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State of New York.

IN THE
COURT FOR THE TRIAL OF IMPEACHMENTS.

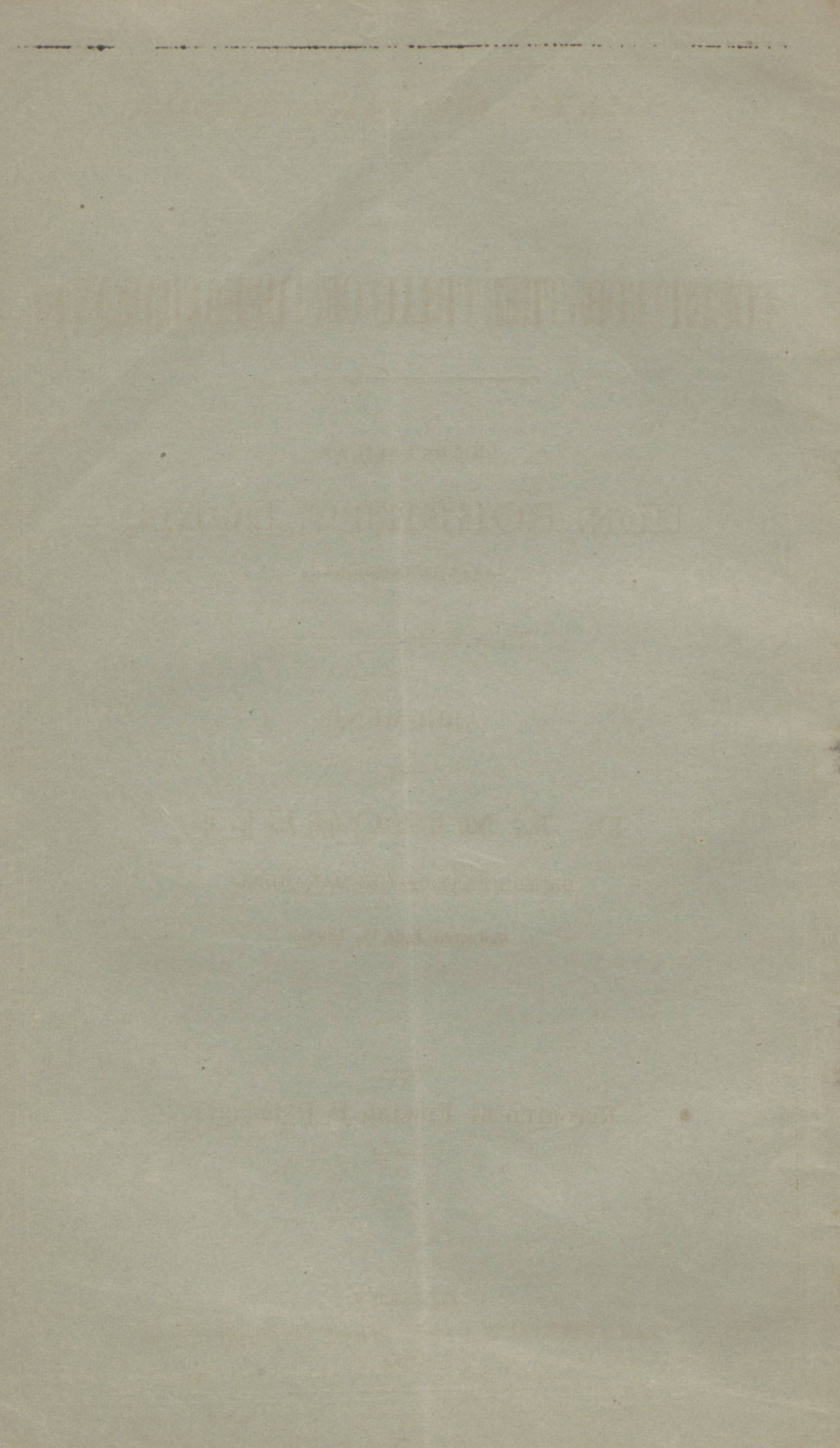
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HON. ROBERT C. DORN,
CANAL COMMISSIONER.

ARGUMENT
OF
D. J. MITCHELL,
ON THE PART OF THE MANAGERS,

Delivered June 11, 1868.

REPORTED BY EDWARD F. UNDERHILL.

ALBANY:
PRINTING HOUSE OF C. VAN BENTHUYSEN & SONS.
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Mr. MITCHELL in behalf of the MANAGERS addressed the COURT as follows :

Mr. PRESIDENT : I rise to address this COURT upon this important case with a great degree of embarrassment, arising from two causes. One, of being compelled to enter upon the discussion of this case without having had any time to examine the evidence after it was closed ; and secondly, because I am called upon to address a COURT, composed of the judges of the highest COURT, and of the SENATORS of this STATE. But it shall be my duty—it is my duty—and it shall be my purpose, Mr. PRESIDENT, in the discussion of this case, to deal with it fairly and frankly, and to endeavor to present the truth, as I understand it, which has been elicited by the evidence that we have been detailing here during the last three weeks. And if I should fail to discharge the duty in the manner that I should, you will attribute it to the fact that I possess not the requisite ability, and not to any want or any desire upon my part to fail to do my duty. I regard this case as one of great importance, not only to the people of this STATE, but to the RESPONDENT who has been charged in these articles of impeachment, and who is now on trial

And I do not desire, if I knew my own heart, to bring into this case any allusions, or make any remarks that shall have any effect whatever to hurry this COURT beyond the law or beyond the evidence that surrounds this case ; neither will I allude or spend any time in alluding to the remark of the learned gentleman who has just taken his seat (Mr. BEACH) in reference to the committee for which I had the honor to be the counsel. Neither shall I spend any time in defending an honorable SENATOR who has been kept away from this trial on account of sickness, and who has expended a year's time and much money without receiving a dollar from the State. (SENATOR STANFORD.) Neither shall it be my purpose,

beyond what the evidence requires me to refer to, to say any unkind or harsh things in reference to that class of men known as the canal contractors of this State. If the gentleman has their money for defending them here, or making charges against those who have endeavored to uproot corruption, I have only to say that I pity him, and that his shafts have fallen far short of the mark that he intended to hit.

Now, as our time is quite limited, I desire to proceed to the discussion of the law and the facts of this case. As I understand the gentleman's interesting argument—because he is always interesting and always eloquent—it is, in fact, that the contractors of this State, under a law which provides that the work for the keeping of the canals of the State in repair, shall be let to the lowest responsible bidder; may assemble and buy up all of the bids that they propose to put in, at any figure that they choose; that they may mutilate them and obtain their own prices, and abolish, in fact, the statute under which these contracts are let; and then, that the officers of the State, with a knowledge of it, can sit by and allow transactions of that character to take place; and, when the contracts are made under those circumstances, that the contractors are to be commended and the officers not to be censured. That is, in fact, the very gist of the gentleman's argument, so far as it relates to the first article that is presented by the House of Assembly for trial before this honorable COURT.

Now, the first article that I shall discuss is number one, and I shall, for a little time, array the evidence and call the attention of the COURT to the evidence that is applicable to this article, and see whether it is proved; for I allege here that this article is proved by not only circumstances, but by the most direct and conclusive evidence that was ever given in a court of justice. I shall go to the defendant's own testimony; I shall go to the record of the Contracting Board of this State, and then we will see whether there is any chance or opportunity for the RESPONDENT to escape upon the ground that he had no knowledge of this combination.

