

## A R G U M E N T

OF

GEN. BENJAMIN F. BUTLER,  
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FOR THE DEFENCE,

IN THE CASE OF

SHERIFF A. B. R. SPRAGUE

VS.

H. H. BIGELOW,

TRIAL: MARCH TERM, SUPERIOR COURT, 1884.

Worcester, Mass.

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# CLOSING ARGUMENT FOR THE DEFENCE

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GEN. BENJAMIN F. BUTLER.

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*May it please Your Honor, Mr. Foreman, and Gentlemen of the Jury:*—I congratulate you, first of all, upon the fact that this case, so long and tedious to you, to which you have given your careful attention, is about to come to a close. My duty will soon be done, and then, after hearing the argument of my brother upon the law as he understands it, and the charge of the Judge upon the law, your duty will begin.

Burke said that "The whole object of the British Constitution—King, Lords and Commons—was to get twelve honest and unprejudiced, fair men into the jury box, to judge between man and man of their rights." And that was the only safeguard. And that has been the object of all our constitutional provisions, to bring at last to twelve honest men the adjudication of the supposed wrong. And a trial by jury has never found yet any equivalent or substitute. First, because you are taken from ordinary life, and you judge of men by ordinary standards. Second, you are drawn together for the occasion, and when the occasion passes away, you, as a jury, pass away, and you have to settle with nobody for what you do, but God and your conscience, and when you have satisfied the latter you have satisfied the former, and you can look back upon what your work is with satisfaction, if you believe in your hearts that you have done justice between man and man, and you will never have that clear conscience if anything either one way or the other should influence you but a sense of right.

Now, this case has some peculiarities, and perhaps the thing best to be done is to see the actors in it. Generally there are but two. Here there are in this case three—the plaintiff, the defendant, and Wardwell. And in order to rightly understand this case, you will bear with me for a few moments, while I put each actor in the position I think he occupies, and then we will judge of the acts from the evidence under the light of those positions. And it is a little remarkable that this case requires to be begun precisely where this controversy began, by the enquiry in Worcester, "Who is Burnham Wardwell?"

He was a native of New England. Fortunately, whatever other matters there may be in dispute in this case, there is no dispute about the answer to this question, under the light of all the evidence. He was a native of New England. He went south in 1856, and went into business there, was successful, got a small competence, and had obtained the confidence of all the people of Richmond, where he lived, for no man from there has yet spoken ill of him in any way. Mr. Bigelow tells you that when he went down to make enquiries about him in two instances, everybody spoke well of him, and there has been no contradiction of that.

The war broke out. He had two courses before him—to stand by his country and his flag, to be patriotic, a loyalist, and to suffer all the privations and penalties that such a course would bring upon him; or he could join the then triumphant Confederacy, fresh with the laurels of overthrown Sumter, and, soon after, the disaster of Bull Run, and been a petted servant of the Confederacy, because all northern men that were loyal to the Confederacy became the favorite sons of the Confederacy, and many Confederate generals were men from the north. But a sense of duty overcame all the temptations, and Wardwell became a prisoner in Libby. Prisoner for what? For anything done to the Confederacy? No, sir. Simply because he said he would not do anything against his country. From thence he was transferred to Salisbury prison with others, and there before he went he had the offer to enlist in their home guard and have every comfort in life—house, home, wife, and the enjoyment of his property—or refuse and be shut up in a southern prison. He, with eighty others out of four hundred, chose what he deemed to be the good part, and took imprisonment, and stayed there in prison for more than a year.

Now, gentlemen of the jury, what actuated that man? Was not it a high sense of duty? Honestly and fairly, now, between man and man, wasn't it a high sense of duty? He was let out to go back again; put upon his parole. He and his wife spent their money by the hundreds to feed your sons and brothers, and men in Libby prison, with the necessaries of life, to keep them from starving. And for this he was directed to flee or worse would come to him. He did flee, and he came into the lines of the Union army, and there met the commanding general, who, from one of the letters that has been here, is shown to have learned of Wardwell through his secret service agents, and was ready to welcome him, and there he went into the service of his country, and remained in that service, without any epaulets on his shoulders, without any pay in his pocket, simply for the love of the cause, until the war was over.



Does anybody deny this? Again actuated by principle—the war closed, the government of Richmond went into the hands of a loyal state government at first, and Wardwell sought and obtained the wardenship of the penitentiary. Why? A Christian man, he had seen the cruelty administered to others, and he was anxious to show that a prison could be governed by a law of right and love, without a handcuff, or chain, or dungeon. He abolished the whip, and took the old whipping post of the penitentiary as he found it, and sold it for Bibles or testaments. He remained there and demonstrated the fact that the law of love can govern a prison, govern the worst men in a prison, precisely as the fact that we may refer to the current history as now being demonstrated in this state, that a state prison can be governed and good discipline be maintained without the lash, solitary confinement, and handcuffs and cruelty and brutality.

While he was there Mr. Bigelow made his acquaintance, because he went down there to see if he could not get a contract to work those prisoners. And he examined into all Wardwell did and was doing. He went all around among his acquaintances, and inquired of them whether Mr. Wardwell was a man whose word could be trusted, and from that hour Mr. Bigelow has been the warm friend and supporter of Mr. Wardwell. He saw that there then which made him his friend.

He himself had had experience in many prisons as contractor, and had seen the way that the poor, unfortunate, miserable criminals I will agree, but still men in the image of God, who, by the terms of our law, were sent to our institutions for reformation—he had seen how they were treated, and he saw how Mr. Wardwell treated them, and he desired that Mr. Wardwell's system should be adopted here. And when by a change of things under Johnson the state of Virginia went into the hands of those who had fought to take it out of the union of government, Mr. Wardwell's "occupation was gone," and he came north, and among the first things that he did was to devote himself, with the friends of reform everywhere, to the care and comfort of the prisoners, and to the exposure to those around of what prisoners suffered, and to which they can give no voice. And in that he was brought in contact with every reformer in this Commonwealth and elsewhere. He was appointed at Providence, he was appointed at New York, and he came in contact with Charles Sumner, Henry Wilson, Wendell Phillips, and that class of intelligent minds, Winds, the great prison reformer; all of them approved of what he did. He met men and women, holy, God-loving women, who gave him of their substance to keep him on in this work, and nowhere, gentlemen, is he accused of having made money out of that work

and becoming rich, for they say he was a poor discarded tramp. That was one of the receptions he met with in Worcester, and he went on for seven or eight years, and there can be found no word during all that time against him. Am I not right? Who spoke harshly of Wardwell? Nobody. He came in in 1870. We have now run down to 1878 or 1879, and so on up to 1881.

I supposed when Wardwell was on the stand and they said "How were you treated in such a Poor House and such an Institution, and what quarrels, &c., did you have here and there?" I supposed we were to have that all brought in here showing how Mr. Wardwell had been kicked out of them; but not one. When hate was spurred on by malice to hunt him down, he was the friend of good men here. The late Mr. T. K. Earle, I believe, was one of the best, and to his dying day went to him and attended his meetings. He did not preach in the grogeries. He was not found on the corners of the streets. He sought the churches and the churches were opened to him. He tried to influence God's good people to take hold of the work of prison reform. He came here. Did he come here on any mission of stirring up strife, or interfering with anybody? Nobody claims it. Nobody has heard of it. He makes the acquaintance of the pastor of the Unity Church. He has a conference with him. That pastor finds that he is a man with whom a man of God, a clergyman ought to associate. He gives him the use of his pulpit Sunday evening to speak of prison reform, nothing more nor less, and there was simply that notice put in the newspaper, not a word said about Sprague, or was to be said about him. Nobody thought of him, or cared for him. No grudge of Wardwell, if he had, as Sprague tried to show on the stand, he had let it sleep quietly for eight years; for it was eight years since he was appointed to visit the prison—and probably his wanting to go—*enamored of living there*—he wanted to stay there three weeks—was probably a premonition that the cream was skimmed off of the milk. They have not shown by a single person that Mr. Wardwell mentioned unkindly the name of Sprague up to that time. What happened next? We will see in a moment.

