph Company; that the Bankers' and Merchants' had no other property under the shining sun except the line between New York and Washington, and that line had already been mortgaged for three hundred thousand dollars—*its entire value*. We will prove in this connection, that the contract between the Empire Construction Company and the Bankers' and Merchants' Company was known to the officers of the American Rapid Company. These officers knew that the contractors were to be paid in Bankers' and Merchants' bonds. Further than that, we will show that the Empire Construction Company made a sub-contract with Baldwin & Miller, of this city, and that Baldwin & Miller went to the vice-president of the American Rapid Company and asked his advice, whether or not they should enter into a contract with the Bankers' and Merchants' Telegraph Company to build the Western lines; and the Vice-President of the Rapid Company, one Frederic May, hostile

*to us then and hostile to us still*, read that contract, and knew that the contractors were to be paid only in the bonds of the Bankers' and Merchants' Company. If it was a fact, as it is claimed now, he then knew that there was no property in the world of the Bankers' and Merchants' to secure those bonds; because now they claim that all the Western lines were built for the American Rapid, and that the moment they were constructed they were to be seized by the three million mortgage and held as security for the payment of the American Rapid bonds. We will show you that this contract was submitted to the officers of the American Rapid, and that they advised their friends to take an interest in that contract, and advised their friends that the bonds were good.

(Mr. Ingersoll here exhibited to the jury a map showing the lines of the American Rapid and the Bankers' and Merchants' Telegraph systems).

Now, you will remember that it will be claimed by the other side that the wires placed upon the Rapid poles immediately belonged to the American Rapid system: and secondly, that all the lines built west of Pittsburgh, and west of Cleveland were, in fact, built for the American Rapid, so that on the tenth of July, 1885, the Bankers' and Merchants' owned only the line between Washington and New York. I think, before I get through, or before you get through with this case, you will agree with me that there never was a claim with less foundation. There is one thing that I do not want you to forget: that the Bankers' and Merchants' Company for the purpose of constructing the Western system, issued bonds to the extent of ten million dollars, and in one way and another, absolutely disposed of over five million dollars par value of these bonds.

About the first day of May (to be absolutely correct, I think it was the fourth day of May) A. W. Dimock, who was President of the Bankers' and Merchants' Company, failed in business, became a bankrupt, and as a result the Bankers' and Merchants' Company failed. Right at that time the very men who now swear that the Bankers' and Merchants' bonds had no security—the very men who now state that all this building in the West was for the benefit of the American Rapid, as we will show you—these very men, after the failure of Dimock, took Bankers' and Merchants' bonds to Boston and induced



their best friends to loan money to the Bankers' and Merchants' Company, taking those bonds as collateral security.

A little while after this failure of Dimock the Company became insolvent. I believe it paid its interest once more in the following July, or a part of it.

This failure of Dimock happened, as I have said, on the fourth of May, 1884. In September, 1884, a suit was commenced by a judgment creditor of the Bankers' and Merchants' Company in the Supreme Court of the State of New York. In that suit a receiver was appointed to take possession of the Bankers' and Merchants' property. Afterwards another suit was commenced—the suit of De Haven vs. the Bankers' and Merchants' Company—and receivers were appointed. A report was made to the Supreme Court, setting forth the property that really and honestly belonged to the Bankers' and Merchants' Company—and giving the court a description of the entire plant of that company; also stating its value, and setting forth its condition; setting forth that many judgments were being obtained; that taxes would have to be paid; that in many places the lines needed repair, that there were some pressing claims—claims, too, that had been collaterally guaranteed by bonds and stocks of value. And it was reported to the Supreme Court that this property was worth in the neighborhood of four million dollars. The Supreme Court of New York thereupon authorized the issuance of fifteen hundred thousand dollars in receivers' certificates for the purpose of taking care of and protecting this vast property. I may say here, in passing, that of those certificates thus authorized, seven hundred and two thousand were sold, bringing to the court about ninety cents on the dollar in money, issued, as I have said, by the Supreme Court. After that had been done the Farmers' Loan and Trust Company, the trustee in the ten million mortgage, as was its duty, filed its bill in the Supreme Court of New York to foreclose that mortgage, to sell the property, and to see how much could be paid on these bonds. Remember, gentlemen, that there were five million two hundred thousand dollars in bonds issued; remember also that there was a time when these bonds sold above par, and that there was a time when even the stock sold for 130. Upon the application of the Farmers' Loan and

Trust Company, John G. Farnsworth and J. B. Butler were appointed receivers of the Bankers' and Merchants', for and on behalf of the holders of bonds, and for and on behalf of the holders of Receivers' certificates. All this property was placed in the hands of Farnsworth and Butler, and afterwards in the hands of Farnsworth as sole receiver.

Now, let us see where we stood at that time. Seven hundred and thirty-two thousand dollars had been issued in Receiver's certificates, and several millions in bonds had been sold; and about that time the holders of these securities went into what was called a scheme for the reorganization of this property. All the holders of securities were invited to join—five million and over in bonds, and three million and over in stock, and holders of Receiver's certificates to the amount of seven hundred and two thousand dollars. I want to impress these figures upon your minds, because they throw a certain light upon what happened afterwards.

A scheme of reorganization had been agreed upon. This property was again to be put upon its feet; it was to be vitalized; it was to have capital behind it; it was still to remain a rival of the Western Union Telegraph Company. That was the danger. *And, right here, it may be well for me to say that the Western Union Telegraph Company believes it is entitled to this hemisphere. It looks upon every rival as an interloper. It imagines that it has a preëmption upon not only the territory of the United States, but upon the ocean as well. It never has tolerated a rival. It will destroy by one means or another, and it will keep on destroying, either by the brutalities of competition or by simple brute force, unless the juries of the country say to that company, "You exist by virtue of the law; you shall obey the law; every other chartered company has the same rights that you have; and if you interfere or endeavor to interfere with the rights of others, we will make you pay not only to the last farthing, but we will inflict such damages upon you as will be a lesson not only to you, but to all other corporations which grow arrogant through wealth."* The Western Union Company saw, as we will prove, that this corporation was about to be a rival again. They made up their minds to stop it.

Gentlemen, I will admit that I have a little feeling in this case. Wherever I see power perverted; wherever I see it used to destroy instead of to benefit, I cannot help having a little



feeling. Whenever I see a great and wealthy corporation tread upon a little one, I have feeling. If we have not in the United States a government of law, and if that law is not more powerful than any corporation; if it is not great enough to protect the weakest; if it is not strong enough to punish the most powerful, then it is a delusion and a fraud.

