

Duplicate

W. S.

REPORTS
OF
THE TRIALS

OF
DAVID T. CHASE AND JOHN W. FELLOWS

FOR AN ALLEGED CONSPIRACY, &c.:

AND OF

JIREH BULL

ON AN INDICTMENT FOR PERJURY,

IN THE COURT OF SESSIONS:

REPORTED BY

J. S. CARPENTIER.

NEW-YORK.

1829.

ADVERTISEMENT.

For the truth and correctness of a great proportion of the following Reports, I can vouch. I have taken much pains to obtain correct information of all the material facts of which I was not a witness, and believe the whole essentially correct. I have only to say, that if there are any errors, they have arisen from the incorrectness of my information, and not from intention.

THE REPORTER.

REPORTS.

The following Indictment was found on the 14th of February, 1828. It is deemed unnecessary to give a history of the transactions which led to it, as they are all developed in the course of the Reports and the Appendix.

City and County } *ss.* The Jurors of the People of the State of New-York, in and for the body of the City and County of New-York, upon their oath present : That David T. Chase, late of the First Ward of the City of New-York, in the County of New-York aforesaid, labourer, being a person of an evil disposition, ill name and fame, and of dishonest conversation, and devising and intending, by unlawful ways and means, to obtain and get into his hands and possession, the moneys, goods, chattels and effects of the honest and good people of the State of New-York, to maintain his idle and profligate course of life, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty-seven, at the First Ward of the City of New-York, in the County of New-York aforesaid, with force and arms, on the day and year last aforesaid, at the Ward, City and County last aforesaid, with intent to cheat and defraud one William W. Edwards and Jireh Bull, did then and there, unlawfully, knowingly and designedly, falsely pretend and represent, to the said William W. Edwards, that one John W. Fellows had lately commenced business in Canal-street, with a cash capital of eleven or twelve hundred dollars, and that certain notes for the payment of money, to wit, one for the payment of two hundred and ninety-six dollars and forty-seven cents, dated October 25th, 1827, payable in three months after date, and one other note for the payment of two hundred and eighty dollars and forty cents, dated October 25th, 1827, payable in four months after date, drawn by the said John W. Fellows, in favour of the said David T. Chase, and that certain other notes, amounting in the whole to nine hundred dollars, which the said David T. Chase then had in his possession, and exhibited to the said William W. Edwards, had been given by the said John W. Fellows to the said David T. Chase, for goods actually sold to the said John W. Fellows, and that the said notes would be paid by the said John W. Fellows, who was fully able to pay the same. And the said William W. Edwards then and there believing the said false pretence and representation, so made as aforesaid, by the said David T. Chase, and being deceived thereby, was induced, by reason of the false pretence and representation, so made as aforesaid, to deliver, and did then and there deliver to the said David T. Chase, a certain order for the payment of four hundred and fifty dollars, and of the value of four hundred and fifty dollars, of the proper moneys, goods, chattels and effects of the said William W. Edwards and Jireh Bull, and the said David T. Chase did then and there receive and obtain the said order for the

payment of money, of the said William W. Edwards, of the proper moneys, goods, chattels and effects of the said William W. Edwards and Jireh Bull, by means of the false pretence and representation aforesaid, and with intent to cheat and defraud the said William W. Edwards and Jireh Bull, of the said order for the payment of money ; whereas, in truth and in fact, the said John W. Fellows had not commenced business in Canal-street, and had not a cash capital of eleven or twelve hundred dollars, or any other amount of capital ; and whereas, in truth and in fact, the said promissory notes so exhibited by the said David T. Chase, to the said William W. Edwards, had not been given by the said John W. Fellows to the said David T. Chase for goods sold, or for any other consideration, and the said John W. Fellows was utterly unable to pay the said notes ; and whereas, in fact and truth, the said David T. Chase well knew the said pretence and representation so by him made as aforesaid, to the said William W. Edwards, to be utterly false and untrue, at the time of making the same.

And so the Jurors aforesaid, upon their oath aforesaid, do say that the said David T. Chase, by means of the false pretence aforesaid, on the said fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty-seven aforesaid, at the First Ward of the City of New-York, in the County of New-York aforesaid, unlawfully, falsely, knowingly and designedly, did receive from the said William W. Edwards, the said order for the payment of money, of the proper moneys, goods, chattels and effects of the said William W. Edwards and Jireh Bull, with intention to defraud them of the same, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New-York, and their dignity.