Now, the article charges, first, "That on the 28th day of December, 1866, at the city of Albany, a wrongful, unlawful and corrupt meeting and combination of the contractors and those bidding and proposing for the repair contracts of said sections above mentioned, was formed for the purpose of buying up and obtaining possession of all bids or proposals for the contract of said section; and for the further wrongful, unlawful and corrupt purpose of

mutilating, interlining, erasing and causing to be made informal all bids or proposals made or offered at reasonable and advantageous rates and prices for the repairs of said sections, for the ensuing five years, including the first day of January, 1866; and said wrongful, unlawful and corrupt combination did buy up and obtain possession of all bids or proposals made at reasonable and advantageous rates to the STATE, and did mutilate, interline, erase and cause to be made informal, the bids so bought up and obtained; and for the further wrongful, unlawful and corrupt purpose of causing the contracts to be let and awarded to the highest bidder or proposers, and in causing the bids or proposals made at fair, reasonable and advantageous rates and prices to the STATE, to be rejected and held for naught, as being informal and not in compliance with law and of the rules and regulations prescribed by the Contracting Board."

Now, have we proved that, your honors? Have we shown that the contractors of this State met at Stanwix Hall, and there for an unlawful purpose—for the purpose charged in this Article of Impeachment, did purchase and buy up each others bids, and did mutilate and make them irregular, for the purpose of obtaining higher prices, and to strike down all competition; and, in fact, as I said before, to abolish the law under which this letting was made, which was to invite competition, and to have the work awarded to the lowest responsible bidder? Have we proved that? It was shown by Mr. Dennison, it was proved by Mr. Nichols; it was, in fact, confessed by the RESPONDENT, and under the direction of the COURT we were asked to go no further, and spend no more time upon that question.

Now I assume here, because I wish to proceed step by step during the little time that is allowed to me in the discussion of this case, to see whether there is any chance, whether there is any opportunity—I would to God that there was—for your honors to come to the conclusion that this RESPONDENT is guiltless, and ought not to be convicted upon this trial. Now, I assume, and shall spend no time on it, that that unlawful combination was formed. I assert further, that that combination, as we have proved it, was not only illegal, but that it was criminal and directly prohibited by the statutes of our STATE. And I shall allude for a moment, and call the attention of your honors to the section of the statute against conspiracy, for it falls within the

very provisions of our statute prohibiting and inhibiting conspiracies, and fixing the punishment therefor.

Now let us proceed and see whether the balance of this article is proved, because it will not do here for counsel to endeavor to carry his case by eloquence or by high sounding words, or declamation. The question is, have we proved this **RESPONDENT** guilty of the charges that the Assembly of the State of New York, not in a partisan sense, as my friend urged, but who unanimously presented these articles, and I hurl back the charge to the gentleman that this was a political prosecution, or instituted by any political party for political considerations.

The statute to which I refer to is this :

“ § 8. If two or more persons shall conspire, either,

“ 1. To commit any offence ; or,

“ 2. Falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence ; or,

“ 3. Falsely to move or maintain any suit ; or,

“ 4. To cheat and defraud and person of any property by any means which are in themselves criminal ; or,

“ 5. To cheat and defraud any person of any property by any means which, if executed, would amount to a cheat, or to obtaining money or property by false pretences ; or,

“ 6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or the due administration of the laws ;

“ They shall be deemed guilty of a misdemeanor.” *

Now, I aver that that combination which was formed for the unlawful purpose of buying up all of these bids and mutilating them, that there might be no competition, and with the object of deceiving the Contracting Board of the State, was clearly a misdemeanor by virtue of the statute I have read to this honorable COURT.

Now, let us proceed to the second portion of this article, and then I will stop a little while to argue the question whether we have not fastened the knowledge of this criminal act on the part of these contractors in regard to these bids upon this **RESPONDENT**, and whether he went on aiding that combination and conspiracy

by his official votes. If he did, then is there a member of this COURT that will say, that when an officer knows of a criminal combination for the purpose of wronging the State, and goes on and awards contracts to the very parties engaged in that criminal combination, that it is not a proper case for impeachment? If so, then I have only to say that the doors to fraud and robbery of the public treasury of this States are not only thrown wide open, but they are entirely taken from their hinges.

Let me read the balance of this article :

"That the said ROBERT C. DORN, as Canal Commissioner and member of the Contracting Board, with full knowledge of the above mentioned wrongful, unlawful, corrupt combination to cheat and defraud the State, and to obtain the contracts for the repairs of said sections at rates and prices disadvantageous to the State, did wrongfully, unlawfully and corruptly vote to award, and did award said contracts, and execute the same on the part of the State for the repair of said sections aforesaid, to the highest bidders and parties to said corrupt combination, and did vote to reject, and did reject bids or proposals lower and more advantageous to the State, with full knowledge of the aforesaid wrongful, unlawful and corrupt combination. That by reason thereof, the State was defrauded out of a large sum of money, to the manifest injury of the people of the State of New York, and against their laws and dignity."

Let us see whether I can establish the balance of this article.

I now refer, in the first place, to the evidence of the RESPONDENT himself. Under what circumstances, may it please the COURT, was that evidence given? Was there any chance for an error? Was there any opportunity for a mistake? It was given under oath, where both the questions and answers were taken *verbatim*, by an experienced stenographic reporter, who has been upon the stand here as a witness, and related to you that he sat within two feet of Commissioner DORN; that it was a very easy matter to report; that he took down all the questions; every question, *verbatim*, that was put, and every answer given by him. This is the evidence we have, and it was under an oath that was administered by virtue of the power conferred upon the committee by the SENATE of this STATE. Was it fairly drawn out? There was an offer made for explanation at the close of the case, if the RESPONDENT saw fit to avail himself of it. You will recur

to the evidence, and see that it is evidence of the most reliable character, and that no COURT has a right to disregard it. I read from page 388, of the files of this COURT :

"Q. Were you present at the canal lettings on the 28th day of December last at Albany ? A. I was.

"Q. Do you recollect that the first letting was to expire—the time to bid—at 12 o'clock on the 28th ? A. Yes, sir.

"Q. Were you at the Canal Commissioners' office with the rest of the Board when the contractors came up to get an adjournment ? A. I was there when an adjournment was made.

"Q. You recollect a large number of contractors came up just before twelve o'clock ? A. Yes.

"Q. Do you recollect of Mr. Geo. Lord coming into the room when this large number of contractors came in ? A. No, sir ; I don't suppose I could tell three that were in there.

"Q. Do you recollect Mr. Selye coming in ? A. I recollect of his being there that day.

"Q. On this occasion ? A. No, sir ; I can't recall now as he was.

"Q. Do you recollect Mr. Belden or Dennison coming in at that time, just before twelve o'clock, when the contractors came in together ? A. No, sir ; I don't know as I could tell three men that were in there.

"Do you remember that the contractors requested that the time should be extended until four o'clock ? A. Something of that kind ; yes, sir.

"Q. [By SENATOR STANFORD.] Don't you remember Mr. Willard Johnson coming here and talking with you upon the subject ? A. Well, no, sir ; I do not.

"Q. [By Mr. MITCHELL.] You have no recollection of Mr. Johnson talking with you alone about it ? A. Well, no ; I have not now.

"Q. Do you recollect of seeing him among the rest ? A. I recollect of his being there on that day.

"Q. Did he talk with you in regard to postponing this matter ? A. I guess nothing more than general talk of the board.

"Q. Did he talk to you personally ? A. Not to my recollection.

"Q. Will you swear he did not ? A. I don't recollect as he did.

"Q. Can you say anything stronger than that ? A. No, I don't think I can ; there were quite a good many men in there that day.

Q. "Did the Board grant the application of the contractors, to adjourn it until four o'clock? A. Yes, sir.

"Q. For what reason? A. It was thought advisable by the Board at the time, that there were but very few bids in; I was under the impression that there were not over three or four bids in, that there was a heavy storm, or something else that kept the bidders back.

Q. Did you not think it a little queer that the contractors should want a postponement in order to have more competition? A. I don't know at present whether it was the contractors advanced the idea or the Board themselves.

Q. "Don't you recollect that a large number of them came in just before twelve o'clock and applied for an adjournment? A. Well, I recollect that there were a good many people in there on that day.