Now, take Wardwell up to that time. What did they say about him? Now I will tell you what I say. He was a fool. Why should he care to spend his breath and time and go around talking about these people that could do him no good, and he must wait for his reward of his Heavenly Father—if he expected one at all; and yet, perhaps he has chosen the wiser part, even if the end has brought him into the dungeon itself. He was a fanatic. No man would do that that was not an inspired fanatic. He was the gallant Garri-



son, the Phillips, the Lovejoys, the Godins, the Browns. He was crazy. Just as old John Brown was crazy and filled with love for the slave and the down-trodden, and this poor, foolish old man was filled with a love for the prisoner, the insane and the poor in the Pauper House,—everyone who had no one to speak for him, that is Wardwell. He must be an honest man. Indeed I believe that my brother said in his opening that he was an honest man. You have seen him before you. Does not the mark of honesty stand out all over him everywhere? Does he keep back anything? Is not his mind and heart as open as sunlight?

Now, why have I spent this time, some twenty minutes, in dealing with Wardwell? Because as we shall see by and by you have got to find him a wilful, deliberate, perjured man, or else there is no case for this plaintiff. If Mr. Wardwell is a true man, then Mr. Bigelow has never circulated any of these pamphlets. That is why I want you to deal first with the character of Wardwell. Deal with every good man's endorsement of him, deal with his good works and loyalty to the country, deal with his truthful and faithful work to your sons and brothers when in Libby prison. Take all this. Fetch him here then. See what he is, and say if you have a shadow of doubt as to what he is. What then, with suffering as he has been under the law, sent to jail in Massachusetts under the inspiration of this plaintiff, for doing what? He has been to jail for loyalty before. He has been to jail because he would not swerve from what he deemed to be right, and he has gone to jail now for what he deems to be right. But we may all think it to be wrong. But the time was when Garrison was in jail for doing what he thought was right. A mob in broadcloth in Boston hunted down Phillips as they would a wolf, and Brown went to the gallows with a smile on his face and with his eyes fixed on the future as it shone to him out of the Heavens for striking the first blow for the freedom of the slave, for which many of us have had to strike the second and the third, until, thank God, the last has been struck.

Now then, who is Mr. Bigelow? He is one of your neighbors here. You know all about him. I never should have known him probably if not brought into contact with him on account of my knowledge of Mr. Wardwell. He is a man of public spirit and enterprise. He is attempting to do good, in his way, by founding places of innocent and proper amusement all over New England for young children of the several cities. No claims that any intoxicating liquors, or anything improper, or immoral, have ever been done or shown from his museum or rink. A place of amusement and enjoyment where the young may come together, and the old, and spend in innocent enjoy-

ment an hour of relaxation. And he who makes that sort of a place in a community is a man that deserves well of the community. And no man speaks differently of him from that, and he has from time to time sustained Mr. Wardwell.

He has been first and foremost in all good works. His word will be taken. You shall judge whether it must not be in any community where he is known—in this community,—where other men's bonds would not be taken. Is he a quarrelsome man? No, sir. He has had no quarrel with Sprague. He did not know him, did not have any malice against him. He had hardly a thought of him, and that was the condition of things up to the time of this meeting at the Unity Chapel.

He accumulated a very considerable property, and you have not heard wherein he has ever done anything wrong with a single dollar of it, or anything unwholesome, except it may be in circulating this libel. But that is to be proved.

Now the next step you have got to take is to deal with Mr. Bigelow, because unless Mr. Bigelow is steeped deeper in perjury, and ought to go further into hell than any man I know of for false swearing, the plaintiff has not any case here. Because he has sworn with the oath of God upon him what this matter is and how it happened. You say: "Gen. Butler, you are a little strong with Mr. Bigelow." Yes, sir, I am, for if he has come here and told this false story, why then it is only his perjury. Why, I say he ought to be doubly damned if he has done it. If he has brought in these young men here from his establishment and made them steep themselves in perjury—that bright young man who is his brother's relative; every man in the rink, every man in his employ has come here and sworn falsely as men ever did swear, and it must have been under his inspiration. If it had been done and they have all sworn falsely; if this case is to be won by the plaintiff and if he has corrupted the heart of these fine-looking young men with prospects before them in the community such as our children might envy,—if he has done that, hell has no cell hot enough for him, and no keeper, short of importing one from the Worcester jail, fit to take care of him.

Now, pretty much of a load you have got to take, so far, and you have got to take all these young men in with him. I may have occasion to run over the names of some of them by and by, and what they say.

Now, then, those two men—Mr. Wardwell and Mr. Bigelow, were about an errand of mercy, and not interfering with anybody, and Mr. Wardwell was going to ask some good people to go to church to hear him. Then came Sprague.



Well, let us see what sort of man he is, and we will take it from what he has shown us here and what has been shown here. He is a man, we will agree, of great energy of character. He is a man utterly unscrupulous how he treats prisoners, because one of his turnkeys took up two men and said one of these two threw a pillow, and Sprague ordered them both to be put in solitary confinement for doing it, when it was clear that one had not done it. Now, a man must be very unscrupulous who puts in an innocent man against whom nothing is proved, and keeps him there until the guilty man confesses, and then lets him out. I think that act speaks more for Sprague's character than anything that can be told, and it is not denied. Told right here by a man that he has lately set to work while he is a witness here, having dismissed him shortly before.

What would any right-minded, well-balanced man, who had a human heart anywhere around loose in his pocket, what would that kind of a man have done under those circumstances? He would have said: "If you cannot find out which it is we cannot punish anybody here until we find out who is guilty. I guess, rather than to punish an innocent man we will let the guilty man go." What is the maxim of law? The maxim of Sprague is: "Better not let one guilty man escape." I take this as a specimen brick out of the house of his character.

Now, what are his passions? Ungovernable. That he will agree. They control him. He cannot control them. His own partner said that when a man disputes him he uses harsh language. He, an officer of the law, grows pale and then jumps for him. A man must be very ungovernable.

Again, he agrees, and we will agree, that he went and met a woman who had slandered him and she did not want to talk with him or say a word to him, for reasons that we won't talk about now, and he and his friends saw her. And he said, "Did you say that?" And she did not answer. And he keeps after her until he gets her stirred up. "Is that true?" And she says, "Yes, it is God's truth, and I can prove it." That was a plea of "not guilty" wasn't it? The moment she entered the plea of "not guilty of circulating a slander" he, surrounded by his friends, and she a poor woman alone there, what did he do? A general in the United States army,—a man of war,—he jumped for that woman, and it took three men to hold him, and one had to get him right around here (arms and body) to keep him from getting his pistol out—that they agree. She says that he did get it out and it was taken away by Charlie, and Charlie was crying out, "For God's sake, General, don't make a bad matter worse," and then they led him out "as if like a dog," and sat him

down on the stairs, because he was so weak after that attack upon that woman that he could not stand. Now that is what his friends say. We put it stronger. Now think of a man with such passions—so ungoverned—put into a jail with a thousand unprotected men in the cells, and let him once get on one of his rages and God help them. Ungoverned passions—because that is the key to the whole of it. He thereupon goes to the committee of the church and tells them such a story about Mr. Wardwell of which he confesses he knows nothing.

Now that pastor actually drove Wardwell out of his house, where he was going to take dinner, as an unworthy, lying tramp, unfit to associate with any good people. Any provocation? No; he (Sprague) went and told that story so bad. What story was it? We don't know. We cannot put it in. He can. He has forgotten part of it, but he could have brought the man, whoever it was, that he told the story to, and that man can tell us. It was one of the committee. We don't know who it was. Somebody he had told that story to about Wardwell. Now what was the head and front of that story, if he told the truth. The head and front was simply that somebody sued Wardwell after he left Virginia, and in his absence got a verdict against him, and his (Wardwell's) witnesses ran away, and they prosecuted the suit, and that he had made charges against the New Hampshire state's prison. That is all he said he told him, because he said he told him no more than was published in the *Spy* the next day.