About this time the holders of the American Rapid bonds commenced a suit in the Federal Court at Hartford to foreclose their mortgage for three million dollars. I want to make this clear in your minds. The Farmers' Loan and Trust Company was foreclosing its mortgage, and when a Receiver was appointed to take possession of the Bankers' and Merchants' property he naturally took possession of all the property the Bankers' and Merchants' Company had in its possession; and under the contracts of the 28th and 29th of August, 1883, and contracts made thereafter, the Bankers' and Merchants' Company had in their possession the Rapid system that I have pointed out to you on the map. Naturally the Receiver of the Bankers' and Merchants' took that property, and at that time the property was to a certain extent commingled and intermingled. Under the contract of the 18th of October, 1883, wires of the Bankers' and Merchants' Company had been strung upon the American Rapid poles, and under that same contract the wires of the American Rapid Company had been strung upon poles of the Bankers' and Merchants'. Under that same contract the Bankers' and Merchants' had possession of offices that had been rented by the Rapid Company, and under that same contract some of the cables crossing streams belonged to the Rapid and others belonged to the Bankers' and Merchants'. It was at that time difficult to separate that property without some judicial determination of the rights of the parties. So a suit was commenced in the Federal Court. The Boston Safe Deposit and Trust Company filed a bill to foreclose the three million mortgage. Naturally they claimed everything. I believe that is natural. Every mortgagee claims everything that the terms of the mortgage can by any possibility reach. Therefore the Boston Safe Deposit and Trust Company (the mortgagee in the three million mortgage) claimed all the wires that had been strung on the American Rapid poles, claiming that they were real estate, and

that whenever any wires were strung upon their poles those wires immediately became a part of the real estate, and that thereupon the lien of their mortgage attached and the property became theirs. Then they claimed all the Western lines because they were built, as they claimed, under the contract of August 28th and 29th. We will come to that after a while, and it will be one of the interesting features in this entire case.

In the case at Hartford, Judge Shipman appointed General Harland receiver of the American Rapid property. Let me say, right here, that there had been before that time a little feeling between the holders of the Rapid Company's securities, and the Bankers' and Merchants' Company, and they thought that the Bankers' and Merchants' receiver should give up their property, which of course he would have done, but the question was, "What is your property?" They would not take what really belonged to them and say, "This is our property and we are satisfied," but they wanted it all; they wanted all the wires that had been strung and paid for by the Bankers' and Merchants' Company on their poles; they wanted the Receiver of the Bankers' and Merchants' Company to deliberately give away two million dollars worth of property, and then they would have been satisfied. We replied, "You are entitled to your original plant. You are entitled to the property you really own, and if you will take that we will give it to you. But no, they wanted it all. In consequence of this feeling, when Judge Shipman appointed Harland receiver, I was afraid that the Receiver would go and take violent possession of our property. I was afraid that he would lease it to the Western Union Company. (I was afraid that the Western Union Company would resort to force as they had done before in reaching their ends by the shortest line—by corruption, by bribery, by brute force, by perjury, and so I said to Judge Shipman, "If you give to your receiver the order to take this, it will be violently taken; the wires will be cut.") So, at my suggestion, when he appointed his Receiver he put this in his order, which we will show to you: "*You are directed to take possession of the American Rapid property, unless the same or some part thereof is in possession of some other person or corporation claiming right of possession and title thereto, in which case you will take*



*such suitable and proper proceedings to obtain possession thereof, or of the part as to which such claim shall be made, and for the determination of the title to the same, as you may be advised."* And this is a very important point in our case, and I want you to remember that when Harland was appointed receiver of the American Rapid property he was instructed by the Federal Court that if anybody claimed right or title to any of the Rapid property he should then take proceedings for the purpose of determining the title. That did not mean that he was to take it with an axe or a gun, or that he was to call in a mob. It meant that he was to institute judicial proceedings in an orderly and civilized way. The difference between savage and civilized people is that the savage relies on brute force. If he has a misunderstanding with his neighbor he settles it with a stone or a club, or with a dagger. The civilized man goes into a court and submits his grievance to his fellow citizens. They render a verdict, and that verdict is executed by a court. That is the difference.

In this case, Judge Shipman of the Federal Court directed his Receiver to pursue a civilized course. He started out all right, but fell in with bad company, as I shall show. Mr. Harland came to the City of New York, and commenced a suit in the orderly way in the Federal Court for the Southern District of New York, and that bill was filed on the 2d of June, 1885, and in that bill, which will be shown to you during this case, in which he asked the Court to pass upon his title, *Harland asked the Court to decide what wires he was entitled to the possession of.* That was on the 2d day of June. In the meantime, this Receiver had been authorized to lease these American Rapid lines on the best terms he could; and he was impressed with the belief that some one would take them off his hands. He went to the Western Union. Remember that the American Rapid Company at the time it was constructed, was a rival of the Western Union. I thought at that time, and I still think, that it was unfair to give to the Western Union the control of that line. But no matter. They sought to lease the American Rapid. Mr. Lauterbach acted as counsel for the Bankers' and Merchants'; he acted for the bondholders and for the holders of the certificates; and he said to them, "Gentlemen, this property is about to be sold,

It is already advertised to be sold on the 17th of July, 1885. At present we are not in a position to make a contract; but the moment the sale is made we will be in position to lease your lines. You will hear the testimony and you will find that he was trifled with; that he was put off from day to day; and that finally, when they knew that he was not in town—finally, when they had deceived him, the contract was made; and it was made on the 10th of July, between Mr. Harland on the one side, and Jay Gould, or the Western Union, on the other. We will show you, during this trial, the circumstances under which that contract was made, and I will say now, that the principal officers of the Western Union were opposed to making that contract; and that it never would have been made, *except upon the order of Jay Gould* himself; he (Gould) made it. He made it and enforced it. He made it with Harland, the Receiver of the American Rapid Company. I will have something more to say about that.

What was the contract? We will show you.

Now, remember, that according to the order of Judge Shipman, his Receiver had no right to take forcible possession of this property. Judge Shipman would not inaugurate a mob. Judge Shipman said, "If this property is claimed by other people you must commence proceedings to determine the title." What did his Receiver do with Mr. Gould? That contract will be in evidence. By the second section of that contract we will show that the Western Union then and there agreed to take possession forthwith of all this property; *the Western Union then and there agreed to violate the order of Judge Shipman; and Judge Shipman's Receiver then and there made a contract that the order should be violated. They agreed to take possession forthwith. That frightened Receiver Harland. He did not know but he might get into trouble, and he said to the Western Union people, said to Jay Gould. "I don't want to get myself into trouble." Thereupon they put another section in the contract, the eighth section, in which the Western Union agrees to run all risks and to pay all damages. There was a conspiracy—nothing more, nothing less; a conspiracy clearly evidenced by that contract. The Western Union was to take forcible possession of the property, and the Western Union was to stand between Receiver Harland and all damages.*



And that is precisely what *Western Union is doing now*. We have got that corporation to the place where it has to stand. It has made as many dodges as any other defendant ever made, during this pursuit. Every court in this building has had to throw its lariat before this wild beast was caught. There is no art, and there is no artifice left untried. We have finally brought them where they must answer.

This contract, we will show, was an agreement on the part of the Western Union to take violent and forcible possession of the Bankers' and Merchants' property. What next? Remember, the Western Union is not the lessee. It did not pretend to lease this property. Finding in the order of Judge Shipman authority to his Receiver to employ such attorneys and agents as might be necessary in the discharge of his duties in that behalf; finding there the word "agent;" and having in mind that in the State of Pennsylvania, if a telegraph company leased its line to another running parallel to it, the franchise could be taken from it and the property confiscated; and wanting to dodge the law in Pennsylvania and violate the law in New York, these gentlemen called themselves "agents." Now, as a rule, an agent is one who is working for somebody else. That is true as a rule. As a rule, men do not care to hire agents to control them. There is a principal who commands, there is an agent who obeys—a principal who lays out the work, an agent who does it and, as a rule, the principal pays the agent. This is the first case to the contrary that I know of. In this case, the Western Union was so anxious to do this business that it not only became the agent of the American Rapid, for that purpose, but agreed to give sixty thousand dollars a year for the privilege of being an agent. I simply call your attention to this to show you the object that they wish to obtain.