On examination, this Indictment was found to be defective. The Counsel of Mr. Chase communicated the fact to the District Attorney, with a request that it might be amended. Another Bill, of which the following is a certified copy, was accordingly found by the next Grand Jury, and returned on Thursday, the sixth of March.

City and County } The Jurors of the People of the State of New-
of New-York, } ss. York, in and for the body of the City and County
of New-York, upon their oath present : That David T. Chase, late of the First Ward of the City of New-York, in the County of New-York aforesaid, labourer, being a person of an evil disposition, ill name and fame, and of dishonest conversation, and devising and intending, by unlawful ways and means, to obtain and get into his hands and possession, the moneys, goods, chattels and effects, of the honest and good people of the State of New-York, to maintain his idle and profligate course of life, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty-seven, at the First Ward of the City of New-York, in the County of New-York aforesaid, with force and arms, on the day and year last aforesaid, at the Ward, City and County last aforesaid, with intent to cheat and defraud one William W. Edwards and Jireh Bull, did then and there, unlawfully, knowingly and designedly, falsely pretend and represent, to the said William W. Edwards, that one John W. Fellows had lately commenced business in Canal-street, with a cash capital of eleven or twelve hundred dollars, and that certain notes for the payment of money, to wit, one for

the payment of two hundred and ninety-six dollars and forty-seven cents, dated "October 25th, 1827," payable in two months after date, and one other note for the payment of two hundred and eighty dollars and forty-five cents, dated, "October 25th, 1827," payable in three months after date, drawn by the said John W. Fellows, in favour of the said David T. Chase, for goods sold, and that the said two notes would be paid by the said John W. Fellows, who was fully able to pay the same, and which said notes were then and there exhibited and delivered to the said William W. Edwards, and the said William W. Edwards then and there believing the said false pretence and representation so made as aforesaid, by the said David T. Chase, and being deceived thereby, was induced by reason of the false pretence and representation so made as aforesaid, to deliver, and did then and there deliver, to the said David T. Chase, a certain order for the payment of four hundred and fifty dollars, and of the value of four hundred and fifty dollars, of the proper moneys, goods, chattels and effects of the said William W. Edwards and Jireh Bull. And the said David T. Chase did then and there receive and obtain the said order for the payment of money, of the said William W. Edwards, of the proper moneys, goods, chattels and effects of the said William W. Edwards and Jireh Bull, by means of the false pretence and representation aforesaid, and with intent to cheat and defraud the said William W. Edwards and Jireh Bull, of the said order for the payment of money. Whereas, in truth and in fact, the said John W. Fellows had not commenced business in Canal-street, and had not a cash capital of eleven or twelve hundred dollars, or any other amount of capital; and whereas, in truth and in fact, the said promissory notes so exhibited, by the said David T. Chase, to the said William W. Edwards, had not been given by the said John W. Fellows to the said David T. Chase, for goods sold, or for any other consideration, and the said John W. Fellows was utterly unable to pay the said notes; and whereas, in fact and truth, the pretence and representation so made as aforesaid, by the said David T. Chase, to the said William W. Edwards, was in all respects utterly false and untrue, to wit, on the day and year last aforesaid, at the Ward, City and County aforesaid; and whereas, in fact and in truth, the said David T. Chase well knew the said pretence and representation, so by him made as aforesaid, to the said William W. Edwards, to be utterly false and untrue, at the time of making the same.

And so the Jurors aforesaid, upon their oath aforesaid, do say, That the said David T. Chase, by means of the false pretence aforesaid, on the said fifteenth day of November, in the year of our Lord one thousand eight hundred and twenty seven aforesaid, at the First Ward of the City of New-York, in the County of New-York aforesaid, unlawfully, falsely, knowingly and designedly, did receive from the said William W. Edwards, the said order for the payment of money, of the proper moneys, goods, chattels and effects of the said William W. Edwards and Jireh Bull, with intention to defraud them of the same, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New-York, and their dignity.

On the same day, Thursday, the sixth of March, the body of David T. Chase, who was confined in the Debtor's Prison at the suits of William W. Edwards & Co. and Arthur Tappan & Co., was brought up on a Writ of

Habeas Corpus, who pleaded *not guilty* to the Indictment, and declared ready for trial.

Mr. District Attorney. I will try you on Saturday.

Mr. Roome, the Jailor, here inquired if he might not take Mr. Chase back to the Debtor's Jail, stating that he would be responsible for his appearance.

Mr. Chase. I have sent for my Bail—they will be here in a few minutes—I will then enter into recognizances for my appearance to answer to this charge.

District Attorney to Mr. Roome. I have no objection to your taking him back, if you will agree to become responsible for him.