Now if the Rev. Mr. Woods, and if that church on that story undertook to turn Wardwell out of the building, and to cast opprobrium upon him because somebody had sued him for assault and battery, and because he had complained about the conduct of the state's prison, then I say that that church committee are as bad as men could be. I don't believe it. I believe Sprague told a different story. The trouble is, his passions so overmaster his judgment that he don't know what he is about half the time when he is crossed anywhere, and he felt it his duty—because there was an agreement among the sheriffs and wardens of the state's prisons and a meeting had been held—he felt it his duty to squelch Mr. Wardwell. Well, every rascally sheriff and warden of the state's prison I have no doubt wanted to do that. He said that he undertook to squelch Wardwell by stopping that meeting. That is what we don't want done. We don't want Wardwell squelched by a conspiracy of sheriffs and wardens, and above all not by lying. You want him to tell what he finds. You all want him to go around, and glad that he will go around and look into it. Do any harm? But this man is



going to squelch him. Very well; and there never would have been any quarrel if he (Sprague) had not stirred it up. What did he do? Mr. Wardwell went to the pastor and said, "Why have you done this?" And he said, "I can prove everything that is said about me to be false." "Go to the committee," said the pastor, and Mr. Wardwell went and began to talk with them, and we tried to put in what the committee said, but the plaintiff's counsel objected, although one of the committee was Mr. Mason.

He then published in the paper not an untrue statement or harsh statement. Read it. It is in the *Spy* of the 14th of February. I cannot stop to read it. He wrote a quiet, gentlemanly, Christian note, so far as I can understand it, and saying that he was not properly treated, and Mr. Bigelow wrote a note saying what he knew of him and saying it was unfair and unjust to him—that he was a good man. No aspersion upon anybody, certainly not upon Sprague. They hadn't heard of him, hardly, then, and there the matter stopped. Mr. Wardwell did nothing. Mr. Bigelow did nothing. And there was no more publications until sometime in March Sprague went into the marble factory and there found Mr. Bigelow, and did not even know him, and he said, "Are you Mr. Bigelow, the friend of Wardwell?" "Yes, sir." "Well," said he, "he is an imposter, liar, blackmailer and tramp, and I have a record of his indictment and arrest"—leaving it as if he had been indicted. And then he lied about the New Hampshire state's prison. How did Sprague know that he had no evidence at that time? He got some afterwards. All Sprague had was a newspaper publication, and I guess he has by this time found it won't do to believe all he finds in the newspapers about himself.

Well, Mr. Bigelow got excited and he said, "It is not true. I know Mr. Wardwell, and if you will bring me the proof and send down to Virginia and fetch me that proof, I will have nothing more to do with him and pay every dollar of the expense, and Sprague, who claims to believe in a God of all sorts, requested his counsel to ask Mr. Bigelow whether he did believe in one. I can pardon a man who don't believe in a God for swearing, but a man that does swear, if he does believe in a God, I cannot. They both believe in a God. The only difference is by Mr. Bigelow when he said "he believed in a great God, but not a seven-by-nine God—apparently having reference to the one that Sprague believed in. And now Sprague testified to you that he told that story and afterwards went and got a record of the case in Virginia and left it at the *Spy* office and had the notice published, and gave notice that anybody might go there and inspect it—a perpetual libel and a perpetual lie. Well, in the

meantime people began to see that there was trouble between Sprague and Wardwell, and so much so that three of their witnesses testified that they saw a pamphlet with Sprague's name to it abusing Wardwell. Now I want to say to you that there never was any such pamphlet. But I kept asking them about that pamphlet because I thought if a man had such a memory that he could remember seeing a pamphlet when there never was such a one in the world, that that same man's memory might be a little at fault when he tried to remember the difference between the "Charges" and "I Want Justice." The fellow who had such a fertile memory—take this bandmaster Richardson—you remember him. He swore to this pamphlet from recollection. I want to show you what a recollection he had. (Reading from evidence.) "I saw one of the publications of Gen. Sprague's here in Worcester. Am sure that I saw a publication of Gen. Sprague's accusing Wardwell of having been indicted in Richmond." Now here is a man that they brought up here to swear to the difference between these two pamphlets; that absolutely swore that he read one that Sprague signed. Well, he didn't, because they never had one. He don't do that way. He didn't put his name to it. He gets behind the "we." Mr. Wardwell and Mr. Bigelow don't do that; they sign their names.

Now, Gen. Sprague started the fight without provocation, for the purpose of getting rid of Wardwell; he goes to crush him, he says he is a tramp, and Bigelow says, (showing that he knows some Scripture), he was no more a tramp than Jesus Christ. He was going about doing good as he did, and the Saviour said that the "Foxes have holes, and the birds of the air have nests, but the son of man hath not where to lay his head." And he said that in that sense he is a tramp, but not any other, he is going about unselfishly doing good. Now then we find a man with great energy of character, of ungovernable passions, undertaking to crush Wardwell, and spreading this thing wherever he goes; and he said he lied up to Concord, he said the council up there found something against him. We have no evidence of that here. He did not get it until long afterwards, and the Court ruled it out. But we know that Wardwell went for Warden Pillsbury and Pillsbury went out under those charges, and if he had never done another thing, he deserves a crown of glory, even if he has to go to it from the cell of the Dedham Jail.

Now, this is the case. Now, when stirred up and driven and vexed, Mr. Bigelow says: "I will stand by this friend of mine and will help him vindicate his character." And they tried every way to do it. They asked people to come and hear the proof. Mr. Bigelow



prints "I Want Justice" and I want nothing more, and now to get it, I know that about Sprague that I hope I shall not have to tell, and we have found out now what he did know. He knew the story of Mrs. Phelps as told on this stand. That is what he did know, and refer to at that time. At that time he knew nothing more, and it is a story which he will deal with directly. And he stopped there. He defends the character of Burnham Wardwell. He writes to all good men that he knows of and gets letters such as anybody might envy. You will read them through in "I Want Justice," that was read before you.

He then says Mr. Wardwell shall have my Rink for one night and he publishes it, and he goes to the printer and has it advertised, and tells him he will be responsible for "I Want Justice" and the "Address" and that was published in the Rink, everywhere by Mr. Bigelow. He don't mean to deny it, never has denied it, always owned it, put his own name to it; for whatever he is, he is no sneak. He put his name to it, stands by it, and if it is libelous, he can be sued for it, or indicted for it, and if he cannot make it good, may be punished for it, and therefore it has no effect in this case, for it is not a similar libel. He says nothing about Sprague. It is not libelous. On the outside he says: "I have heard since I was writing this pamphlet, that I was assailed by Sheriff Sprague, asking to know what I knew of Burnham Wardwell, and after telling him as briefly as I could, &c." And he then puts forward the other statement. He says: "If you will bring the New Hampshire and Virginia persons to Worcester, I will pay all expenses if they prove what Mr. Wardwell has been accused of." What institution had he lied about in this state? Nobody comes here to complain that he lies about any institution, except Sprague, who stirred up this trouble. "Wardwell wanted to stop three weeks with Sprague and write up a favorable report of his institution. Right here I don't hesitate to say that I believe that is false. Mr. Wardwell has had the privilege of coming to my house at all times. I also know that T. K. Earle's house was also open to him." "Right here I don't hesitate to say that I believe that that is false," and I say "Amen," for there is not the slightest corroboration of it. On the contrary, Wardwell swears that he never went there with any such idea, and it is now got up to meet the case, precisely as the ready statement was coined about the child to meet a piece of evidence here by Sprague on the stand. (Reading.) "In defending Mr. Wardwell I hope it will not make it necessary for me to tell what I have heard of Sheriff Sprague."