Then what did they do? Remember that all this Bankers' and Merchants' property, all the red lines you see on that map, were in the actual possession of Mr. Farnsworth, a receiver appointed by the Supreme Court of the State of New York. He was holding all that property to secure seven million two hundred thousand dollars in bonds; to secure seven hundred and two thousand dollars in receivers' certificates, that had been issued by the court, and he was holding all that property

to secure the cost of the proceeding. That was on the 10th day of July, 1885. Now, no outside party can sue a receiver without the permission of the court appointing that receiver, because the property is supposed to be under the control of the court, and because the property, while in the hands of the receiver, is subject to the court. The law is, that any one having a claim against the receiver goes to the court that appointed him, and either files a petition there or asks leave of that court to sue that receiver somewhere else. But what did they do in this case? The Western Union, on the 10th day of July, 1885, (or rather Jay Gould, because he had his way, the contract being made at his dictation, everything was done at his command; when he speaks all other persons in that vast and great corporation become as pawns on a chess board; they are ready to take or to be taken, as he says.) Now, what did he do? He filed a petition before Justice Donohue of the Supreme Court, asking Justice Donohue to order his receiver—the receiver that had been appointed by the Supreme Court, the receiver that had been appointed on the bill of the Farmers' Loan and Trust Company—asking that court, that judge, to instruct that receiver to hand over to the receiver of the American Rapid all the lines and all the property mentioned in a certain bill of complaint, between sections 27 and 49 inclusive, in a certain complaint that had been filed by Receiver Harland in the Federal Court.

Think about it. Farnsworth, the plaintiff in this case, held in his hands, as receiver, all the property of the Bankers' and Merchants'—seven thousand miles and more of strung wires—property paid for by the Bankers' and Merchants' money; property that the Supreme Court knew had thus been paid for; and the papers were then on file in that case showing that fact. Farnsworth then held in his hands all the Western lines, more than two thousand miles of poles, and over twenty thousand miles of wire, he being then in the actual possession; although there had been other receivers appointed in the Western States they had turned the property over to him; he held every wire; he paid all the employees of the system; he transacted all the business; and he held, as I have said, the entire system in his hands, 24,000 miles of wire. Now, what did they ask? They asked this judge to order this



receiver to do, what? To turn over all the property, every poë, every wire, that this receiver held as the security of the bonds, and of the seven hundred and two thousand dollars in receivers' certificates which that very court had issued, and which that very court had induced the public to buy. What would that leave in the receiver's hands to pay the certificates so issued by the Supreme Court? Nothing, except the line from New York to Washington, on which there was another mortgage for its full value, as I have already told you, of \$300,000. That is what they asked the Court to do. I do not believe that since the creation of man, since man has formed the habit of living on this planet, there was ever a man, before Jay Gould, who had the impudence to make such a request of a judge, and such a request was never before granted.

They went there in the dark—I do not mean by that that they went in the night—but they went in the dark: they went in secrecy, they never notified a human being; not even the Farmers' Loan and Trust Company, that was then foreclosing, and had foreclosed a mortgage for ten millions of dollars on this very property and in that very court. More than that, the decree of sale had been entered; more than that, notice had been given that the property would be sold; more than that, the property was to be sold on the 17th of July; and the decree provided that out of the proceeds of that sale should be paid seven hundred and two thousand dollars of receivers' certificates; and that the proceeds of that sale, should any be left thereafter, should be divided pro rata upon the bonds. Now, on that 10th day of July, in secrecy, giving no notice to the receiver, giving no notice to the holders of receivers' certificates, giving no notice to the Farmers' Loan and Trust Company, giving no notice to the reorganization committee, giving no notice to the holder of a bond, or to any attorney in the case, although on the records of the court were the names of the attorneys for the Farmers' Loan and Trust Company; and although attorneys had appeared again and again representing holders of receivers' certificates; and although the attorney of the receiver was an attorney of record, and his name was in the papers, not a word of notice was given to him, and not a word to anybody; but there, in silence, alone, an order was issued by the court. And, before I get through, I will show you that they made a mistake.

Whenever anybody makes haste to do wrong they are very apt to stumble. If people were as ingenious as they are wicked, rascality would rule the world. But they generally lack ingenuity. Boil it down as you will there is nothing smart in meanness; honesty is pretty nearly genius. I have sometimes thought that a perfectly honest man could fool almost anybody.

*By that order, on that petition, the judge, as Western Union claims, put it out of his power to pay one of the certificates that he has issued; he disqualified himself, as defendant claims, from keeping a judicial contract. And when courts will not keep contracts, what shall we say of individuals? He disqualified himself, as they insist, from paying a solitary bond. What more? He disqualified himself from paying the costs of the court. Not enough left to pay the crier—not a dollar—not enough to pay the salary of his receiver; not enough to pay the clerk for filing the fraudulent petition upon which the order was issued. All that belonged to the Bankers' and Merchants' Company was taken. The safe was broken open—nothing but the combination left, and that worthless, with the door torn off by the court. I want you to understand this matter thoroughly; I want you to understand the impudence that it took to ask for the order; and I want you to understand the amount of deception that must have been practiced to obtain it.*

Now what was the order? I think it is on the 27th page of their answer. Now let us see what the order was.

“It is ordered that John G. Farnsworth, the receiver heretofore appointed in the above entitled action, wherein the Farmers' Loan and Trust Company is plaintiff, by an order of this court duly made and entered herein on the 5th day of May, 1885, and also Richard S. Newcomb, James G. Smith and James B. Butler, heretofore appointed by the Court receivers of the Bankers' and Merchants' Telegraph Company, be and they are hereby directed and required to surrender and turn over to the said petitioner and agent”—that is the Western Union—that is to say, Mr. Gould—“all the property of the American Rapid Telegraph Company and the several auxiliary telegraph companies mentioned in the said petition, and more particularly described in folios 27 to 49 inclusive, of the Bill of Complaint of Edward Harland, Receiver.”



There was one little mistake that I would have you notice. Instead of saying "All the property described in that petition," they said, "All the property of the American Rapid Telegraph Company described in that petition." So that the Court did not decide which was the property of the American Rapid Company. The Court said to his receiver, "You will turn over all the property of the American Rapid Telegraph Company described in that petition." They imagined that that included all that was described in that petition. That is what they intended, and I prove their intention by proving what they did under it.

Now what did they do? That order said to the receiver of the Bankers' and Merchants': "You deliver over to these people—to this agent—all the property of the American Rapid Company." What duty then devolved on that receiver? The duty of deciding which property belonged to the American Rapid. Now let us see what they did. Under that order and armed with it, (the Western Union people, headed by General Eckert,) armed with hatchets and axes—although they knew a suit was then pending in the United States Court to be decided by a Federal Judge, whether or not they were entitled to that property—fearing a decision in that case—as the Western Union fears a decision in any case—they concluded to settle that for themselves. *So this mob, carrying as its flag the order of Justice Donohue, an order, in my judgment, obtained by deceit and fraud, went to the office of the Bankers' and Merchants'—the office of General Farnsworth, the receiver, at 187 Broadway, and thereupon the spokesman—the gentleman in charge of the squad—demanded of General Farnsworth that he comply with this order. Let me read a little more in the order:*

"More particularly described in folios 27 to 49 inclusive, of the Bill of Complaint of Edward Harland, Receiver."