"Q. These contractors? A. Yes, sir.

"Q. Was there anybody else that had business there except the contractors and the Board? A. I suppose everybody had business there.

"Q. You don't recollect anybody but contractors? A. No, sir.

"Q. You remember it was on their application that the postponement occurred? A. I am under the impression now there was something of that kind spoken of by those men.

"Q. It was granted? A. Yes, sir; the adjournment was granted.

"Q. Did it not occur to you as suspicious that these contractors wanted a postponement in order to have more competition? A. No, sir; it did not at the time.

"Q. Do you recollect an application to withdraw the bids already in? A. Yes, sir.

"Q. And the Board consented to it? A. Yes, sir.

"Q. Do you recollect that Mr. Vandekar had put in a bid and had gone away? A. No, sir; I don't recollect.

"Q. You recollect that he had a bid in? A. Yes, sir.

"Q. Do you recollect that there was an effort made to get that bid out by the contractors? A. No, sir; I don't recollect it now.

"Q. You don't remember that? A. No, sir, I don't; it might have been the case, but I don't recollect it.

"Q. After this application to postpone was made and some of the bids withdrawn, the contractors left again? A. I believe they all left.

"Q. And they appeared again before four o'clock, some of [M.]

them, and put in more bids? A. More bids came in in the afternoon, I know.

"Q. When you came to canvass those bids you found a great many of them informal, stamps torn off, the face of the bids defaced, and various kinds of informalities, did you? A. Yes, sir.

"Q. It was perfectly evident from the inspection of the papers that it was done on purpose; that they were not accidental omissions or tearing off of stamps? A. I don't recollect of any stamps torn off.

"Q. Well, from the manner of the erasures was it not evident that it was done from design? A. Well, I can't say anything about that.

"Q. Did you not suspect from the appearance of those papers that there had been a combination of the contractors to buy up the bids? A. I knew nothing about it at that time.

"Q. Did you not believe it? A. No, sir; I had no particular occasion to believe it.

"Q. Did you not suspect from the appearance of those papers, and from their having appeared there to procure an adjournment, that they were forming a combination? A. The adjournment was because there were not bids in.

"Q. Did you not suspect from the appearance of those papers, and everything taken into consideration, that there had been a combination of the contractors? A. Well, sir, that is a question, I declare, I don't how to answer.

"Q. You know whether you suspected it? A. Well, nothing more than natural suspicion of mankind.

"Q. That suspicion you entertained? A. Well, I can't say that I did particularly.

"Q. Nothing more than natural suspicion, you say? A. Natural suspicion.

"Q. I am not asking whether you knew that fact, but whether you suspected it. Did you not suspect from the appearance of those papers that there had been a combination formed? A. Well, naturally so.

"Q. Now, sir, I will go farther: did you not know perfectly well beforehand that it was to be formed? A. No, sir.

"Q. Had you not been informed of it before the letting? A. No, sir.

"Q. Had you not heard talk about it before the papers appeared? A. No, nothing about it at all before that day.

"Q. About what time that day did you first learn it? A. I don't know whether it was before we got in session again or after; I can't swear.

"Q. You can't swear whether it was before you got in session at four o'clock or after? A. No, sir.

"Q. Who told you of it? A. I could not tell you, for my life, sir.

"Q. Where did you hear it? A. I could not say that for my life.

"Q. Somewhere here in Albany? A. Yes, sir; I was not out of the city.

"Q. That is your best recollection, that you heard of it either before you went in or after, here in the city? A. Yes, sir; I was not out of the city.

"Q. You did not let the work until the 31st; you adjourned until Monday? A. The record is correct.

"Q. Did you tell any of your associates in the Contracting Board that you had learned of this combination, and if so whom did you tell? A. Not that I recollect of now.

"Q. Did you not speak of it in the Board? A. Not that I recollect now.

"Q. Why did you not inform the Board of what you had learned of this combination? A. I don't recollect of learning it; I don't recollect whether it was before or after we went into session.

"Q. You learned it before the 31st? A. Yes, sir.

"Q. Now why did you not inform the rest of the Board that there had been a combination to wrong the State? A. I presumed that the Board all knew about it as much as I did.

"Q. Is that the reason you did not inform them? A. I don't know.

"Q. Was the reason you did not speak of it in the Board, that you supposed they knew as much about it as you? A. I don't know whether I spoke of it in the Board or not.

"Q. Was that the reason you did not speak of it, because you supposed they knew as much about it as you? A. I presume so, sir.

"Q. Did you not deem it your duty before these contracts were signed to move to reject all of these bids? A. No, sir; I did not think it my duty; I did not know as the State had been defrauded.

"Q. Did you not deem it your duty after learning of this combination to move to reject all these bids as a fraud upon the State? A. No, sir; I don't recollect that the bids were awarded that day.

"Q. Did you ever make any such motion upon any such ground—to reject them because of this combination? A. I don't recollect of it, the record will show.

"Q. Then you signed those contracts after you knew there had been a combination by which they had been obtained? A. I knew nothing of the combination except the rumor.

"Q. You signed those contracts after you had heard of this combination without investigating it? A. I don't know what you have reference to by the combination.

"Q. I mean this buying of each other's bids? A. That was a matter I had nothing to do with.

"Q. You signed them after you had learned the fact by information of this combination? A. Yes, sir.

"Q. You knew Mr. Jenne, your division engineer? A. Yes, sir.

"Q. And you know that he had made a report as to the extent of the excavation that would be required in the Albany basin, and as to what it was worth to do it, before you let this work? A. Yes, sir.

"Q. You knew what that price was that he said was a fair price—forty cents a yard? A. Yes, sir.

"Q. And you voted to let that work to Mr. Stevens, and which was immediately assigned to Mr. Gale by your consent, as appears upon the record, at seventy cents a yard, did you? A. How did you say that?

"Q. You knew that your engineer had estimated it at forty cents a yard? A. Yes.

"Q. And you voted to award that contract for the excavation of the Albany basin at seventy cents a yard? A. Yes, being the lowest legal bidder.

"Q. In the face and eyes of the engineer's report? A. We disagreed as to that.

"Q. You did that in the face and eyes of the engineer's report? A. Yes, sir.

"Q. Do you say that you believe that it is worth seventy cents a yard to take the mud out of that Albany basin, according to the contract? A. Well, it depends a great deal upon where it has got to be deposited.

"Q. Just as that contract reads, do you swear here you believe it was worth seventy cents a yard? A. The way I understood Mr. Jenne's estimate in relation to the amount of yards, was what

it was worth to take it out of there and deposit it right over into the river on the other side."

There is the evidence given by Mr. DORN himself, that with a full knowledge of this combination, which was not a simple combination to buy up the bids on section No. 1, but to buy up the bids on every section that was let or advertised to be let by the Contracting Board, under and by virtue of this statute of 1857, which was a sweeping combination to purchase the bids on all the sections, and make that statute nugatory so far as this letting is concerned, and, in fact, contrary to the very intent of the statute, having been informed of it the very day of the letting, and knowing the combination before the contracts were let, he did not move to reject the bids; but went on with that letting as though no such combination had existed.

Further, he did not inform his associates, as he avers, for the reason that he supposed they knew it as well as he did.

Now, I suppose that if a director in a bank who is discharging the trust that the stockholders have imposed upon him, had known of a combination to wrong that institution, and should keep entirely silent about it, and refuse to disclose it to his co-directors, and should go on and let contracts on bids that were frauds upon that company, the stockholders would remove any such director the moment it came to their knowledge.

I suppose more; for it is a breach of his duty, a breach of the trust reposed in him, that he would be liable for all the damages that ensued to that institution in consequence of his letting the contracts when he had knowledge of an illegal combination to wrong the institution of which he was a director.