There breathes the noble, whole-souled man. Very well, that meeting passed off, but not until poor Curtis, who was there, and who

undertook to say something about Sprague and then he was seized by three of Sprague's deputy sheriffs,—Drennan and three minions under his command, and taken to the District Court, and prosecuted three times:—First, that he licked that fellow you saw on the stand, whom everybody contradicted, and the jury found he did not. Then for disturbing the meeting. Oh yes, Sprague was very anxious that that meeting should not be disturbed, that there should not be any disturbance of the Wardwell meeting,—and the jury said he did not do that; but by the aid of a sufficient number of officers they did swear that he was drunk. However, that is a matter that nobody could defend himself against, and he can thank God that they did not break his head with their clubs, to make good their words when they got him into the jail up there where they could maltreat him. And that is the result of free discussion in Worcester under this regime. Here was a man prosecuted three times over, and two charges false and the other one a simple question of whether he was drunk, and he was fined for that. And if he had got that vice all that I can say is: He is a soldier of the army, and if you knew what brother Hopkins and I know by that you would pardon them for that vice, if vice it is,—it may be a disease. And neither he (Mr. Hopkins,) nor I—for I know his kind heart would never punish by imprisonment a soldier for drunkenness. The man has earned in the baptism of fire the right, almost, to do that, at any rate, you must pardon something to the services which he gave his country, and pity, not punish, him for the single fault of yielding to temptation.

After the matter at the rink, all along through April you learn that Wardwell was collecting evidence against Sprague, and Sprague all the while was stirring up these stories about him. That he does not deny. And the papers had taken it up. The *Marlboro Times* was abusing Wardwell and saying if he came up there he would get a warm reception, and the *Fitchburg Sentinel*,—that was pitching into him. And he is a nervous, excitable, (and not very discreet man I agree—I never knew a fanatic that was, and I have known a great many. If they were discreet they would not have been fanatics. They are truthful, just men, though.) And it was kept along until Mr. Bigelow thought that Mr. Wardwell had had his say in the rink in his "address" about Sprague and the way he was treated and thereupon he would give him an opportunity to clear up the state's prison matter at New Hampshire, and he gave him the Rink once more on the 14th of May, and that becomes a little material because that advertisement of that meeting was got out and plays a little part by and by. He got up his meeting then to prove that he was right in New Hampshire and it was advertised and Wardwell brought down



two women with their backs lacerated with the accursed whip from New Hampshire, and he produced them on the stand, and he sent to Virginia and brought that other evidence,—the original whipping posts which he had sold when he was warden, and exhibited them on the stand, and he showed that he had told the truth about the New Hampshire states prison, and he challenged Sprague to come there and hear him. Even at that time there was nothing said which has been put in here at all derogatory to Sprague. That meeting was a states prison meeting. I think after that meeting Mr. Bigelow's connection with Wardwell had ceased. He had given him the opportunity to make his speech in the rink on April 16th, he had written a letter saying that he thought his character was good; he had published "I Want Justice." He had given him the opportunity to show that he told the truth; that they whipped women in the state's prison in New Hampshire, and from that time all connection with the fight between Wardwell and Sprague, which still went on, passed away from Mr. Bigelow and Mr. Bigelow never did anything after that or else he is a perjured liar. No man ever says that he did anything else further in that fight after that. He had vindicated his friend as well as he could, he had given him a chance to vindicate himself, and he let Wardwell work out his own salvation until Wardwell was arrested, and then he bailed him and said he would stand by him, and I thank God he had the manliness to do it.

Mark our theory, gentlemen. We have not changed it since I first came before you. Mr. Bigelow undertook to defend Wardwell and say a word for him when he was turned out of the church, and he wrote a temperate letter, and he said nothing again until Mr. Bigelow himself was attacked by Mr. Sprague, with his ungovernable passions, so that he don't know what he says or talks, and he tried to brow-beat Bigelow. But he met his match. Bigelow stood up to him, as Sprague did to that woman, and Bigelow published then "I Want Justice," gave Mr. Wardwell an opportunity to speak in the rink and to publish his "address" about prison reform, and gave him on the 14th of May an opportunity to clear up the charges against him about the New Hampshire state prison. From that hour (by any reliable testimony) there is not the slightest thing done or said by Mr. Bigelow up to the hour of Wardwell's arrest. And then he bailed him. And the Court will tell you that he had a right to bail him, and that it did not make him responsible at all for the libels that Wardwell had published. That is our theory. That is our case. That is what Mr. Bigelow and Wardwell swear. Wardwell swears that he had gone down to Milford and got that evidence about that ruptured blood vessel, went there and picked up facts,

and then he gave them upon his own responsibility, and in his own way, without the knowledge of Bigelow, under his own hand, and brought out that bill of "Charges," which is made the foundation of this prosecution.

Now, there is a very broad issue between us, and there is only one way to reconcile it. The prosecution or plaintiff says that Mr. Bigelow aided Mr. Wardwell in every way in distributing these charges everywhere; that the locality was full of them. That *non-partisan gentleman*, Howland, swears they were swept up by the basketfuls every morning. He swears that the office was full of them, and they come in and attempt to show that they were distributed there all the time, and that Mr. Bigelow was distributing them. On the other hand, Mr. Wardwell says that he went and got these printed in his own way, for his own purpose, and that Mr. Bigelow never knew anything about it; that afterwards he simply gave him one; that there never was one in the Rink, except in a bundle in his own hand, except when he put them where he kept them in his sleeping-room up in that attic, and where he folded them; and that so far as there being any issued from the rink, he instructed everybody not to have in the Rink one of those issued; that he issued them from the street and all over the country, and carried them everywhere just as much as he pleased, open and above-board, and hired Parsons to do it. And why don't they bring Parsons? They opened him somewhat when they opened their case. Parsons knows what his instructions were. Wardwell tells us that, and nobody contradicts that.

Now, that is the difference between us exactly, and between those two theories. Except for one thing there would be a most frightful collision of testimony. Perfectly frightful. When this case begun you heard my argument to the Court to the extent of my poor power and ability, that we should not have testified to on this stand anything about a single copy of these "Charges" unless the copy was produced. The Court said a man might swear by looking upon it that it was the same thing, whether it was produced or not, and I argued with great earnestness, you will remember. I think if His Honor, having watched carefully, and seeing the result, would have been glad to have had the law otherwise than what he ruled it, because it has opened the widest door on earth to perjury and falsehood and mistake. If no man could have told a word about those "Charges" except the man that brought the copy here, there would have been but very few proven to have been circulated. But when a man like Richardson has come here to swear that these "Charges" were the ones, and that he circulated them with the band, when



every man that is in the band has come here to swear, and has sworn, that he never circulated them—I speak advisedly—some people having got turned out of the band got over here—but they would not be considered—and they swear that they never received any. Now I say that all there is to prove a written publication is the memory of that poor creature Richardson, who, because he had been dismissed from that band, or for some other reason, God knows what, thinks that book, “I Want Justice,” which we did give him, and Bigelow said he gave him, and nine or ten or eleven of the band said that they received from him away back in May, and they never received any other; and yet that poor creature comes and swears that they were the “Charges,” that were not published until the 24th day of July, upon everybody’s testimony.

Now, gentlemen, it all comes in with the law that I shall ask the Court to instruct you that wherever you can reconcile testimony without imputing perjury to anybody it is your duty so to do. Now take Richardson’s case, and so take them all. I will run through with them slightly. If those were the “Charges” that he gave the band, then you must find every one of our witnesses perjured upon that part of the case, because they all swear that those “Charges” were not there, not plenty there, and were not given there, and we say, further, that they were not printed until long afterwards. And the remarkable thing about these witnesses of the plaintiff is that you cannot fasten them—any of them—down to any time when they got what they call these “Charges.” Now then, if you believe that Richardson is simply mistaken as to the nature of the paper he had in his hand that he got, why then, that testimony is wholly reconciled, and irreconcilable, may it please Your Honor, entirely, assuming that the band told the truth, and that they never received any but once from Richardson, and that was “I Want Justice.” And now assume that Richardson made a mistake, and there is an end of that case. That reconciles it, and nobody is found in your mind to have sworn falsely.