So when he said to General Farnsworth "I want this property" he had not the bill which described this property; and the property described from folios 27 to 49 inclusive he had no list of. He did not even have that Bill of Complaint with him, as we will show. General Farnsworth did not have that Bill of Complaint. General Farnsworth did not at that time know what property was described in that bill, in the folios mentioned, and the gentleman who demanded that he give him the

property described there, had no copy of that bill himself—or if he did, he did not give it to General Farnsworth. So he came to him and said, “Deliver to me all the property described in a certain bill.” “Have you got the bill with you?” “No; I do not know what is described in that bill.” And thereupon General Farnsworth said: “I will go and consult my lawyer.”

According to that order, General Farnsworth was called upon to exercise his judgment. He was called upon to deliver the property that belonged to the American Rapid, and he was to decide what that property consisted of—almost a judicial duty devolved upon him. And he said to this man, to the mob—and General Farnsworth would have been perfectly justified, then and there, in defending his property with a revolver—“I wish to consult my counsel.” “No, sir,” said the leader of the mob—the bandit—“I demand this property, and I demand it now.”

General Farnsworth, who acted like a gentleman, said: “I will go and consult my attorney.” He went out for that purpose, and the moment his back was turned this Western Union mob, carrying this order and acting under the orders of Jay Gould, commenced, with crowbar, hatchet and axe, to demolish and destroy the Bankers’ and Merchants’ system—wires running hundreds and thousands of miles—wires bearing messages of every possible description—of love, of news, of business, of death, of hope—hundreds of these messages fell to the ground. But what did the Western Union care? It had destroyed a rival. That was enough. It was about to add to its own receipts. If it could only destroy that rival, and one more, it would have the public by the throat. It had exactly the feeling that a tiger has, leaping upon its prey. It broke through skylight, gaining the roof. It cut the cables that united that office with every office in the system. It instantly cut communication between St. Joe, Kansas City, St. Louis, Chicago, Pittsburgh, Cleveland, Boston, Washington, Philadelphia, and all the intermediate towns and cities. It did not care how much the public suffered. It did not care who lost or who made. It did not care who was put to inconvenience; it cared nothing for the rights of its rival, nothing for the rights of the public, but with simple brute violence,



directed by Jay Gould, governed and controlled by malice, avarice and greed, endeavored to destroy a rival system. And it is for you, gentlemen, to say whether a crime like this shall be successful. It is for you to say what this monopoly shall pay in dollars and cents for trampling on the rights of this plaintiff, not only, but for recklessly disregarding the rights of the public. It is for you to say what punishment shall be meted out to the Western Union in the form of damages—a company that wants to control in the interest of avarice the distribution of news, the distribution of intelligence by the telegraph over half the world.

They thought that under that order they would take all the property described in that bill, and they did; and on the tenth day of July, gentlemen, when they got through, every red wire that you see on the map, going from the city of New York in any direction—except the few red wires from New York to Washington—had been cut and severed by the Western Union, every one. And what more? Did they cut the wires, thinking that they belonged to them? I will show you. I will prove that they went out miles from stations, and cut the wires and left them dangling in the air—wires that they did not use themselves, and that they destroyed simply to prevent their being used by us. I will show you that in town after town, and in city after city, they recklessly and without reason destroyed this property, not that they might take it themselves, because they knew it was not theirs, but that they might render it impossible for us to live again. That was their object.

That was all done on the 10th day of July, and when the sun went down that night, the Western Union had no rivals in the United States except the Postal and the Baltimore and Ohio Company. All others were dead. All of these veins and arteries had been severed. Mr. Gould was triumphant. What more? Hundreds of people were thrown out of employment. The four hundred offices of the Bankers' and Merchants' were useless. The 24,000 miles of wire were dead, the receipts absolutely nothing. The expenditures precisely the same. That was the condition on the 10th of July. And you can see how quickly the Western Union could destroy this system. Wherever we were they were, and we will show you that before they cut these wires, they had telegraphed to every principal point

on their lines to be ready with the axe to destroy our system. All the instruments taken ; all the boxes destroyed, or carried away ; so that on the night of the 10th of July, as I have previously stated, the Western Union had no rivals except the Baltimore and Ohio and the Postal Telegraph Companies.

Then they began to fear there might be trouble. They heard several remarks made incidentally, by persons not interested, and they began to be afraid that the persons from whom they had captured the property, would take it back. And let me ask you, gentlemen, suppose we had retaliated on the 10th of July, and cut the wires of the Western Union ? Is it a good thing to have the communications of this country destroyed to gratify malice ; and then, should the victim turn and destroy the other, is it a good thing to have the law so administered that things like that are likely to occur ? So on the 11th of July, the day following, fearing that the property might be taken back—and no thief ever stole anything in his life and hid it but that it was a wonder to him the owner did not find it, for he knew so well where it was himself ! The thing was to get and keep this property. So they went to the same judge, Justice Donohue, on the 11th of July, and filed another petition, in which they substantially set up, that the people they had robbed were threatening to take their property back. They feared it ; and they asked the Court to enjoin the owners from making any efforts to regain their own.

I said a little while ago that the petition of July 10th was the most wonderful piece of impudence, the most mountainous, that the world had ever seen, but it seems to me that the 11th of July overtops it. There they appealed to the Chancery side of the Court, to the equity jurisdiction, and said : We want these people restrained from trying to get this property back.

*It is enough to say that the order was granted, and we were restrained from making any effort to get back our own until the 14th of July following. That was done on the 11th of July. It was done to make the plunder secure. It was done that they might keep the property they had taken. They were so afraid something might be taken back to pay the certificates, that something might be taken back to pay the \$10,000,000 mortgage, that they got an injunc-*



tion to prevent it. An injunction was granted. The villainy was complete. It had been sanctioned by a Court. The Bankers' and Merchants' system was destroyed; Jay Gould was triumphant. Another rival lay dead at his feet, and a Court of Chancery, as coroner, had sat upon the corpse and rendered a verdict of justifiable homicide. Nothing remained for the Western Union except to attend the funeral.

This happened on the 11th day of July. Thereupon the attorney for Farnsworth and the attorney for the Farmers' Loan and Trust Company went before Justice Donohue for redress. Thereupon the whole matter was turned over to Judge Shipman, the Federal Judge at Hartford, Connecticut. We then went before Judge Shipman. *The case was stated to that Judge, and thereupon he ordered the Western Union to hand back the wires it had stolen.* Afterwards, and after the Judge had pronounced from the bench that these wires must be given back, after that, between the lawyers in the case a stipulation was made, most of the lawyers leaving before it was signed; and when it was signed a mistake had been made. By that stipulation the American Rapid had been given the Western system, to which the Rapid had not the slightest claim. When I found that, notice was given and we again went before Judge Shipman. He made another order, on the 23d of July, 1885, by which the Western Union system was given to us, with the exception that the Western Union, as agent, was allowed to use the four top wires running between Cleveland and Chicago.

We appealed from the order of Justice Donohue to Judge Shipman of the Federal Court. You remember that order told the Receiver to hand over the property of the American Rapid, and that same order allowed the Western Union to receive it. But the Receiver was to *give* it. The Receiver was to determine what property belonged to the American Rapid, and by that order the Western Union was allowed to take, that is, to *receive*—not to *seize*, not to *demolish*, not to destroy, but to *receive*. The Receiver was ordered to hand over, and the Western Union was allowed to take, that is to *receive*. But instead of that, they said: By this order we have the right to *seize*; and when the Receiver refused to hand it over without consulting his lawyers, the Western Union then proceeded to *take*.