Court of General Sessions, Tuesday, March 11, 1828.

Present, the Hon. Richard Riker Recorder, and Aldermen and

Mr. Clisbe was associated with Mr. Maxwell, the District Attorney, for the People, and Messrs. Price and Sullivan for the defence.

The District Attorney opened the case to the jury.

William W. Edwards, sworn.

I am partner of the firm of Wm. W. Edwards & Co.—Have known Chase 2 or 3 years—Received from Chase these two notes (handed him) drawn by John W. Fellows in favour of Chase. Both dated October 25th 1827.—one for \$296 47 at two mos. and the other for \$280 45 at three mos.—Chase represented Fellows as having recently commenced business in Canal St. with a cash capital of \$1100 or \$1200—and that these notes had been given him in consideration of goods actually sold to Fellows.—In consequence of these representations, I advanced him the sum of \$450 on these two notes, which was to be repaid in a few days together with \$100 that he previously owed us, when the notes were to be given up.—I suspected that Fellows was only Chase's clerk, and had been put up to answer his ends, to enable him to raise the wind. The very next time I saw him, I charged him with my suspicions.—He said it was true that Fellows had been his clerk, and that other young men who had lived with him, had gone into business besides Fellows. I frequently conversed with him about it afterwards. He always repeated his assurances, that the notes would be paid. I have never received a cent of the money I advanced. The morning the first note became due, I received this letter from Chase, enclosing one purporting to be from Fellows to Chase, in which was contained another note with 60 days interest added. (Here the letter was produced and read, as follows.)

New York, Dec. 28, 1827.

William W. Edwards, Esq.

Dear Sir.

I have just received a letter from Mr. John W. Fellows which I hasten to lay before you.

The enclosed note I have thought proper to endorse, as I am short of money. I have no means by which I can obtain a dollar from the Banks, and I might as well attempt to "squeeze blood out of a turnip" as to borrow

the amount. In short, you must renew it. I would do myself the honor to wait on you, had I not a cause to attend to to-day.

Yours truly,

(Signed)

D. T. CHASE.

I would here state, that his store was but a short distance from ours, and in going to Court he must have gone right past it.

Cross-examined by Mr. Price.

The money was advanced to Chase on the 13th of November. There were other notes besides those of Fellows—one of John M. Holley for \$113 40 and one of George N. Sharpe of Troy for \$168 66 amounting in all to about \$900. Advanced the \$450 to Chase on the four notes. Advanced the money believing it would be paid.

Mr. Price here rose and desired the Court to notice that the witness now swore that he advanced the money believing it would be paid.

Cross-examination resumed. Only \$13 has been paid on Holley's note. Have frequently lent him money—may have lent him \$600 at a time—but generally from \$100 to \$300. (The Account Current furnished Chase by Edwards & Co. in which was comprised all their business transactions with each other, was here handed to witness in which the \$450 was particularly set forth as *cash lent*.) I furnished Chase with this Account Current. All the money he ever had from us, is here set forth as *cash lent*. Has been sued and held to Bail by Chase for slander. Does not recollect of having said in the store of Fellows that I would crush them both. Did not menace Fellows with my clenched fist. Was not at Chase's store-door on the morning of the 8th January. Did not call to some one to bring me a hatchet—was sick, confined to my room.

By the Court. Was induced to advance Mr. Chase the money from a combination of circumstances. The representation that Fellows was doing a good business with a cash capital. To secure \$100 of an old debt, and the deposit of other notes.

John W. Fellows sworn.

These letters (handed him) were written by me, but do not contain facts. They are false. I need not read them, I know what they are. I was arrested and put in Jail by Mr. Edwards. He promised that if I would make out on paper certain statements as he should dictate, he would immediately let me out of Jail. He said he wanted to humble Chase. That Chase had written him and Mr. Tappan insulting letters, calling them Hypocrites. I wrote them at the request of Mr. Edwards, to get out of Jail. I wrote them without the knowledge of Mr. Chase. Mr. Edwards knew they were false as well as I did. I did not know that he was going to make use of these statements to get Mr. Chase indicted. I did not know that they had got Mr. Chase indicted until Thursday evening the 14th of February, when Dwight, the clerk of Edwards, informed me of the fact, and that the trial of Mr. Chase was expected on the next day, Friday, and that Mr. Edwards would let me out the day following, on Saturday. (The testimony of this witness produced great excitement. The appearance of Mr. Edwards may be easily conceived, but not described.) Mr. Chase had nothing to do with my store in Canal street. I bought goods from Mr. Chase on a credit to the amount of \$1200 and upwards. These two notes (handed him) were

given on account of these goods. I had no capital when I commenced business, but told Mr. Chase that I had a cash capital of \$1200. I did then expect to receive that amount of capital from my friends. I believe Mr. Chase sold me goods on a credit in consequence of these representations. I was clerk for Mr. Chase before I went into business. Mr. Chase did not agree to give me any compensation for my services. My object was, to get a better knowledge of business. I am not of age. It was not agreed upon between Mr. Chase and myself, that I should be represented as a merchant in order to get goods or money. I was doing business in Canal street, exclusively on my own account.