Now they produced Thompson. He says that summer that he worked for Easton in post office building, in the summer of 1882; knows Bigelow; had pamphlet from Bigelow; don’t know where it is; gave it to Easton; don’t remember the date; there was no excitement about the matter; it was in the early part of the summer. Now he has not the pamphlet, but he got it in the early part of the summer from Bigelow. Well, he could have got a hundred or a thousand. The Bigelow pamphlet was printed in the last part of March, or first of April. These “Charges” were not printed until the 24th of July. We fix that by the printer’s bill. And they were

not circulated until a few days after that, so that the pamphlet that he received must have been "I Want Justice." Mr. Easton said that Thompson told him it was in a pigeon hole in his desk; I don't mean to say that he testified falsely, but he was not asked about it until some time afterwards, and he remembered seeing Wardwell's face upon it, and after being talked over two or three times, he came on and swore it and believed it. But we know it is not true. If it is true, why then in the early part of the summer, before the pamphlet was printed, Mr. Bigelow gave one to Thompson, and Thompson gave it to Easton, and that cannot be. But you can reconcile it all if you say it is "I Want Justice."

Now then comes Thomas C. Richardson, and I have already sufficiently commented upon his testimony; and he is the master of the band, and is contradicted by every man.

And now comes Arthur J. Marble. Well, I shall spend very little time about him. You remember him. He was the man that had been persecuted on account of his politics. He was a man who was at the head of the XXX club in a low dance hall, and he was the man that ran for mayor and got 59 votes, and he was the man that worked for Bigelow. And let us see what he says. He says that on a certain day Bigelow came to him and asked him if he had read Wardwell's "Charges" against Sprague, and gave him some of those "Charges," and he glanced at it and said it was a pretty strong indictment, and he (Bigelow) went on to say that he would let Wardwell have his team and go around the country distributing these pamphlets, but that Wardwell was so old and not so active, and that he would like to have a young man, and wanted Marble to go and deliver speeches while Wardwell circulated the pamphlets, and Marble replied that he had acquired some considerable disagreeable notoriety in consequence of his political activity in Butler's election and had to leave town, and lost his business. Well, if the jurymen of Worcester won't repel that slander upon their city, I can. If you will allow a man to come here and swear that he cannot advocate my election without being driven out of town you had better purge your city. That was only done to stir up a little political matter here in Worcester. I never got as many votes as I wanted to here in Worcester, and now I know the reason—Marble was for me! Now if any person in Worcester thought he was for me I don't blame him for not voting for me. Thank God he did not say I ever spoke to him before I spoke to him on the stand. Now he is the man that comes and swears to that story. He said that they were there in large quantities, and that Mr. Bigelow cautioned him about giving them out—after wanting him to go and spread them broadcast for



him he cautioned him about giving them out! You would not convict a dog with a bad reputation on his testimony. You remember that he was the man that, after he left Mr. Bigelow, by the testimony of three witnesses, threatened to "get even with him" in some form if he did not take him back. He was the man that Sprague bought the patent filter from for the good of the prisoners in the jail, so as to have their water filtered in which their potatoes were boiled and other things were cooked. And he said "oh no, the County Commissioners bought it." Don't you know Sprague bought it? He had to confess it at last. That was his part that was given him, and he had been at work up there with Sprague and he was confidential with Sprague as we show you by witnesses. Think of it, gentlemen, a water filter up to the jail to filter the water that Worcester uses. What a humane man Sprague must be! But he never thought of getting a filter until just before this trial was coming on and Marble was needed for a witness.

Now we have one man by the name of Moses H. Fay. He is the farmer that lived in Worcester. He was called here and volunteered his testimony, after he had sat outside and heard it, and said that he had received one of the pamphlets. "I was called here to-day; saw a pamphlet in 1882; Bigelow gave me one. I was hitching my horse and he came along up the street and he gave me one. As I unfolded it, it unfolded three thick. Never had any personal acquaintance with him. Merely bowed to him."

Here came in a new witness picked up, and calls himself a farmer, tells you that "Mr. Bigelow went out to a stranger that was hitching his horse, not knowing whether he could read or write, and gave him three of them. Never saw him to his knowledge. Might have seen him once in the telegraph office or the *Spy* office and spoke to him about the weather, but never more than that." Utter stranger. Can you believe that? Which will you believe on that, Mr. Bigelow, or this man? Besides, this man kept that all to himself until he came here into this court house and heard the testimony. Now, gentlemen, if this pamphlet had been circulated so freely as it was at the New England fair; if that is true, would there have been difficulty in proving a hundred circulation that this plaintiff must bring suit for the circulation of a pamphlet that he had never heard of or seen, and waited a year and a half or two years before he tries it, and when he does try it have to rely upon the truth of a publication on a publication that he had never heard of? Nobody can believe that, it seems to me. And the burden of proof is upon this plaintiff. You saw the man on the stand and you saw that I followed him about the Rink; that he went in, and he thought it had a plat-

form six feet wide, and afterwards he thought it was forty feet wide; but you remember. Would you trust anything to a man that went through a rink and could not tell anything more about it than Fay? He never was there in his life. No man can doubt that.

Now then they thereupon abandoned the attempt to prove anything more here, but said that up to Northboro', at one Woods' Grove, Wardwell was up there circulating a few of them. That is true, I have no doubt. He tells why and how he was there and that he did circulate them. Mr. Griffin was not well acquainted with it and might have mistaken the two. Certain it is that Wardwell swears that Mr. Bigelow had none to circulate, and Mr. Bigelow swears that he did not circulate any and that this one that man got from Wardwell.

The next witness was George A. Woods, and he swears that he got one. He was proprietor of the grove. Well, we have put a man on afterwards and he said that this man was hired to do odd jobs. There was a slight difference between them there. Well we know what it means when Col. Drennan sees a man to whom he has loaned twenty-five dollars to redeem an overcoat whenever any gentleman was short. Did not he swear that he loaned it as he would to me or any other gentleman. This man says he did not know what they were. He never read them. This Mr. Bigelow gave him one and that is all. Now take that man, and without saying anything more than simply he don't know, simply he made a mistake, one with the other. Are you going to convict two men of perjury on that recollection, when he never read the "Charges" or heard them read from that day in 1882 up to the time that he heard it read on the stand.

J. F. Bigelow is called. He lives in Marlboro'; one of the executive committee of that meeting. He was in Woods' Grove at the time spoken of; "Did not see any books or pamphlets distributed generally. Saw none. Gave something to Silas Howe to distribute. It was in a box. Got it from Wardwell." That proves that Wardwell gave them, and Wardwell said he did. Now we come to the testimony of Silas Howe, and I made light of it, because I saw by my cross-examination that it was "daylight." He testified that Bigelow and Wardwell were sitting right up in the carriage in full sight. No need to go any further on that.

Now comes Ashley Brigham. No occasion to trouble about that.

Now we come to O. P. Shattuck and M. V. B. Jefferson. Now we have got a touchstone to deal with those gentlemen, I think. Mr. Sampson delivered it. Fortunately for us he put the time when Sampson, by the book and upon the testimony of everybody, was



gone away to his summer vacation. Sampson says he never did deliver any. He went away and was gone thirty days, or thereabouts, coming back August 30th—went away August 4th. Now these pamphlets were not printed until the 24th day of July, and were not circulated until sometime afterwards, as Wardwell testifies. This man says that he went sometime after he heard that the pamphlet was in circulation, and that Sampson gave it to him, and Sampson says he never did give it to him, and at that time Sampson was not there to give it to him. Now you are asked to rely upon that for a publication.

Now we have Higgins. I won't spend a moment with him. He testified that the meeting broke up in a row, and that Bigelow talked about Sprague's dealing with women, when everybody else that has been called here heard no such thing.

Now we have Edward E. Longley. He was in the fire insurance business. He cannot swear who was there at the fair, because he was so busy. He sold some tickets. Says that he saw a package. Of what? Said that Bigelow was delivering packages of all manner of advertisements at that time. That we prove. He did not pretend that Bigelow was delivering this pamphlet. Now upon the testimony of everybody there was not a large quantity in that office, except always Marble and Howland's testimony.

Now comes A. L. Marble. You saw him. I shall not say one word about him. Sampson says he did not deliver any, and that is sufficient for me and it will be with you,—the burden of proof being upon them.