And when it proceeded to take, it took upon itself the responsibility of deciding what property belonged to the Western Union. It took upon itself the responsibility of violating the order that it pretended to act under.

And let me say here, because somebody may forget it: We were in the peaceable possession of that property. No matter to whom it belonged, no matter if every wire had belonged to the American Rapid, they had no right, by violence or fraud, to take from us that possession. All it is necessary for us to prove in this case is, that we had possession of these wires. That is all. But, knowing as I do that they will try to show, not that the property belonged to somebody else, but that they thought it did—knowing that they will try to show that—I want to state to you all the facts.

We appealed, as I have said, to Judge Shipman. Judge Shipman ordered the property returned. Then we made a compromise amongst ourselves—signed a stipulation that I told you was a mistake—and again we went before Judge Shipman. The error was corrected, and nearly all the property was given back to us.

On the 31st day of July the property was sold. The property that Jay Gould had clutched by mob violence—the property that the Western Union had been compelled, by order of the Federal Court, to hand back—was sold. And you know, gentlemen, as well as I, the value of what is called a “habit” in a community—that is to say, the “good-will” of a business. You know that when hundreds and thousands of people are in the habit of telegraphing by a certain line, that when, for any reason, that line is destroyed or prevented from doing its business for any length of time, you know how confidence is lost. When a man sends a telegraphic message he wants to be sure it is going to get to its destination at once, or else he will send it by mail, or will go to a rival company. You know how long it takes to get public confidence, and you know how hard it is to keep, and the Western Union knew that. On the 31st of July the property was publicly sold. Everybody had full notice. These riotous proceedings had published the fact in every newspaper in the United States. Not a solitary man likely to buy a property of this kind but what knew of it. On that day the property brought



only \$500,000—the same property that afterwards, when they were trying to set aside the sale, the President of the Western Union himself swore that he would have given \$1,000,000 for. Why did the property bring only \$500,000? Because the people understood that it had been crushed by this powerful enemy. Because the people understood that the Western Union had destroyed it. Because the people had got it in their minds that its wires had been severed, that its usefulness had been impaired. Because they believed that it would soon cease to exist as a telegraph system, and it sold for less than it was worth in poles and wires. Seven millions of bonds issued, seven hundred and two thousand dollars in receiver's certificates, and the money paid for it five hundred thousand dollars, after taking out the costs of the courts, leave only thirty-eight or forty cents on the dollar for the receiver's certificates. That was the end of this property, brought about by the infamous action of the Western Union Company.

Thereupon Mr. Farnsworth, the receiver of the property, feeling that he had been outraged; feeling that an order had been obtained from a court by fraud, by the suppression of truth and the presentation of falsehood; feeling that he had been outraged; feeling that the creditors of the Bankers' and Merchants' system had been robbed, commenced this suit, and asks the Western Union to respond in damages.

Mr. Farnsworth knew that, by reason of this outrage, the scheme of reorganization had failed; that it had become impossible to raise money and purchase this property and put it in order. Knowing this he commenced this suit for the purpose of making the Western Union account for its action. And thereupon the Western Union brings forward its defence. I propose to tell you now what it presents as a defence, what it claims as a justification.

The first defence is that the Bankers' and Merchants' were never incorporated. What a defence! A receiver in the possession of a certain property—that property taken from his possession by violence, and thereupon they say that the Bankers' and Merchants' was never incorporated. What has that to do with it? As the receiver of a court I have in my possession certain property—money if you like—supposed to

belong to a corporation, and thereupon a robber waylays me and takes it from my possession. I ask him to give the money back. He says that the company in whose name you hold that money was never incorporated legally. The Bankers' and Merchants' Company is not asking the Western Union to hand the wires back. This is not the suit of the Bankers' and Merchants'. This is the suit of a receiver who had possession of the property and from whose possession it was taken, and yet the Western Union comes into court and pleads as an excuse for mob violence, as an excuse for taking this property by brute force, that the Bankers' and Merchants' Telegraph Company was never incorporated! Now, just think of that! They are not sued by the Bankers' and Merchants', they are sued by the receiver who had the property in his possession, placed there by a court, and it makes no difference in this case whether the Bankers' and Merchants' was ever incorporated or not.

What is their next defence? (And let me say here that the one I have just stated is as good as any they have.) Now, what is their next defence? This: That Mr. Harland was appointed receiver of the American Rapid. That I admit. And that the contracts of the 28th and 29th of August were made, and that therefore they owned the Western lines.

Now let me explain that transaction so that there will be no mistake. We will show you that the American Rapid was losing money; that it wanted to turn its property over to the Bankers' and Merchants'. Thereupon a contract was made on the 28th of August, 1883—a contract that the American Rapid would issue 3,000,000 of bonds, and that the Bankers' and Merchants' would build about 1500 miles of Telegraph in the Western states in consideration of the 3,000,000 in bonds. After making that contract they turned the whole 3,000,000 of bonds over to Mr. Dimock, president of the Bankers' and Merchants'—that is to say, paid in advance—gave \$3,000,000 in consideration that the Bankers' and Merchants' would agree to build 1500 miles of lines in the Western states. Remember, there was not a hole dug, not a pole cut, not a wire out of the ground—all resting in virgin ore; and yet the Rapid handed over to the Bankers' and Merchants' 3,000,000 of bonds.

Now let us see. On the next day, as appears from the papers—on the same day in fact—there was another contract



made—a contract bearing date the 29th of August; and by that contract the Bankers' and Merchants' agreed to give all the bonds back. These bonds were to be placed in the hands of a trustee, and then as fast as people who owned stock in the American Rapid would give their shares to the trustee he would give them the bonds, and the Bankers' and Merchants' agreed to give back all the bonds and to take stock instead. In other words, the contract was that the Bankers' and Merchants' would build the Western lines, not with the bonds of the American Rapid—because they were to give them back—but for the stock of the American Rapid. The American Rapid system at that time was worth \$1,500,000, and they issued 3,000,000 of bonds on it. Now you know what the stock of a company is worth. The stock of a company is worth the margin there is left after paying the bonds. Here was a property worth \$1,500,000. On that property 3,000,000 of bonds. The stock was worth what was left over after you subtract 3,000,000 from 1,500,000; and for that margin—for what might be left after that subtraction, according to these gentlemen, the Bankers' and Merchants' agreed to build 1500 miles of pole line in the Western states.