Is it to be said that a Canal Commissioner, an officer of the State, who forms one on the Board that is to let contracts involving millions, is not to be held to the same strictness, and that the people's rights are less sacred than the rights of the stockholder in a banking institution, or any other institution of your State? If that be so held by this COURT, then there will be no protection for the treasury of this State; but there will be a license for every person to form combinations, and for every officer to wink at these illegal combinations, and to let the treasury be filched from, in contracts involving millions, if the doctrine contended for by the learned COUNSEL on the other side is to prevail. There is the sworn evidence that he knew it all.

Let me call the attention of the COURT to one thing on the question of corruption in this. Why did he keep it secret, unless he had a corrupt intent? These contracts were not let until the 31st, and the statute of this State, to which my associate will refer, made it his duty, as well as his privilege, to reject all the bids and re-advertise that work. There was a plain statute, to which your attention will be called, providing that the Contracting Board shall reject bids made by a combination and re-advertise the work. Why did he keep it secret, if he was so noble, honest and pure as the learned COUNSEL has pictured him before this COURT? There he was with his associates, knowing of this corrupt conspiracy, made in the very face and eyes of the statute I have read to this COURT. He had full knowledge of that before the contracts were let, and he keeps as still about it as though he were a *particeps criminis* in the organization of that conspiracy. He sits there three days in this Contracting Board, and never alludes to the fact that these bids are the handiwork of a criminal combination against the treasury of the State.

Still the gentleman says that argues no corruption. Has it come to this, MR. PRESIDENT, that in order that this STATE may remove an officer who has abused his trust, we must show that somebody put dollars into his hands? If we have, I know the way affairs have been managed upon the canals of this STATE well enough to assure this COURT that there never will be a conviction, and there never will be a time when speculations upon the public treasury will cease; for the man that will bribe, and the man that will receive a bribe, will in every case swear falsely. Bribes are not given in open daylight. Nor is it always the greed of money that makes corruption. It may be favoritism. It may be to procure the friendship of a body of men that are powerful to aid in renomination, that these wrongful acts are winked at, that these violations of duty are permitted to pass; and there may be no money whatever, offered or taken.

It may be that a public officer falls into the hands of these contractors long before the letting commenced, and knows full well if the contract is awarded to his friend that he will in some manner receive a benefit. But if you are going to ask that the prosecution shall show the money, the gold dollars counted out and put into the palm of the offending officer—of the officer who secretes this conspiracy, then, indeed, I shall not claim that we are entitled to a conviction at the hands of this COURT.

Now, let me go a little further, and call the attention of the COURT to evidence that you have not examined in full, evidence that is so strong, so clear that I trust every member of this COURT, however carefully he would guard the rights of this RESPONDENT, will become convinced that when he swore he knew of that conspiracy, he not only knew of it, but knew its extent, knew all its details, and that he fraudulently, corruptly concealed it ; did not even speak of it during that three days that the Contract Board was in session.

JUDGE MASON—What is that bundle of papers, and what do you claim they show?

Mr. MITCHELL—I claim they show distinctly and directly that there was a combination—a conspiracy.

JUDGE MASON—What are they?

Mr. MITCHELL—The bids on section No. 1, Erie canal.

Now the highest bid was Thomas Gale—it was for sixty cents per yard for dredging, and seventy-five thousand dollars per year for keeping the section in repair; I go now to the next, which was the bid upon which the contract was awarded, the W. C. Stephens' bid, and that bid was seventy cents per yard, and seventy thousand dollars per year ; that bid was regular, and not informal in any respect.

JUDGE MASON—Was the first one informal?

Mr. MITCHELL—No, sir; because it was higher than Stephens' bid. Then W. D. Palmer—that bid is eighty cents, and eighty thousand dollars per year. This amount was in the handwriting of one of the men who were in the conspiracy, and who bid off this section at a bonus of forty thousand dollars. It is in his peculiar handwriting, as the COURT will see by examination. Now, I come to Mr. Scovill's bid.

SENATOR NICHOLS—The Palmer bid was all regular on its face.

Mr. MITCHELL—Yes, sir ; Scovill's bid is fifty-eight cents per cubic yard, and seventy-eight thousand dollars. With that bid I see nothing to indicate irregularity. I then come to James Spencer's bid at sixty cents per cubic yard, and fifty-four thousand dollars for keeping the section in repair. That bid has no revenue stamp upon it. I have no doubt, and the court will have no doubt, when they examine that bid, that it was made up at home ; that it is all in the handwriting of

Spencer, different from the writing of the hand that inserted the amounts in the others. It was made up for the purpose of being put in. No stamps were put in because the party did not wish to put on stamps until he got his bid, because if he did not use it he would not loose the stamps. That was one that was purchased and filled up at fifty-four thousand dollars, and at the rate of sixty cents per cubic yard. Had it not been for this conspiracy, very probably the bid would have been accepted, for it was a legal bid. Then take that bid at fifty-four thousand dollars per year, and for the dredging sixty cents per cubic yard for removing this mud, which the evidence in this case shows was a very extravagant price.

JUDGE MASON—Is there any other defect than the want of a revenue stamp?

Mr. MITCHELL—No, sir; nothing else. I see no revenue stamp; but this was an honest bid, and the amount is in the same handwriting as that which drew the bid, and is ninety thousand dollars less. Estimating upon the basis of one hundred thousand yards, there was, in all human probability, a loss of ninety thousand dollars to the STATE upon this one bid, in consequence of this combination at Stanwix Hall, of which the gentleman who has addressed you on the part of this RESPONDENT speaks so favorably and so kindly. Look at that bid, and see that it was filled up by the man who intended to bid at a reasonable price—such a price as the evidence in this case shows would have been sufficient to permit him to keep the section in repair and take out the mud to the mitre-sill of lock No. 1 of the Albany basin. Even calling it one hundred thousand yards, there would have been saved to the STATE \$90,000 upon that one bid. Still this RESPONDENT, as Canal Commissioner, acting under the statute that made it his duty to reject all these bids, with a full knowledge of this combination, conceals it from his associates and votes in every instance, as I will show you from the record, to carry into effect the results of this combination.

But let us go a little further. Here is Charles Hubbell's bid upon the section. There was a bid evidently a forgery from beginning to end. It is a bid that is filled up in one handwriting, and was sold out by Mr. Gere, one of the members of the combination. It is forty cents per yard, and \$90,000 for the section.

JUSTICE DWIGHT—Was it regular?

Mr. MITCHELL—I do not see but what it was regular upon its face.

Then you go to Charles Degraw's bid, which was for thirty cents per cubic yard, and \$80,000 for the repair of the section.

JUSTICE MILLER—Was Hubbell's bid put in?

Mr. MITCHELL—Yes, sir.

JUSTICE MILLER—Why was it rejected if it was regular?

Mr. MITCHELL—Because it was higher altogether.

Charles Degraw's bid is thirty cents per yard, and \$80,000 for the section. I say that this bid is in Stephens' writing, and the amount filled by Dennison; and Willard Johnson is one of the bail. This amount of dredging is put at thirty cents, and is inserted in Dr. Dennison's handwriting. Now Mr. Dennison, and Gale, and Belden, and Peterson, and Hirsch, were the men who bid for this section, and agreed to pay the others \$19,000 if they would not bid against them. Belden, Gale and Dennison purchased out Hirsch and Peterson, and gave them \$5,000 each, thus making this section cost them at the rate of \$40,000 bonus to destroy all competition. The bid was regular until it was purchased by Dennison, Belden and Gale and company, and then \$80,000 is inserted in the handwriting of the man who purchased the bids at Stanwix Hall, in order to make it higher than the Stephens bid upon which the work was awarded. I say it is in his handwriting because I have proved it by a witness, and the \$80,000 is in a different handwriting from the body of the instrument.