Hartwell says he got two from Sampson and thinks he got them on the 9th of September. On the 7th of September, Wardwell was arrested. Do you believe for a moment that Sampson was distributing them after Wardwell was arrested? That fixes those gentlemen.

Now comes Howland and he puts himself in a condition to be contradicted by everybody, because he swears they were there to be swept up by the basketful and distributing in the Rink at all times.

Now, gentlemen, comes Mr. Merrick, who lives in Holden. He came to the Rink, got nothing else but got that from the ticket master. Never saw the man before or after. "He gave it to me the next day after the Wardwell lecture." When was Wardwell's lecture? The last time that Wardwell lectured in that Rink was on the 14th of May and these pamphlets which this fellow produces were not printed until the 24th of July. He swears that he bought the 7th of August *Spy*, but he swears that it was the day after the lecture, and he was the man that was so lucky as to keep a copy of

the *Spy* for that morning and no other copy during the whole year. Providence has been very busy in this case: Providentially he met Drennan in an eating house and he turned up with his hand in his pocket with one of these pamphlets. But he was not so well instructed and he has put it the day after the meeting. When a man trusts to his memory and remembers, he cannot remember eight when it was seven, because all he heard of it was the seventh and how can he remember eight except he wants to twist his memory to serve his purpose? He said it was the day after the Wardwell lecture. Now that puts me in mind of one thing more to which I must call your attention, gentlemen, and that is if I had not taken Drennan by the throat and asked him about that coat which he redeemed for Collins we should have had Collins on the stand swearing that he folded up in the "I Want Justice" this pamphlet of "Charges." They got him in there and they kept giving him money and then they talked about "Charges" and they sent him from pillar to post, from Sprague to Earle, and from Earle to Goulding to show him the "Charges." He saying, "let me see them," and he could not get a sight of them. They meant he should swear, and I have no doubt that the boy would have come here and honestly sworn that these things which he did up in the "I Want Justice," which was this thing, were the "Charges;" it was white, it had Wardwell's face on it and paragraphs to it, and he did not remember and they tried to get him to remember and he could not remember, and they kept giving him money to remember,—and what a beautiful sight it was, and they were going to put him on. He was their war-horse. On the Friday before, brother Hopkins opened his whole case on this Collins, substantially. Am I not right, your Honor and Mr. Foreman and Gentlemen? Called him by name, and as soon as I cross-examined Drennan he went to him, and says he, "you are not wanted. You had better go; we can do without you," said he, they are going to prove the "Charges" were not printed until the 24th of July and you left the Rink and did not do any more work after the 26th of May, so you can go. That money was badly thrown away, gentlemen.

Now, was this true what he said? He has come here and sworn it and Sprague sat there and heard it and Drennan sat there and heard it, accusing them both of bribery of a witness, and they have not either of them dared to take the stand and deny it. They wanted to deny it and then brought this little whippersnapper lawyer of a Sullivan to deny it, which you don't believe it or anybody else. Nobody believes that story. They wanted to contradict Collins. Here were two full-grown men—sheriff and deputy. He goes to them and asks them to do something for him and Drennan says, I cannot do it



directly, but I will do it indirectly, and it was done indirectly,—through the little lawyer. And Sprague sitting right there, who was able to have told us all about it,—like a lamb dumb before the shearer so opens he not his mouth. Drennan too,—the late City Marshal,—having been accused of bribing a witness, carrying him money down to one Garrity's, having made that excuse and having been obliged to own it, and then having been told by the witness that that was done substantially for a bribe, Drennan keeps away too. What is the matter with him if it is not true; if this is not true? Gentlemen, this case has been worked up as no case was ever worked since God made this world, with all manner of appliances and no man was safe, or is safe, if an honest jury here are to be hoodwinked by this sort of testimony. There has not been a fair man on this stand swearing to these publications. They are simply mistaken in what it was, or else it can be shown that he was false, if not mistaken.

Now, gentlemen, that is the plaintiff's case of publication. I have been all through, with one exception, and that exception is the man named Chapin. He said he went and got one. Drennan says he said he went and got one, and Drennan ought not to be believed on his oath after the exhibition we have had, and after he didn't come to defend his reputation and Sprague's reputation. What is it about this case that should cause such a matter as Collins has brought to your attention. And Collins tells you about Mr. M. A. Garrity. They know all about that and they don't bring them. Collins comes here and meets them face to face, with his eye right on the sheriff and says "you bribed me." And the sheriff don't dare come here to swear that it was not so, because the moment he did he would open himself to my cross-examination and to contradiction. Have you seen anything on our side like that? If you have, for God's sake give the verdict against us. I don't ask anything else. Here is a high officer, lauded about as a good citizen. His character is spoiled by this libel. He is terribly injured. Why rake the purlieus of Worcester with a fine tooth comb for men to prove it if it was openly and under all circumstances, as they swear?

Now, how do we meet them? They tell us that the Rink was full of them. Given out to everybody. Given to the band and that all our men were busy distributing them. We bring every man from the Rink, every one, and many of the men that have been in there from the Rink, and every one of them swear that they never saw one there. They never delivered one there; they never heard of one being there for delivery. Eight, nine, ten, eleven, twelve,—thirteen of them in all, swearing upon their oath that those "charges" were not there. They know what they talked about. And it is false when

this man Marble and these other men say they were delivering them out there, because they were not there. We bring good citizens, besides, residents of Worcester, that frequented the Rink, and they never saw one of those delivered from there.

That is our case. We bring Wardwell, a man of God if there ever was one, and he swears that he took pains not to have them there. That this was his fight and he did not mean to bring Mr. Bigelow into it. And we put Julian on the stand and he swears, and Sampson swears that they both agreed that there should not any get out from the Rink, that they would have nothing to do with them. And lastly we put on the defendant himself, and he raises his hand to heaven, as God may help him in his hour of need, that he never had one there, knew of one being there, or ever gave to anyone there one of those things, and the burden of proof is upon them. They are to convince you by a fair preponderance of evidence that they were delivered from the rink by Mr. Bigelow or by Mr. Bigelow's procurement. Nothing else, may it please your Honor, will satisfy the law. Wardwell tells you that they were up delivering on the street by many thousands, so that everybody might get one. If this plaintiff requires to get into court to prove this libel every witness with a spot on his jacket somewhere, which when cross-examined he dodges, how could Sprague be harmed.

Now, gentlemen, I have given you the two theories of the defence and of the plaintiff. If you doubt fairly as to the preponderance of evidence on counting the witnesses up, weighing the testimony, then there ends the case—and it will be a fortunate ending for everybody. And I would suggest to you that it would be fortunate for all parties and for the ending of this litigation, for you to come to that conclusion. Simply that you are not convinced by the preponderance of evidence, you will say so in your verdict and I will tell you why. It will save examinations of questions of law by the parties—a great many of them. But it would save another thing. It will save any enemy of Sprague's saying that the "Charges" were proved true, when in fact your verdict was upon another point, and relieves him from that imputation, which, otherwise, might stand upon him. And then as to whether they are true or not, so far as his character in the community stands, the conviction of Wardwell might be sufficient justification; and I have wondered, aye, doubly wondered, why Sprague was not content with that. But he has chosen to go on. His uncontrolled passions have driven him headlong. He has thrown himself in here to take money out of Bigelow—for that is all that it can do—and as I cannot tell what your verdict will be I am driven to two other grounds of defence. I wish I might leave it here. One



is as to the truth of these "Charges." If the main charges are proved true, why then only damages can be given for those that you find are not proven; and the main charges are the charge of libertinism with a young woman and breaking up a family, and cruelty to prisoners in the jail and not properly dealing with the county's property. Those are the main charges.