It was in reality understood at the time that no lines were to be built. The contract never was to be carried out. The contract was simply this: To change the stock into bonds, and let the original stockholders have bonds upon their property to the extent of \$3,000,000, and then the Bankers and Merchants agreed to pay the interest on these bonds for the use of that system, which interest would amount to \$180,000 a year. Probably a very silly contract! But let us look at it the other way. They, according to these gentlemen, were not only to pay that interest of \$180,000 a year, but they were to build \$2,000,000 worth of lines, in the West. What would they have for the \$2,000,000? In the first place, the \$3,000,000 bonds were to be secured by a mortgage on the lines in the West, and the lines in the West and the lines in the East would not make to exceed \$3,000,000. And yet, according to these gentlemen, the Bankers' and Merchants', for the sake of stock which was worth \$1,500,000 *less than nothing*, agreed not simply to pay \$180,000 a year interest, but to add two millions of dollars to the property, and

*the two millions to be held as security for the bonds. In one view it is idiocy, in the other insanity, and no man, no human being will make you believe this story.*

I will show you that the western lines were all built with Bankers' and Merchants' money—all built with the proceeds of Bankers' and Merchants' bonds ; so built with the knowledge of the holders of bonds and stock in the American Rapid, so built with the knowledge of the officers of the American Rapid. More than that. The Bankers' and Merchants' paid \$150,000 of the floating debt of the American Rapid. So that, when you put it in figures, it amounts to this: *For stock worth \$1,500,000 less than nothing*, the Bankers' and Merchants' agree to pay \$150,000 floating debt, build additional lines of telegraph in the Western States, to the value of \$2,000,000, and pay interest at the rate of \$180,000 per annum. That is the contract.

When was this mortgage of \$3,000,000 made? It bears date September, 1883. When were the bonds issued? On the 4th day of March, 1884. The \$10,000,000 mortgage was made on the 24th of September, 1883, and hundreds of thousands of dollars were issued in the month of September, 1883. So that, if it became a question between these two mortgages, I am satisfied the Jury will decide with the mortgage that was honestly issued and the money raised and put into this property.

Let us see again. If this contract that they depend upon is carried out, the Western lines were to be built for nothing and given as a present to the American Rapid system. We will show you by the evidence that all the rights of way from Pittsburgh west were obtained by the Bankers' and Merchants', that all the rights of way from Cleveland to Chicago were obtained by the Bankers' and Merchants'. We will show you that the Bankers' and Merchants' had an underground system of great value in the city of Pittsburgh, all bought and paid for by the Bankers' and Merchants' money and by the sale of Bankers' and Merchants' bonds. We will show you that they had an underground system in the city of Chicago worth in the neighborhood of \$100,000, paid for, every dollar, by Bankers' and Merchants' bonds, and all done with the knowledge of the Vice-President of the American Rapid, and with the



knowledge of Rapid Directors who were not interested in the Bankers' and Merchants' property. And what more will we show you? After the failure of the Bankers' and Merchants', the men who under contract had built the Western lines had not been paid in full by the Bankers' and Merchants' Company. There remained their due \$135,000. They appealed to the Western courts. Receivers were appointed for all the Western lines, and afterwards that property was sold. It was turned over to Newcombe & Smith, Receivers of this Court, and Receivers of other Courts in the Western States; turned over on condition that they would pay the \$135,000 due to the contractors. *The property was sold, but before it was sold the Western Union, the American Rapid, and the Boston Safe Deposit Company, united, tried to stay the sale—tried to convince the Court that those lines belonged to the American Rapid. The sale went on, and that property, by virtue of that sale, has passed into other hands; and yet they will come into this Court, as they have in their answer, and claim that the property belongs to them.*

It has been decided by a Court in Ohio, and we will bring it before you as an adjudication of a part of this case, that the contract of the 28th and 29th of August simply amounted to a fraud. It has been decided by that Court that the action of the Bankers' and Merchants', as well as of the American Rapid, was *ultra vires*. It has been decided by that Court that the whole transaction was fraudulent and void, and that nothing passed to the American Rapid by virtue of it. That has been decided in one of the Courts, and I think by the time we get through in this case it will be decided again in this Court.

The contract of the 28th and 29th of August made one contract. There is a curious thing about that contract. According to the contract of August 29th all the bonds were going to the old holders of the American Rapid stock, and you know that everything that happens in this world leaves a track. No matter how sharp you are, no matter how well learned in the law, no human being yet has ever been ingenious enough to cover his tracks—never. No man can write a contract and hide the real intention if it is looked at by clear, unclouded eyes. By the contract of the 28th of August it is provided that the property shall never be leased without the consent of a majority of the bondholders. Who put that

clause there? The American Rapid gentlemen, who were to have none of the bonds. By the contract of August 29th the bonds were to come back to them, and by the contract of August 28th, they say, you shall never lease this property without the consent of a majority of the bonds. Why should they be anxious about the bonds? Why? Because they were all coming back to them. And we will prove to you that they never parted with the bonds. They tied a string to each one of the bonds, and when they pretended to pass it to the Bankers' and Merchants', before that company could possibly get its hand upon it, they snatched it back; and the contract of August 29th was the string they tied to every bond.

Then there was another compact; a third one; and that third one was an agreement with certain men of the Bankers' and Merchants' that they would not part with the stock. They wanted to tie both ends, and when you come to hear the testimony, gentlemen, you will agree with me that the contracts of August 28th and 29th and the one without a date, all should have been dated precisely the same day, as the three together simply made one contract.

You will recollect another thing. Both of these mortgages included all the property that the corporation then had and all that it might thereafter acquire. So that the \$10,000,000 mortgage covered property between New York, and Washington, and all that might thereafter be acquired, and the \$3,000,000 mortgage issued by the Rapid did the same, and it is by virtue of that after acquired clause that they claim the strung wires in all the East. And there is this one curious fact. *The Rapid people held a \$3,000,000 mortgage. They claim that is a lien on the Western lines, and yet they allowed year after year to go by—that is to say from 1883 to 1885, and never had their mortgage recorded in a Western state—not one. They knew it was not theirs. They had not the impudence to do it. They knew the work would stop if they did. They knew that not another Bankers' and Merchants' bond could be sold if the Rapid mortgage was recorded.*

Now what more? They stood by and saw people doing work and receiving bonds which, according to their doctrine, were never to be paid; they saw people furnishing wires and poles and doing work and receiving pay in bonds that they knew had no security. Now do you know that the law will not



permit a man to do that thing? The law will not justify a man if he looks on, if he has a mortgage on a piece of property, and knows it, and sees another man loaning money on that same property and he does not say a word about his mortgage, equity will come in and subject the property to the lien of the second mortgage and say to the silent rascal who stood by: "You would not speak when this man was about to be defrauded. Equity will not allow you to speak in Court when you try to prevent the recovery of money. If you keep your mouth shut when another man is getting in a trap, equity will not allow you to open your mouth to get out of the trap yourself. You have to talk out at the right time or not at all. Equity says you cannot keep still as a bait and then open your mouth to spring the trap; and if you do spring the trap it will catch you!"

So the question is, when men bought bonds of the Bankers' and Merchants' in good faith, whether they shall have the property, or whether it shall be turned over to the holders of American Rapid bonds. I said before that all the persons, or at least the principal men interested in the Rapid knew of these transactions; knew that contractors were being paid in these bonds; advised the making of these contracts; got their own friends to join; advised the loaning of money on these bonds as collateral, and borrowed money on these bonds. All of which we will show.