Now we have Theodore D. Snooks' bid. This bid was purchased by these parties, and you find that they make it informal. It was originally made out at \$70,000, and sixty cents per cubic yard; but it is altered, in Dennison's handwriting, to \$75,000, without noting the alteration, thus making it an irregular bid. The word "five" is written in Dennison's writing which is different from the body of the instrument, as is perfectly palpable to any one upon looking at the body of the instrument. Now we come to Anson Knibloe's bid. That bid was \$65,000 for taking charge of the section. But it was originally, may it please the COURT, made out at forty cents per cubic yard for taking out this mud from the Albany basin; and after it was purchased by Dennison and company, in Dennison's handwriting the words \$65,000 for the section are inserted, and the words forty cents for a cubic yard for taking out the mud are stricken out, and sixty-five cents

inserted by Mr. Dennison. I aver that no person looking at the handwriting of that bid, filled up in Stephens' handwriting, and acknowledged before Stephens, as justice of the peace, with the amount inserted in another handwriting, and the word forty stricken out and sixty-five cents inserted in another handwriting, could fail to see that it was the result of a combination. That bid made a very large difference even from the amount it was originally filled up at by Dr. Dennison himself, from the one it was taken on.

Now, your honors, I call attention to the bid of Henry G. Radcliff. Here was a proposal purporting to be at the rate of thirty cents per yard for taking out the mud and \$63,940 for keeping the section in repair for one year.

That bid is altered by Dennison, the man who purchased it at Stanwix Hall, by striking out the thirty and making it read forty-five cents for the dredging. That bid was undoubtedly an honest bid, brought here and intended to be put in at the original figure, because it is filled up in the peculiar handwriting of Radcliffe—large and bold. There is a bid at thirty-five cents, which I aver from this evidence was a liberal price for taking this large amount of mud three or four miles down the river, which was as far as any man would expect to take it. Thirty cents was a large price. The bid was brought here at thirty cents, and the words forty-five inserted, without noting, in the place of thirty. The only alterations made were to strike out thirty and insert forty-five in Dennison's handwriting.

JUDGE GROVER—That is made informal by not noting the forty-five?

Mr. MITCHELL—Yes, sir. I aver no person can look at this paper without seeing the evidence of a conspiracy. A man who is capable of driving horses upon a towpath would see, the moment he looked at that bid, that it was the result of a combination, of a conspiracy; that it had been purchased and altered intentionally, and that the alteration was not accidental in its character. Now what did the State lose there by this conspiracy, which this RESPONDENT kept entirely secret and did not even expose to his fellow members of the Board?

Even assuming there were only one hundred thousand yards to come out of the basin, the loss was very large. I will remark here, that we have shown that with one hundred thousand yards taken out, there was twice that quantity left; that 25,000 or

30,000 yards drift into that basin annually. Now, what is the real loss? If these contracts are indorsed by this COURT, as the counsel desire you to indorse them, as valid contracts, free from suspicion and fraud, and to go on for five years, what would be the difference, assuming that there were 300,000 yards in the basin? Have we not a right to assume that when we have proven that with one hundred thousand taken out, not one-third of the work was done? The saving to the State would have been \$195,000. Is it not corruption? I put it to the judgment of the COURT. Is it not corruption for a man who knows of a criminal conspiracy of this character, who swears he knows it, and when the evidence of it is upon the face of every paper presented, so plainly that he who runs may read, is it not corruption for such a man, an officer appointed to protect the people, to take charge of those interests that have made the State of New York the Empire State, to withhold that knowledge and refuse to communicate it to his associates, and allow these consequences to fall upon the people, the canals to go to ruin, and that, too, when the statute requires him to reject all these bids and re-advertise the work? And yet he is defended by the learned counsel by the pretence that he has made a mistake. I do not claim any man should be convicted for making a mistake. I hope the day is far distant when I shall stand up before the Court of Appeals, and the SENATORS of this STATE, and urge that a man shall be convicted for an error of judgment. But when he is surrounded by evidence that the humblest individual of the Republic would at once see was indicative of a combination, of a conspiracy, to rob his principal, he is corrupt and culpably guilty, unless he raises not only his voice, but gives his vote against that combination. If not then, the time for the enforcement of law is passed, and this Republic will go down more rapidly than Rome did after her conquest of Carthage. I repeat, if this combination had only been as to one single section, we might put on the mantle of charity and say that we would forgive—that there might be some mistake. But go with me for a moment (for I will hurry through) to the next section, and see what the evidence there is. I now take section ten, Erie canal. The counsel's argument was, that it was mere rumor this RESPONDENT heard; that this was a mere innocent mistake. If this COURT come to that conclusion, in behalf of the MANAGERS of the ASSEMBLY, in behalf of the people of the State of New York, whom I represent, I pray you to acquit him.

But we have not only evidence as to the first section, but as to every other section, that no man could be mistaken in regard to. And then I ask that you will lay aside sympathy, and remember justice, and the interest of your STATE.

I now call attention to section ten, which was let at that time. The first was a bid for \$38,000. The amount, as you will see, was put in a different handwriting, showing this same Stephens, at Fulton, filled up the original bid, and the "38" is inserted in a different handwriting, after it was purchased at Stanwix Hall. Then you take Benjamin Butler's bid; that was the one that this section was awarded upon. It was for \$34,000. Adam C. Mowry's was the next bid to which I will call your attention. This is important to be examined by the members of this COURT. It was made out, undoubtedly, as will appear from an examination of the bond, honestly, for you will see the twenty thousand dollars is written in the same handwriting as the rest of the bid. But after it is purchased, the word "nine" is inserted; it then reads "twenty-nine thousand," and the "nine" not noted, which makes it informal. Now, then, it was let at \$34,000. This bid was 20,000 until it was altered in consequence of this conspiracy, and in five years' time it would have saved the STATE \$70,000—\$14,000 per year. That bid alone upon section 10 would have saved the State of New York seventy thousand dollars in five years. The bid was \$20,000, altered to \$29,000, and not noted. It is perfectly palpable that it was altered for the purpose of making it informal. Henry S. Pratt's bid was \$38,000; filled up in the same handwriting as the Butler bid. It is Thomas Cheesebro's proposal was \$32,000. This paper was filled up by Stephens, and the amount inserted in a different handwriting, and no stamps were put on it—sufficient, of itself, to arouse suspicion at once. And, mark you, a certificate of four thousand dollars deposited to the credit of the Auditor of the State in every one of these bids. Would any Contracting Board suppose for a moment that this man would fail to put on the stamps, allow those mutilations and the stamps to be torn off, and a four thousand dollar certificate to be accidentally in these bids that were made?

Now, I come to John Davidson's proposal. That was \$25,000. Now, look at that paper. Those stamps were torn off in that place. I wish that to be exhibited to each and every member of this COURT, that this bid, which was \$25,000, for this section would

make a saving of \$45,000 to the State for three years, with the stamps in that condition. Could any member of the Contracting Board see that paper without believing those stamps were torn off for the purpose of making is informal? It is clear the object was to make it informal purposely, and it was not accidentally so. If purposely, then there is no other conclusion except that it was a conspiracy, and these bids were simply put in to deceive the people, to impress upon the public that there was competition, and have it go out to the world that there was no conspiracy.

Mr. PRESIDENT, there was a reason why this number was put in. It is this: otherwise they would have presented only the one they fixed at the highest price. They took good care to make all the lower bids informal. The object was, that when the people read the proceedings they would see what the bids were, and they would not clamor, believing they had been wronged.

JUDGE WOODRUFF—How many bids for section one were informal?

Mr. MITCHELL—Four or five.

Thus the people would be deceived, and the question is whether you will excuse the officers, who knew all about this combination, to the great injury of the people, and to the prejudice of the interests of the State.

Now, I wish to call attention to George Robacher's bid. This was put in at twenty dollars—filled in by the man that purchased it, in his handwriting; and there was, in that paper, a certificate of deposit for \$4,000, and only twenty dollars bid to keep the section in repair.