Now if he is proved guilty of adultery, that, I respectfully submit to your honor, would cover all those charges. It is no worse committed in jail than anywhere else. Libertinism is no worse committed in one place than another. Now is that true? Well, in the early part of his life we have plenary evidence that his passions in that regard were unbridled. I agree he was a strong man, and I agree that when a man is strong in one place he is all over, and if he has not any balance wheel nobody knows where he will go to. He drove us in self-defence to call attention to the date of his marriage and the date of the birth of his eldest child. Those facts were fixed and we showed that his passions had not left him when a young man to respect the woman of all others whom he should respect. What is the answer? It came readily to his lips. It was a very small child, a little one—came unexpectedly. Was that true? His counsel says: I want you to give me until to-morrow morning to call the physician who was at that delivery. I said I would; because I should rather have been glad, in the name of one party, that the thing might have been proven to have been a mistake of a different kind than it was, and I said yes, and the next morning I enquired, "Is the physician coming?" "No, sir; he is an old man and has forgotten all about it." But he is a very old and skillful physician, and what I wanted of him was to take that stand. Here another old physician of whom I asked the question: "Did ever a five months and twenty-five days' child live in this breathing world of ours? And he had to say, and if they talked with him they knew he would have to say just what the doctor that came for another purpose from Milford said—what every doctor on earth will say that is skillful enough to make or deliver a pill—that no child of five months and twenty-five days conception ever lived an hour after it left its mother's womb. And if my old doctor was not right when they had Dr. Woodward on the stand yesterday,—the old physician, the friend of the family—true, he did not know that cold air would fall down,—but he might have known something about this—why didn't they ask him the question of whether he ever knew a five months and twenty-five days' child to live, and he would have had to have said what everybody would have to say, and what the books say. But they did not ask him—no more than they asked anybody whether

Collins got his money that he said he did. Now then he starts off in the world with that sort of a passion. Sometimes it is a good thing for a man to be made strongly in that direction. It makes him a strong man. But he wants a good balance wheel.

Now then the next thing we find him is riding, walking, kissing, hugging, writing love-letters to a very buxom young woman. That is agreed. And she is in his employ. She is the daughter of his friend. He should not have kissed her—after she grew up. I don't know what may be the taste of the young men in Worcester; but I should not want anybody that was not the father kissing my young bride every time they met—slobbering together. Not I; not I. Now then that girl left and went up to her father's house. He followed upon her invitation, on the pretence of fishing. Did he mean to go fishing? Well, he did not take up but one shirt with him and one suit of clothes. He didn't mean to fish where there was any water, evidently. And the first thing we hear, and it is not denied, is that he is sitting in the sitting-room in the presence of the family with his arm around this young girl, saying that he "would like to sit there forever and ever, all night, in the moonlight." Well, my witness was examined until I got tired. "Was it a moonlight night?" And I thought they were going to bring in an almanac to show that there was not a moon that night; but the girl said on the stand that it was a moonlight night—and that girl confirms Mrs. Phelps' story everywhere, except upon the main fact, that she was not guilty. She confirms her everywhere. Nearer than two witnesses should tell the same story. The girl comes down to Worcester to see him. He goes up again on the 19th, and he goes up to go fishing again. But he didn't go fishing. And there, the woman says her suspicions were aroused then, and she looked through and saw him sitting during that livelong day, and the girl says she was sitting with him that livelong day in that parlor; and she says she saw her lolling on his person and fondling and kissing his hand. Of course the girl says that is not so. She confirms the day, and when he goes away this girl is in tears because she is so unhappy on account of her mother, and after she swears all that unhappiness and there never was a kind word passed between her mother and her after a year and a half, when she became her father's housekeeper, we have put in letters of the kindest description to show that it was not so. And at this time the woman was so suspicious that the girl says herself that her mother insisted that she should not sleep upstairs on the same floor with only a little child up there with Sprague; that Sprague should sleep down stairs, or else she should sleep down stairs. That is what the mother says. And there you see the mother was true.



If there was not that to have aroused that suspicion why did she insist that the girl should not sleep upstairs where Sprague could get at her, or she at him, but that she should sleep down there between them, and insist upon it, and they came to a tiff, almost, about it. He goes there the next time, and the next time it cannot be arranged. The woman goes to her husband and undertakes to tell him her suspicions. He has had his mind poisoned against her, for you saw how it was here, and he said, "Never speak to me about this." And she was determined to get evidence, because by and by the natural result of an intimacy between a stalwart man and a young, thrifty woman will get out, to the ruin of her reputation forever; and this woman was determined to put a stop to it and to get the father to put a stop to it, and so she looked for evidence, and she found the evidence, and she carried it and showed it to the Drury woman, now dead. She tried to tell her husband about it, but he would not hear it. Now what should she do? Put yourself in that condition with that poor woman. And thereupon she waited until his visits at her house became the talk of the neighbors, and then she went over where? She went to Mrs. Rice—the mother of Mrs. Sprague—and told her, for the purpose of putting a stop to it.

What next did she hear? She did that on purpose. If she did not believe it true do you think she would have done it? If it was not necessary do you think she would have done it? They say it was to spite this young woman. But only a month before that this young woman was writing affectionate letters to her mother in that happy home to which that daughter wanted to go. They were then living happily together. But while her lover was calling upon her, so was Sprague, and he was carrying her out in a carriage alone by night and by day, by their own confession on the stand here. Then Mrs. Phelps learned from her husband that Sprague was going to have it investigated, and she asked her husband to wait; to give her time to get her witnesses and she would prove the story. She asks her husband to communicate it to Sprague. Her husband swears that he never communicated that request, but he put it off until Tuesday and the woman never knew why, and the first thing she knew was, she says, this young girl and her lover came there and told her there was to be a meeting, and then her husband came out and she said she would not go, and she hung off and hung off and hung off and they tried all they could to get her in.

That is the evidence that they swore to at the last trial, that they sent out Charlie and the husband there two or three times. She says that is so, and she says in addition that this young man came out with the young girl. They came out to tell her that the whole

matter was going to be investigated. And at last her spirit was up and she went into the parlor and sat down. Now they all agree that Sprague began by saying that she told such a story to Mrs. Rice and asked Mrs. Rice if it was not so and that he then asked of the young girl was it so, and she said "No." Of course she would say so. Then he said, "I say it is not so." "Now," he says, "what do you say to it?" And she would not open her mouth. He repeated the question, and then all agree that there was a long talk, and that he was repeating that question in one form or another, and she says "It is so," but she says that he was answering back; that he was saying "No man could live that would tell him that." Now do you believe that if she simply stood up and said "It is God's truth and I can prove it" that that would have had such an effect upon him that instantly he would have jumped for her, or do you believe what she says that she kept taunting him, as I have no doubt she did, "Sue me and I will make your name stink on your heels." That taunt would bring a man on to his feet if anything would. But where two guilty persons had said that they were not guilty and an innocent person had said that she was not guilty by saying that she could prove what she said, was that a reason for a General of the United States army to jump at her, feeling for a pistol, and surrounded by all his friends and the poor woman sitting in the rocking chair. Do you remember those beautiful lines of Bayard Taylor:—

"The bravest are the tenderest,  
The loving are the daring."

They say it is not true. Now this difference of words is nothing. If I may stop for a moment to call your attention, there was an occasion when twelve people of all others, the twelve disciples,—they saw the written legend,—they saw the inscription on the cross where their Master and Saviour hung suffering, put up in derision by Pilate. Four of them inspired to tell from their memory what was that inscription and put it down in the gospels for the instruction of all men for all time, and no two of them gave that description alike. They got the substance, but each differed. Perhaps my memory won't serve me. As I remember it Matthew says the inscription was, "this is the king of the Jews." Mark says, "the king of the Jews." Luke says, "Jesus, the king of the Jews." John says, "Jesus of Nazareth, the king of the Jews." The four apostles were undertaking to tell what was that inscription, truthfully, we know, from their memory; to give the words—they all gave the substance,—and they disagreed about the words. Some scoffing infidel said



that that showed that they were not inspired ; but Bishop Warburton answered that, saying "the fact of their disagreement in immaterial matters and giving the substance showed that it was true, because it was evidence that there was no collusion amongst them that there would have been if they had all given the exact words just alike and stuck to just so much."