In addition to all this, in their defence they set out the proceedings of the Farmers' Loan and Trust Company. We also rely upon these proceedings. We rely upon the appointment of that Receiver. We rely also on the judgment of foreclosure obtained by the Farmers' Loan and Trust Company, and we rely on the sale that took place on the 31st of July. And this company, this Western Union, in its answer admits that *it got possession of this property by the order of Judge Donohue on July 10, 1885—an order obtained by fraud, an order obtained by deceit, an order obtained in the darkness and without notice. And I give the gentlemen notice here, now, that we claim, and will endeavor to establish the fact that that order was absolutely void.* The property of the citizen cannot be taken except by due process of law. The property of the citizen cannot be taken secretly and without notice. Every man

must have the opportunity to defend his property. More than that. In equity, an order taking from the Receiver of the Farmers' Loan and Trust Company all the property that has been mortgaged; taking from the possession of that Receiver all the property for the payment of \$702,000 in Receiver's certificates; an order that does that, without notice, is blank paper and the signature of the Judge is nothing. He might as well have written a private letter to his Receiver. But I will endeavor to show you before I get through that the order does not mean what they claim it means. I cannot believe that Judge Donohue would have granted such an order if he had understood it. They acknowledge that they captured this property on the 10th of July, and they also set out their petition on the 11th of July, asking for an injunction. They set out the action of all the parties before Judge Donohue on the 14th of July, and admit that all parties were sent to Judge Shipman. In one case it was asked, "Why did you not appeal from the order of Judge Donohue?" I replied, "Because when we went before Judge Donohue he sent us before Judge Shipman, and by agreement everything was carried to Judge Shipman." *We did not care to appeal from the order issued by Judge Donohue; the atmosphere was not favorable; we had had enough; we preferred some other tribunal.* We felt a good deal as that man did in the olden times, when they had a statute, as they have now in the State of Delaware, that for certain offenses a man could be whipped. A man was charged with a certain offense; he was defended; he was found guilty. Whereupon the Court adjourned for dinner. When the Court came back the man's lawyer made a motion for a new trial. The poor defendant, pulling the coat tail of his attorney, said, "For God's sake, no more of it. I was whipped while you were at dinner. I have had all of this case I want." So we had all of this tribunal we could stand. We wanted no appeal. We went before Judge Shipman, as I told you, and said to the Western Union, "Hand back those wires. You have prostituted the process of this Court."

The Western Union knew the orders that had been made by Judge Shipman and the stipulations entered into by the parties in the Federal Court. Now, the Western Union comes and says that it was an "agent" of Receiver Harland—nothing but



a poor, simple, innocent "agent"—that Harland employed it to act as his "agent," and that it, taken unawares, unacquainted with the forms of this business—although it had stood on the shores of bankruptcy for many years, burying rival companies by false lights and seizing all wrecks, still Harland deceived it—got it to act as his "agent," and in the innocence of its heart, obeying his instructions, they seized and destroyed his property.

This is the second defense, with this addition: It is further set forth in this answer that Receiver Harland has a suit pending in the Federal Court to decide the question of title, and that as the Western Union is only the agent of Harland, it cannot be proceeded against until the suit against its *principal* has been decided. You will have to pass on this defense, although it has been passed upon many times. It was passed upon by Judge Andrews, and he said substantially to the Western Union: "Although inexperienced, you must abide the consequences of your own rascality. Then it appealed to the General Term. The General Term said that Judge Andrews was right. Not in the least abashed, it induced Harland to apply to Judge Wallace of the Federal Court, asking him to enjoin us from persecuting the Western Union in a State Court, and setting forth as the principal reason, that the Western Union had acted so badly—there was such a prejudice in the minds of the people against that meek company—that Mr. Harland was afraid he would suffer great damage by being found in the company of that corporation. And thereupon Judge Wallace again decided: "Gentlemen, you are responsible for your lawless action. You cannot shelter behind Receiver Harland; and if you are sued in a State Court you must defend your acts in a State Court, and put yourselves before a jury there." Thus ended the second defense.

Now, there is the third defense. It is, that all the property taken was in fact and truth the property of the American Rapid, and not the property of the Bankers' and Merchants'. The way we can show you that this defense is not true is, to show that every red wire on that map was bought and paid for by the money of the Bankers' and Merchants' Company—bought and paid for by its money; that every red wire on that map was strung and operated by the Bankers' and Merchants'

Company, and that there has never gone over one of these wires an electric spark that was not paid for by the Bankers' and Merchants' Telegraph Company.

We will also show you that the Bankers' and Merchants' agreed to pay rental for these strung wires, and that it did pay the rental agreed upon—that committees representing both companies went over the accounts of both companies, and the committee representing the Rapid charged the rental for these strung wires, and the committee representing the Bankers' and Merchants' admitted the charges to be just.

If they say they claim the Western wires, our only answer is, "You did not buy them; you did not pay for them. Every foot of the right of way is owned by the Bankers' and Merchants'; every pole was bought by that company, and every wire has been in possession of that company from the time it was strung up to the 10th day of July, when you, with a mob, using the order of Judge Donohue as a kind of deaths head and cross-bones flag, took possession of it, and kept it until Judge Shipman ordered you to hand back the stolen wires." That is our answer to that.

Our answer, further, is that the mortgage that secured the bonds that strung every wire, is the mortgage that will be held good, rather than the mortgage that only secured bonds not one cent of which went into that property. We say that the jury will follow the money into the property, and that the men who raised the money will hold the property purchased by that money.

And what is the fourth defense? Just like the second. Papers, contracts, orders, petitions, judgments, mortgages, bonds. You are snowed under. Papers—I believe in a little motion we had the other day, there were 556 printed pages served upon us! Gentlemen, before we get through this case, you will be experts in mortgages, bonds, petitions, answers, depositions, claims and counter claims, and if you pay attention to this case there will be twelve men that ought to be qualified to practice law in any court.

Their fourth defense is, that the contract of the 18th of October is a bad contract—no contract. Now, what is that contract? I am anxious that you should know it as I know it, and I know that I do know it.



On the 18th of October a contract was made for stringing wires by the Bankers' and Merchants' on Rapid poles and by the American Rapid for stringing wires on the Bankers' and Merchants' poles. They say that that contract is not good. Why? It was signed by the president of the Bankers' and Merchants' and by the general manager of the American Rapid, but they say that the same man was general manager of the Bankers' and Merchants', therefore it is not good. *Therefore*, they can take 7,000 miles of wire bought by the Bankers' and Merchants' Company, paid for by that Company and strung by that company, therefore the American Rapid can take all that wire and sell it to pay its mortgage. Now let us turn around and get ourselves on the other side. Dimock was president of the Bankers' and Merchants'. True. He was also president of the American Rapid. Do not forget that. Then the question is, can the president of the American Rapid take 7,000 miles of wire belonging to the Bankers' and Merchants', paid for by the Bankers' and Merchants', and put these wires on Rapid poles and steal the last inch? That is the question. I think not. A man occupying both positions, making, you may say, a contract on both sides, what will the Court say to that? *The Court will say that it must be a fair contract, and that equity must be done.* Then, what will be your decision? If the money was raised by the Bankers' and Merchants'; if it paid for that wire; if it was strung on Rapid poles with the knowledge of Rapid officers, under a contract, whether written or verbal, that they had the right to remove that wire, you will say by your verdict that the wire belonged to the Bankers' and Merchants' and not to the American Rapid. That was one of the questions to be decided by a Court. It was decided by Judge Wallace in the Federal Court. That was the question that the Western Union undertook to decide for itself, and if there was any doubt about it, it solved that doubt by the axe.

One other thing, gentlemen. We will show you that while the Bankers' and Merchants' had these wires on Rapid poles it accounted to the American Rapid for rent, at the rate of \$28,000 a year, and the American Rapid received that rent.

Now, what is the fifth defense? That the plaintiff refused to comply with the order of Judge Shipman of July 17, 1885, and with the order of the Circuit Court of the United States of July 23d. That is all. That is no defense; it cannot be brought here as one of the defenses in this case.