Could any member of the Contracting Board fail to see that this was a proof of a combination, or, to put it in the language of my eloquent friend from Troy (Mr. BEACH), that it was a mere mistake, for which he should be excused?

CHIEF JUDGE HUNT—What is the irregularity in that?

Mr. MITCHELL—No stamps on the bid, and put in at twenty dollars. The bond was regular, the bond for \$25,000, and the body of the proposal filled in "twenty dollars," and the stamps taken off. Mr. Ackley testifies each one of these bids was accompanied by a certificate.

Then we come to Jacob B. Suydam, and his bid was \$43,000, and the amount is inserted in the same handwriting as in the Butler proposal, to which the section was awarded. The person

brought these bids in blank, so he inserted \$43,000, he having purchased the section at Stanwix Hall, making the amount of the proposal higher. He put the amount higher than the other one to show there was some higher proposals, that was the object.

Now, take section 11, Jacob Suydam's bid is \$59,000. The amount of this bid is filled up in a different handwriting from the rest—it resembles Selye's signature to the bond.

JUDGE WOODRUFF—That was not rejected as irregular?

Mr. MITCHELL—No, sir. Here is the bid that section No. 11 was let upon, in March afterwards, and it was let at \$43,500 to Valentine F. Whitmore, and when the previous letting of that section was about \$20,000. There are four bids upon that section, and all of them filled up in the same handwriting. The amounts are also in the same handwriting. Now, if any person will look at that handwriting in all these bids upon this section, and see the character of it, could they fail to notice the resemblance in the handwriting.

Here was Elliott Harroun's bid for that section at \$30,500 filled in in Selye's handwriting. Now I wish to say that I do not believe that even Selye meant to take that section at anything higher than Harroun's bid. I believe that was the one he expected to obtain the work upon, and you will see why it was, in the first place, awarded to Elliot Harroun. Selye purchased that section. That was the section he was to pay ten thousand dollars for, and afterwards refused to pay for the reason that the Board did not award that section at the December letting.

He undoubtedly was satisfied with \$30,500 for the section, but it turned out, when they came to examine the bond, that it was not large enough to cover the \$30,500, showing that when Harroun made it out, he meant to bid less even than that; and, therefore, the award at \$30,500 was reconsidered, and every member of that Board voted that that bid of Valentine Whitmore was excessive and extravagant. It was put over until March, and then they let it to this same Whitman, by inserting a clause of the law of 1866, as an excuse to give this section to Selye at \$40,300, when the section had always been let less than \$20,000, and Jesse Peterson and his brother made out a bid at nineteen thousand and some hundred dollars—satisfied to take it at that, yet this Board awarded it in March, after having declared it to be extravagant, excessive and disadvantageous to the State. Now what was this statute? Section one is as follows: "The Canal Commissioners are hereby authorized to take immediate measures to raise the berme bank

and tow-path of the Erie canal, from the aqueduct to a point ten chains west of Lyell street, in the city of Rochester, in such places as may be necessary, not exceeding nine feet from the bottom of the canal. The owners of property adjacent to said improvement, shall first release the State of New York from all claims for damages in any way for the construction of said work. The Canal Commissioners shall advertise the letting of said work as required by law, and award the same to the lowest bidder giving ample security for the faithful performance of said work."

In the first place, there is to be no work done unless the people of Rochester realized their claim for damages. In the second place, it directed the Contracting Board to let the work by advertising, to the lowest bidder, and after the Board had refused to let this section at the sum of \$40,300 a year as excessive, they did, in violation of that statute which provided it should not be let at all until releases were obtained, and that it should be let by public advertisement to the lowest bidder; but, in order to get Selye this \$40,300, the Contracting Board inserted in the contract the clause before referred to, as follows: "And the party of the first part further agrees, that in addition to all the requirements of this contract, to keep in repair Superintendent section No. 11 of the Erie canal; that he will furnish all the material and perform all the labor that may be required to raise the berme bank and tow-path of the Erie canal from the aqueduct to a point ten chains west of Lyell street, in the city of Rochester, in such places as may be necessary, not exceeding nine feet from the bottom of the canal, as required by act chapter 899, Laws of 1866, as soon as the owners of the property adjacent to said improvement shall release the State of New York from all claims for damages in any way for the construction of said work." Thus they proceed, with that act before them, which provides they shall let the work by advertisement!

Now, look at the proposals for this section. Every bid filled in in the same handwriting, and a peculiar hand at that. Could any Board fail to observe that it was the result of a combination? But we don't stop here. Now, more than that, this work has never been done, releases were never obtained, and the monthly pay of this contractor at those extravagant figures, has been paid for the whole year, and thus the interests of the people of this State have been disregarded; and for these reasons we stand here, before this COURT, asking it to check such conduct by holding this

officer responsible for his malpractices in office, for his corruptions in these lettings.

The next section I call your attention to is section number twelve of the Erie. Allow me to call the attention of the COURT especially to this one bid. Here is a bid that was not bought up at Stanwix Hall; an honest bid, that was made out in a plain manner by William McKea, in his own handwriting, and brought down by him, he knowing all about this section, and he bids to keep it in repair for \$8,952. That is section number twelve of the Erie canal. Ackley swore there was a stray bid found there. This was the stranger. Let us see the amount of money this honest proposal saved to the State, and without any thanks to this Contracting Board. It was awarded upon that bid; but I will show in a moment what was done. John Lute had a bid in for the same section, which was \$21,300, and was filled up in Selye's handwriting, and I have no doubt is the one upon which he intended to obtain the work, as he had purchased all the other bids for the section except McRea's. This bid of Lute's, which was the lowest that was purchased at this combination, was \$21,000 per year, making a difference of \$12,000 a year, and in five years of \$60,000 that this STATE has saved by this gentleman by the name of McRea, coming here from Lockport and preserving his proposal from the vortex at Stanwix Hall.

JUDGE WOODRUFF—Two thousand dollars is the difference there, making \$10,000 in five years, between McRea's and the Tousley bid.

Mr. MITCHELL—The Tousley bid was undoubtedly another honest one. This was a bid that was filled up in the same handwriting all through. There were only three bids for that section bought at Stanwix Hall. These two bids alone escaped that conspiracy. That explains the evidence of Ackley, of the stray bids that got into his box; and it was understood that if the contract was awarded on a proposal not included in the purchase, the sellers did not get the bonus the purchasers agreed to pay at Stanwix Hall. Perhaps there might be a man or two that they did not find, and if a stray bid did get in, the party was not to pay, and McRea's bid was acknowledged in Lockport on the 27th, showing he could not have arrived here until the morning of the 28th, or late in that day.

Now, take the next section, section three of the Champlain canal, and there was Mills P. Pharis' bid of \$30,000, which was counter-

feit all round, as Pharis swore he never signed it, that it was put in by Geer.

Then you come to William O'Neil's bid of \$20,400. This is filled in in Johnson's handwriting, who purchased the section. Edward R. Fonda's bid—eight bids for section three of the Champlain canal, filled up in Johnson's handwriting, the man who purchased that section at \$4,000, at Stanwix Hall. Could any board believe there was honest bidding, when eight bids for that section were filled in in one handwriting, showing that one man controlled the whole; and would they believe, if a man was honest, he would get his opponent to fill up his bid? What higher evidence could be required to show a conspiracy?