Now this woman comes and gives the substance. The others they all talked it over. I must leave out Mrs. Sprague, for she could not remember what was said at all. I leave out one or two. But the girl and her husband and Sprague give it exactly. Even "we have assembled here." It was curious. I looked on. That is the way you can always test an unnatural story. And that poor woman then said that this is true, and he was carried out. And now, on your oaths, don't you believe it was true? What could she have for a motive not to have it true.

Gentlemen of the jury, no man or woman when she had the proofs undertook to investigate it. Husband or lover, Sprague or anybody else never undertook to investigate that story. Sprague's answer to it was so as to compel his wife to take the young woman home ; or if you please, the wife did take her home,—I guess that is better,—and I honor her for it. She took her home to cover the shame to her family and to show to the world that she did not believe it—like a true wife. And there are thousands of them in this good state of Massachusetts that are doing the same thing, as many a lawyer knows that has had cases on his hands. She took her home to save her child and the shame to her husband ; but that girl beforehand never boarded in her family an hour. She called her and I asked the good lady if she ever boarded there and she said she did not ; and my heart filled with pity and with admiration for that brave, good woman who did the best to protect her child and her husband. When she left the stand she left with my pity following her and with admiration for all she has done. If that is true, all the libertinism is proven. Judge ye.

Don't you wonder at Mr. Bigelow's reticence,—knowing that and never telling of it? Does not it show that he can hold his temper, although naturally quick and irascible when he thinks jurymen friendly to himself have been got off of a jury. But he never told it. He said he could. He never mentioned it. He knew it.

Now what next? The next charge charges him with cruelty to his prisoners, and not having good officers. You have seen some of those officers and I think the charge is made out fully from sight.

The next is the County property and the accounts. Gentlemen, here is a cash book, the only cash book that has been used in that

jail since April 1st, 1875,—nine years—and it is as clean and nice as a new pin, and if it was not made for this occasion I will lose my hat. Look and see, and there you will see the Prouty bill when you examine that in your room. You will find they are all the last charge. How lucky it was that they all got into the last charge on each page. Now then, no man ever wrote daily cash transactions as near alike as that since the Lord made him, nor ever will, running over a month or two. Don't you wish you could keep your cash books as clean as that,—no blot, erasure, or pencil mark,—and this has been kept nine years, in a jail! Why, it is not rubbed, even. Now to show you that they cannot do that where they actually keep them I will show you the "solitary confinement book." Here you are, worn clear through here, and the back all off,—blotted, altered and changed. Now, that has been kept all right. Actually worn clear through the cloth. There is one that has been kept for a long time on the same desk, in the same office.

Hayden says he wrote in this one, and Hayden says he wrote in this one. Now then, everybody can see and understand. Now, passing from that, for I have not time to spare. Now then, I put on two or three men to swear that Sprague got his potatoes and his vegetables and cream out of the county, and he had a servant girl that got it, he had a cook that got it, and he knows himself whether he got it, and he don't dare take the stand on that question. Now it is a small matter, I know, but if a man will steal his cream from the county, wouldn't he on larger temptation steal more? What right has he to any perquisites, and, if he takes them, for God's sake don't take them out of the prisoners' mouths. If you see fit to take your perquisites, take them, but charge it to over-production of cream. Don't take it away from the poor prisoners' mouths. Give them a little milk, if the meal is musty. I didn't ask about strawberries, but when they come to skimming the prisoners' milk, it made me "rise up" a little. I have in my lifetime heard of this sort of thing. It is not a new thing. He hasn't any patent on it. It is neither "novel" nor "useful." If it was not so why didn't he tell us? Why has he sent clear off for one man to tell us nothing, and that gentleman who bought this piece of wax here when his boots were soled? What a conscience, gentlemen! Why, I never heard anything like it. Whenever I go to the hotel and have occasion to sew a button on my breeches, I will send out and buy, rather than to take that from the hotel, because they don't agree to furnish me with needle and thread and wax. He sends all the way to bring that man here to testify to that, when he himself sits here and can meet this graver charge.



Now the cruelty. Now the law says in effect that he shall not keep the jail by himself, but his jailer, but it also says that he shall be the board to whom the prisoner may appeal as against the jailer, and that makes the two things inconsistent.

(Refer to Public Statutes, Sec. 42, on "Prisons.")

And the next section is in regard to furnishing a Bible or testament. That was not cruelty, because not letting them see the Bible they would not be tormented with the difference between the Divine law and the law of the House of Correction. But they put in this. Will you show me anywhere where the law says that they may put a man, by the night watchman or the turnkey, without any appeal to anybody, into solitary imprisonment? Nowhere that I know of. When he gets there can you take his board away that he has to sleep upon, which the law allows shall be there? Can you leave him without clothes? Can you put him in for ten days at a time, and no appeal or enquiry or hearing by anybody? Can you leave him to sleep on the stone floor all that time, and no water to wash in during that time, and all that under the pretence of having discipline? The two preceding sections are the discipline ones. But how "solitary" shall be enforced and how cells shall be are not within those sections, and the sheriff alone, or the county commissioners, or the directors of public institutions can put a man in there for ten days. And yet there are hundreds, thousands nearly, of cases of solitary imprisonment in that book, and in no case has the sheriff ever ordered one, or ever heard but one case, and then when the men came before him, and his accusation was that one was innocent and the other was guilty, he punished both. It is cruel. It is illegal. It is against the law and right. And the sheriff feels safe, because these poor creatures dare not complain, for if they do their bad habits will bring them back again, and they will have the very life knocked out of them.

And there was that boy singing a little hymn one Sunday afternoon. No disturbance, no noise. And the man Wilson came there, and the boy said that he did not think he was making any disturbance, did not think it was any harm to sing a Sunday School tune of a Sunday. He did not say he would keep on singing, but when he was excusing himself, saying he did not mean any harm, this man Wilson opened the cell door and took him down into that dungeon and shut him up there—a boy that ought to have been home with his mother, never should have been there at all. Some little boyish freak called larceny. And the boy commenced crying, and crying, and he said he was tied down there, and they said there was nothing for them to be tied to, and I brought that out, that there was some-

thing, in five minutes. But the boy broke a blood vessel, and they went down there in the night ; never enquired about it, never looked into his mouth, even. He says that they mopped it up before the doctor got down there. This man don't say that he did not. He only says that when he got down there with the doctor they did not see any blood, and I saw that, and I left it that way, for I saw what he would have said if necessary, but I didn't want him to commit any unnecessary perjury, so I didn't put the question. When he came out that blood vessel was found broken there, which even to this day breaks out, and he is spitting blood from time to time if he makes any exertion, and the boy is injured for life.

Now, I have gone over this question of justification. We say that if you find that Mr. Bigelow has anything to do with aiding Wardwell in distributing these pamphlets in the form put by them so that you find him liable, then I ask you what damages a man shall have who begins the quarrel, keeps it up, and goads his neighbor with all manner of libels, won't come and have a hearing before his neighbor to see whether he is right, and then, after he has goaded the man to death, and the man turns around, he then comes with an action for damages ?

The law about that matter will be given you by the Court, and upon the question of damages you have the right to take in the whole case as it stands, and the whole surrounding circumstances, and, judging from that, you may in your sound discretion give as little or as much—if you ever come to that question; and I shall not argue that for a moment—you can give as much or as little as you choose, and you think the case deserves. How much a man shall have under all the circumstances, is the law of the land upon that matter, if I understand it.

Gentlemen of the jury, I have done my duty so far as I could, and my failing health and strength of mind have not allowed me to do all I could, or ought to have, under other circumstances. I have been handicapped the whole way in the trial of this case, for I have been suffering under a sense of the injustice done to Wardwell by what was done here, and I cannot but remember when I saw him in my tent when he was doing yeoman's service in the cause of his country, and while I do not and never have (as you will see by the letters), agreed to all that he has done, yet I could not but feel that there was something unjust and wrong in the law, or its administration, that suffered him to be thus punished, and that his friend who was trying to save him for a lifelong usefulness to his country and to his kind, was in danger of suffering also.