Now, what is their real defense, and all their defense? After all is done, you will find them skulking behind the order of Judge Donohue; an order made by a Judge who did not understand the facts; an order made by a Judge who had been deceived and misled; an order made that stultified the entire record of the case; an order that took every dollar of property that the Court had; an order that left \$702,000 in Receiver's certificates worthless as notes written on sand. That is the only order they can justify themselves under. And when you come to read that order carefully, you will find that it says they may take the property of the American Rapid only. Consequently, they took other property at their peril.

And do not, forget, gentlemen, that we claim, we insist, that that property was in our possession—that they had no right to take it from us by force, no matter to whom it belonged. Remember, too, gentlemen, that the question is, whether these things shall be settled by brute force or by law—whether a great corporation shall trample upon a little one. Whether a corporation with eighty millions of stock—one that does not hesitate to use its power and is not particular about the means it uses—the question is, whether this corporation shall override the law of the land—whether it shall take possession of the property of its rival by brute force.

Only a few days ago the head and front of this corporation—really the corporation itself—whose name I need not repeat, was pleading before a Committee of Congress at Washington for law and order—pleading that his property might be protected by the laws of the United States—asking the Government to stretch forth its arm, to draw its sword, and to command, in the name of the United States, peace, and to do away with mob law. And yet that very man, on the 10th of July, 1885, lawlessly took possession of the property of the



Bankers' and Merchants' Telegraph Company, severed its wires, destroyed its system by brute force, and simply for the purpose of destroying a rival.

This ought to be a government of law. There ought to be a redress for every grievance. No man ought to be so small that his cry cannot be heard, and no man so powerful, no man so rich, that it cannot be made to hear. That is what we want in this case. We want Jay Gould and his corporation to be told, and in a tone that it will not fail to hear, that it must keep its hands off the property of others. There is some excuse for a mob when the mob is hungry. There is some excuse for a mob stung by famine. There is some excuse for men who want bread. There is some palliation for a resort to violence when, for years, people have pleaded in vain for redress. I can understand why poverty cries out, and finally, lashed into madness, endeavors to crush the oppressor. But there should be no mob composed of millionaires. The rich should not band together to destroy the property of the poor. The well fed should be well behaved. It is bad enough to have a mob of rags and wretchedness. But when we have mobs of presidents of corporations, owners of stocks and bonds, men that have blown the bubbles of prosperity until they fill the very heavens—when we have mobs of this kind it is time for judges and juries to say to the millionaire and to his corporations, when you disregard a proper appeal to the courts, the courts know enough to make you pay such damages that will force you to respect them in the future.

What I claim in this case, gentlemen, is this, that you are the judges. You are the judges of the damage. You, each one, acting as a kind of chancellor, must take into consideration not simply the damage inflicted upon this property, you must take into consideration the result of this act upon the public. You must take into consideration the recklessness of public rights displayed by this corporation. You must take into consideration the act in all its bearings, the destruction of this property in the several States. You must take all into consideration to show that it was malicious; and if you find that it was malicious, that they cared nothing for the rights of the individual, nothing for

the rights of the public, you have the right to inflict on this wanton Western Union exemplary and punitive damages. You have the right to say: "You shall not only pay for the good will you destroyed and for the wires you cut; you shall not only pay for the damages you inflicted by severing communication between the States, but you must also pay such damages as will prevent you, and the like of you, from committing such violence again. These are the things to take into consideration—the act of this corporation not only in New York but in various other States—and we will prove these acts for the purpose of showing that they were malicious.

And now, so that you will not forget, let me tell you that all the bonds, all the mortgages, all the contracts, have, as a matter of fact, little to do with this case. The question is, who had that property in possession on the 10th day of July? What did the Western Union Company do on that day? Supposing that it had in its hand an order that would uphold any kind of atrocity—What did it do? It went to 187 Broadway to the general office of the Bankers' and Merchants' Company and demanded the possession of all this property. The receiver simply said, "I wish to go and consult with my lawyer." He went out for that purpose. While he was gone the system was destroyed and in hundreds of places the wires were cut and left hanging in the air. I want you to remember that he had possession of that property. It was his. They come forward with this order. We will show that all the strung wires belonged to us—that the Western lines belong to us. And in addition to that, we will show that the plant proper of the American Rapid was then in our possession. The Western Union had no right even to touch that, by brute force. If the Receiver refused to deliver it, it was the duty of the Western Union to go back to Judge Donohue and say "Your Receiver has not obeyed your order." Then the court would send for his Receiver and that would amount to notice; and that was what the Western Union was afraid to do. If they had demanded the wires from Receiver Farnsworth, and he had refused, they would have gone to the Judge and said "He refuses." The Judge would have said: "I will send for him, and ask why he refuses." That would



have been notice, and the Western Union wished to avoid that—it wished to take the property without notice. *The nail was driven through and clinched on the other side. Jay Gould's dagger had gone through the body of the Bankers' and Merchants'; that corporation was dead. People are afraid of a mob. All honest people stand between two dangers—the mob on the one side, and aggregated capital, incorporated rascality on the other. I am as afraid of one as of the other. I am fully as much afraid of the millionaires as I am of the mob. Honest people will stand between them both.*

There is another thing you must take into consideration. Telegraph property is comparatively a new thing, so is the railway. They are the only two kinds of property that are continuous. The telegraph is continuous. For instance, it is continuous from New York to Chicago to St. Joe, to San Francisco—between three and four thousand miles. To cut that line at one point so far as through business is concerned, is to cut it at every point. One of these lines cut in Connecticut, reaching from New York to Boston, destroys all the line that was in New York—destroys, in other words, the entire line. So upon that theory we shall prove the destruction of this property in Rhode Island, Massachusetts, Connecticut, Pennsylvania, Ohio and other States. It is a continuous property, and to cut the wire in Wisconsin is to cut the wire in every State through which that wire goes.

Take into consideration, too, the rights of the people in this regard, and when you hear the evidence, when you know all the Western system belongs to us, when you know all the string wires were paid for by us, when you know that they were taken from us by brute force, when you know that they were thus taken by this great and powerful corporation, and that corporation directed by one man, and that one man is Jay Gould—the man who is ambitious to own the telegraph system of this continent not only, but of the ocean as well—when you take into consideration that through all the brutalities of competition he had failed, and that there was but one way left, and that was to seize, and that seizure took from the holders of \$702,000 of receiver's certificates

all their security—that that seizure was intended to take from the \$5,000,000 of bonds every cent by which they could be paid; that the seizure was intended to destroy a rival; that it was intended to prevent people from having a cheap telegraphic service; that it was simply a step preparatory to taking the public by the throat; that it was meant to destroy all competition, the object being that the Western Union should stand alone controlling the telegraphic business of the United States. When you take all this into consideration, gentlemen, then you will give us such damages as the enormity of the offence requires—according to the amount of the damage actually suffered not only, but enough to prevent corporations in future from heading mobs for the destruction of rivals—enough to teach corporations to go to courts, to judges and to juries, not in the dark, but in the daylight, and ask for judgment upon facts proven—enough to teach corporations, who are but the creatures of the law, in all things to obey their creator.

And now, gentlemen, begging your pardon for all the time I have taken, I leave you to hear the evidence, and then to decide as you, upon your oaths, believe to be in accordance with justice.