Now, look at another fact. This bid of Benj. F. Wells, which was \$9,950 for this section, which was let for \$17,500. There is great pains taken in striking out the word "five" and drawing a mark clear around it. Would any one think that was an accidental omission? The number of years struck out of it, and here was a bid for about half the amount that Johnson procured it to be awarded for, after he had got rid of Vandekar's bid, and there is an erasure of the word "five," great pains taken to erase it. If there is any member of this COURT, to whom this one proposal, upon examination, is not evidence, stronger than the testimony of any one witness on the stand, that this was a conspiracy and a combination in violation of the statute under which they were sitting as a Contracting Board—if there is any member of this COURT that can for a moment hesitate to come to the conclusion that every member of the Contracting Board knew of this combination, and that they were striking down the essence, the spirit and the letter of the statute which authorized them to sit at the State House and receive proposals, then I do not know what we can prove in a case of this character. Witnesses may swear falsely, positive evidence may be untrue, and hence a COURT, before it impeaches a man, should be exceedingly careful not to convict on the evidence of one man, because he may be an enemy; but when you have circumstantial evidence, when you have it from every quarter, when you have it so abundant that there can be no doubt in the mind, and in addition to that, when you have the fact that the RESPONDENT swears he knew it himself, and when you have the additional fact that his friends knew all about it, his own superintendent, Mr. Van Slyck, lived in the same city, had been superintendent under him and foreman for years, he knew all about it,

and take all this evidence, and then will any member of this COURT say that it was "an innocent mistake," in the language of my eloquent friend from Troy [Mr. BEACH], who feels so indignant at the frauds that are being practiced in this country, and feels that he sees in that the indication that his country is or perhaps may be ruined, from the fraudulent practices in the different parts of the government, and still insists that this man must be acquitted, because it is simply "an innocent mistake?"

I shall not go further with these papers. I have proved this article ; I have proved that there was a combination, which was an illegal and criminal offense on the part of the conspirators ; I have shown you that this RESPONDENT knew all about it ; I have shown you that he had abundant evidence from all the proposals—that he himself has confessed it under oath ; I have shown you that the STATE has lost hundreds of thousands of dollars in consequence of that conspiracy ; I have shown you that he secreted it and did not tell his fellow members of the board, because he swore he thought they knew it as well as he ; I have established that it abolished, in fact, the law under which this very RESPONDENT was acting, and now I have a right to ask you whether such conduct as that is impeachable, or whether, in the language of Mr. BEACH, it is commendable on the part of the officers and on the part of the contractors.

Mr. MITCHELL was here interrupted by the adjournment of the COURT to 7½ o'clock, P. M.

7½ O'CLOCK, P. M.

Mr. MITCHELL again resumed his remarks.

Mr. PRESIDENT—Having established beyond all question, by both direct and circumstantial evidence, the truth of every assertion that is put forth in our first article, I now call the attention of the COURT to the fact that every vote and every act of this Commissioner, this RESPONDENT, was in favor of carrying out, aiding and abetting this Stanwix Hall combination of contractors. If you will refer to the votes, you will find that, although some of his colleagues in that Board refused to vote in favor of letting some of the sections which were so unprecedented in price, he, in every instance, voted in the interests of the men that purchased these bids, and formed this combination ; and when Commissioner Bruce offered a resolution, that the bid of William C. Stevens, for section one, Erie canal, should be rejected upon the ground that the price was excessive and disadvantageous to the State, and

although that resolution was adopted by the Contracting Board, you find this RESPONDENT, who knew of this conspiracy, voting alone in the negative. And after that resolution was adopted, upon motion of Commissioner Alberger, it was reconsidered, and the resolution laid upon the table. It is singular that after this resolution, so laid upon the table, which first rejected this bid for section number one as excessive, that he voted steadily to get rid of all the bids that were lower upon section one of the Erie canal. I will not read these resolutions, because the record is in the hands of every member of this COURT, and it is not necessary that I should go through them in detail. Again, after section number three of the Champlain canal was awarded to Charles Vanderkar, whose bid was the only honest one for that section that was put in the box, the RESPONDENT offers a resolution to reconsider it, and to let it to Ryal G. Briggs, which, in fact, was letting it to Willard Johnson, who had paid \$4,000 for that section in this illegal combination at Stanwix Hall. And thus you can trace every vote of his in furtherance of this illegal combination that disgraced our State. And notwithstanding he had the most direct notice of this combination, and after the rejection of the bid of Valentine F. Whitmore for section eleven of the Erie canal as excessive and disadvantageous, still at the next meeting of the Contracting Board on the 9th day of March, 1867, this RESPONDENT voted to reconsider that resolution, and to award the contract for that section on that Whitmore proposal.

Now, let me make this point to your honors, although the counsel stood up here and said that when he let these contracts on the 31st December, '66, he only had mere rumor for information on that day, I have shown that that was not true, that he had the most positive and overwhelming evidence. But the counsel will not claim that when March came he did not know of this conspiracy, and every member of that Board knew of this combination. Because we have proved by Auditor Benton that within one week after the 28th day of December, the New York World published the fact of this combination having occurred at Stanwix Hall, and it was spread broadcast throughout the land. Now, then, no person will undertake to say that on the 9th day of March after this conspiracy had been exposed in the newspapers of the State, and was well known, not only by the Board but by the citizens of this State, the RESPONDENT was ignorant or had no knowledge of its

existence. Yet, with this knowledge, he voted in favor of awarding section No. 11, Erie canal, on that Whitmore proposal. Is not this, Mr. PRESIDENT, conclusive both as to corruption and intent to defraud the State.

Why, if he was that careful officer which he is represented; if he was a man whom no stain rested upon, in the language of his counsel, why did he, after it was publicly charged that such a conspiracy existed and was known by his associates; why did he vote to let section No. 11, on the 9th day of March, after this letting of the 28th of December, 1866? Then I show that not only did he have knowledge at the time he let these contracts, not only did he have knowledge when he signed them, but he had it when, as late as the 9th of March, he let the last section for a most extravagant price, when bids were brought here for one half of the price for which it was let. A few words as to whether this bid for section No. 1, Erie, was excessive. I have not the time to go through and show from the records that it was excessive; but you will see from the very report that they have produced that it was excessive. In 1867, upon page 104 of the Auditor's report, we find that the Superintendent paid \$574.96, and the contractor received \$137,945.22, and to that you have got to add fifteen per cent. which was reserved, and twenty odd thousand dollars more for keeping this section in repair, for the Erie canal had been enlarged, and the lower Mohawk aqueduct had been let separately at an expense of some \$20,000. In 1866 the Superintendent expended \$18,000, and \$84,494.45 in 1865, which was the year when the great floods rendered it an unprecedented year, and then the Superintendent expended \$5,421, and the contractors \$98,060.28. Now, when you go back and notice the figures in 1864, there were \$907 expended by the Superintendent, and \$45,000 only were expended by the contractor. In 1863 there were \$10,000 expended by the Superintendent, and \$32,000 only by the contractor. In 1862 there were \$10,000 expended by the Superintendent, and only \$29,000 expended by the contractor. In 1861 there were \$6,000 expended by the Superintendent, and \$35,000 by the contractor. So you go on, except in the year 1859, and the expenses for that year was not ordinary work. The lower Mohawk aqueduct was built anew upon another and distinct plan, and as the Auditor says, did not belong to the account of ordinary repairs. That is what makes the sum so large for that year. You may run through these fig-

ures, and you will find that in no year did it go up to what it was under this letting—not even when they made the aqueduct. Generally it run at about \$40,000 to \$60,000 for keeping this section in repair, and for dredging the basin to the mitre-sill of lock number one.

Here you have \$70,000 for this section and seventy cents per cubic yard for the excavation of this mud. This contract is to take out the deposit down to the mitre-sill, even though a million yards were to be taken out. And I show you that a hundred thousand yards have been taken from the basin, and not one-third of it is excavated, and that twenty-five thousand yards would drift in annually, making four hundred thousand yards that they had to take out under this contract at seventy cents a yard. What do the witnesses tell you? Here is the United States government paying twenty-one cents for excavation, although they carry it a mile instead of three miles; here are the State Commissioners paying less than thirty cents for excavating in the running water of the river and carrying it about a mile; here was Mr. Jenne, their own favorite engineer, who was borrowing four or five thousand dollars of Mr. Johnson, the contractor, and they could not get him to estimate it at over forty cents.

Is anybody blind enough not to see that it was not worth more than thirty cents a yard under this large contract, to remove it down the river to a place where it would not injure navigation, three or four miles being an amply sufficient distance? We have proved it by STATE officers, and by Government officers; by Mr. Jenne, their own engineer; by Wright, the ex-canal Commissioner; by Payne, who spent his lifetime in dredging. What proof have they given against us? They have called this Gilbert Peterson, one of the conspirators, to sustain this price; a man who paid \$1,800 in behalf of this same set of men in the year 1864, to give them an extra allowance.

May I not ask this COURT to stand firm, when transactions of this kind are occurring in sight of the Capitol, and aid to check them. Where, I ask, in the name of my country, is the safety of the people, and what will be the future of this republic, unless the tide of corruption be stayed. Why should Peterson, who had this section at about \$30,000 a year, and had to keep the basin dredged out through the war, when prices were at the highest point for labor and materials, receiving for the whole, with the extra allowance made to contractors, about \$68,000 a year, be

called to sustain these exorbitant prices? He was one of the men who agreed to pay \$19,000 bonus for this contract, and sold it at the rate of \$20,000, additional. Can he convince this COURT that the price in this Stephens' contract are not excessive? Who are the men whom they call? The men at Stanwix Hall. They had a piece of evidence which they could have given, but omitted to do so; and the practice in this and all COURTS is, that the omission to prove whatever is in the power of the party to prove, if true, furnishes the highest evidence that the fact does not exist.

Where is James J. Belden? Where is Thomas Gale and H. D. Dennison? They have that contract. They have taken a hundred thousand yards of that mud out. Where are they? Why don't they come here and tell you what it costs to remove that mud? They have been excavating a year. They have received their money and know their expenses. Where are they? They don't tell you the expenditures, but rely upon Peterson, the conspirator, who sold out his contract and gives his opinion that it is worth the sum that these parties bid, when at Stanwix Hall they paid \$40,000 to secure the contract for this section, and who boasted in that hotel that there was a hundred thousand dollars profit in that contract. The gentleman is welcome to try to convince this COURT that this is a reasonable contract to the State of New York—New York State to pay seventy cents a yard for doing what the government of the United States pays only twenty-one cents, with the addition of three or four cents for the three miles difference in carrying it? And for what the State is now paying less than thirty-five cents for? The truth is, with the amount of mud proved to be in that basin, and with the excessive price of \$70,000 for keeping that section in repair; when it can be done for forty or fifty thousand dollars, it was evident that there was not less than \$300,000 of the people's money corruptly expended in consequence of Mr DORN's silence and failure to reject all these bids, and asking to advertise for new proposals for the work.

This man is a public officer, and any omission to do his duty, any willful omission, is a misdemeanor by our statute.

Did this man willfully refuse to do his duty when he saw all of these evidences of corruption and combination—when he saw that the very statute that gave him authority to let these contracts was being trampled in the dust, and he sat there and not only refused to reject the proposals as the statute required, but voted to award

contracts to the very men who had thus conspired together against the STATE treasury ?

Now, I say it is not only a clear misdemeanor within the statute, that my associate will cite to this COURT, but I aver that under the laws of the State of New York any officer who utterly refuses to do his duty when the people have put him in charge of an important trust, should be impeached.

Any other proposition would be unwarranted by common sense, by justice, or by the laws of the State. An officer who knowingly neglects and disregards his obligation to watch, guard and protect the interest of the people, is as guilty of crime as though money was put in the palm of his hand. Why, let me give one illustration. The STATE is about to erect a new capitol, that it is said is to cost ten millions of dollars. Supposing the officers having its erection in charge should be required by statute to let the contract for work on the contemplated building to the lowest bidder, and in pursuance of that direction, should meet, and all the contractors of the STATE should come here and bid for work on the proposed capitol, and should meet at Stanwix Hall, or some other place, and buy each others' bids, and finally put in a bid for fifteen or twenty millions, and these capitol commissioners, that the people should elect, knowing, or one of them knowing, that there had been that combination, should keep silence and refuse to reject these bids when the STATE required him to do so, and should enter into a contract under such circumstances for the building of the Capitol of the State of New York at an extravagant and exorbitant price, would it not be corruption? would it not be an impeachable offense? I say that capitol had better never be built, than that it should be found that the courts would not punish that corruption when the question was fairly brought before them, and the facts proved as fully to them as we have presented them in this case.

I have now discussed this first article. I believe that we have proved it, and proved it in such a manner as to convince the judgment and the conscience of every member of this COURT. I cannot believe it is necessary to argue the question further. We have other articles here, some of them which I regard as entirely sustained by the evidence. But my time is about exhausted. The two hours that are allotted to me in the distribution of the time, between myself and my associate, forbids that I should trespass

upon his time, and admonishes me that I should draw my remarks to a close.

This is an important trial. It is one in which vast consequences are involved, because if men can combine together and set at defiance your statutes, if men can make combinations and reach their arms into the treasury, and if the people cannot rely upon the officers to whom they have confided the trust of protecting the treasury, and discharging their duties, then indeed will this country be in a sad and deplorable condition. On this clear and undisputed evidence, if this COURT shall acquit this RESPONDENT, will it not be a license for other public officers to become parties to depredations on the treasury by sitting quietly and refusing to expose those who may be leagued together for the purpose, and help carry out their projects by their votes, so that they may go on in their wrongful acts to any extent that they may choose? And if arraigned they will point to this decision, and say it was clearly established against Commissioner DORN that he aided one of the darkest and most criminal transactions against the STATE which has ever attracted attention.

And it was further proved that he knew and aided in its progress instead of exposing, and yet the high COURT of Impeachment declared it to be no crime; and hereafter men will point to its judgment and claim that it is not only legally but morally right, for an honorable and high COURT has declared that a man shall not be impeached for being, in fact a party to the very fraud. May that time never come, and I trust this decision will be such as will be an example to show that corruption shall be stayed, that no more combinations shall be formed, and that the edict shall go out from this COURT that every man who aids to form a combination against the law, and every officer who refuses to do his duty when such conspirators come to his Board and to his feet in order to carry out their combinations, shall be punished as the laws of this STATE require in their purity. If that be done, all will be well.

My learned antagonist has made a very classic allusion to old Rome and its downfall; that she stood erect and preserved her national integrity and domain amid the upheavings and throes of the mightiest revolutions; that she fell not when the mighty were upon her; that her sons were united; that their undaunted valor drove from her borders the invaders of her soil; and only fell and became prostrate when her officials became corrupt and the admin-

istration of her laws fell into corrupt hands. But I think his citation proves too much, and more than he intended. It is my case precisely. Officials must be honest, or the STATE is doomed. When the public service and public officers become corrupt, not the most dauntless courage on battle-field can save her from a doom more dreadful and an extinction more complete than hangs now over Rome's ruins.

And here I will travel to the same field, and I must be indulged in the same license, and I think I can find a parallel there for the RESPONDENT, as well as for the STATE he represents. The name I mention in this connection will not be new or fall strangely on the ears of the learned gentlemen of this COURT. I refer to Nero, the tyrant, who sat fiddling while Rome burned. Can a better prototype for this RESPONDENT be found in the annals of ancient or modern history. No, there is none; the history of the world records but few instances of a man so regardless of the interests of the people he represents as this RESPONDENT, who sat silently in his office and knowingly permitted the State he had sworn to protect and defend, to be robbed of its legitimate rights.

I have now done my duty in this case as well as I can, in the short time that has been allotted to me. I have endeavored to plead for the People's interest in this case, according to the best of my ability, and now leave it, as far as I am concerned, in the hands of this Honorable COURT, who I know will do justice, not actuated by any malice or other improper influences to convict this RESPONDENT, unless the evidence demands it; but from no sympathy, no appeals that the learned counsel can make, will you acquit him, if you are convinced that he is guilty.