The Counsel of Mr. Chase did not think it necessary to cross-examine this witness.

By the Court. I should never have written these letters, but for the supposition that I should get out of Jail. The application came from Edwards. He said he only wanted to humble Chase.

William W. Edwards recalled.

I never held out any inducements to Fellows, to make any written statements otherwise than what I well knew to be the truth. I can explain the whole story. They both told the same story until they had been in Jail a few days, when they fell out. Fellows wrote a letter to Mr. Tappan which I hold in my hand. One of Chase's friends saw it in my hands. He told Chase of it, and Chase immediately knocked Fellows down. After Chase was indicted Fellows told quite a different story.

Mr. Price. We want none of your explanations, Sir.

The District Attorney. It is all a hoax.

His Honor the Recorder. Mr. Fellows is your own witness, gentlemen. You cannot impeach him.

Arthur Tappan sworn.

I received a letter from Fellows proposing a full communication. Have known Chase about two years. He came to me recommended as a relation of mine. I felt disposed to assist him. He promised to consult me in relation to his affairs, but did not. When I heard he had a store in Canal street, I met him one day and asked why he had a store in Canal street? He hung down his head, but gave me no answer. On repeating the question, he said he should not have done it, if he could have got along without it.

Cross-examined. Chase is a cousin of mine. Have very serious doubts about his being a relation of mine. Did urge him to purchase umbrellas from me. Did tell him that I would give him a credit of 4 mos. on account of relationship. We generally sell on a credit of 60 days to others. It was for his own good that I urged him to buy umbrellas from me. I felt disposed to assist him. He is of a vindictive disposition. I am now a creditor. I have sued him.

Abraham R. Luyster, sworn.

I am a sufferer by this man. He bid off goods at auction. When Chase's clerk came for the goods, he said that Mr. Arthur Tappan was his endorser. This was sufficient. When the notes came, they were endorsed by Fellows. Chase said Fellows was doing a good business in Canal street, and had commenced business with a cash capital of \$1100. I afterwards threatened

to sue him. He laughed at me. He dared me to sue him. He said he would *non-suit* me as he had done Mill and Minton. I have received many letters from Fellows since he has been in Jail, calling Chase a villain and a rascal. (The witness here became very testy, and repeatedly menaced the defendant with his clenched fist, to the no little amusement of both Court and spectators.)

Mr. Price. Do not be irritated, Mr. Luyster.

Mr. Luyster. It is high time to be warm, and irritated too; when I am so swindled.

His Honor stated, that when the prosecution introduced a witness, and he testified contrary to what was expected, they could not impeach him. It is a rule in law, that the party can never impeach their own witness, and as the case now stood, the testimony of Fellows destroyed the allegations.

Mr. Clisbe. We should have indicted for a conspiracy.

Mr. Sullivan. I propose to call and examine the witnesses on the part of the defendant.

Mr. Price. An acquittal is sufficient.

Mr. Maxwell. Under this state of proof, we cannot ask for a conviction. It is a very swindling piece of business, no doubt, and had we indicted for a conspiracy, we should have reached it. But the Court of Errors have decided against actions of this nature.

The Jury without leaving their seats, immediately returned a verdict of *Not Guilty*.

A Bill of Indictment was found by the next Grand Jury, and returned on the 19th of April succeeding the trial, against both Mr. Chase and John W. Fellows, for a conspiracy to defraud William W. Edwards and Jireh Bull, and William and Abraham R. Luyster. The following is a certified copy.

<i>City and County</i> } <i>of New-York,</i> }	ss. * The Jurors of the People of the State of New-York, in and for the body of the City and County of New-York, upon their oath present: That David T. Chase, late of the First Ward of the City of New-York, in the County of New-York aforesaid, Yeoman, and John T. Fellows, of the Ward, City, County and State aforesaid, Yeoman, on the eleventh day of November, in the year of our Lord one thousand eight hundred and twenty-seven, at the First Ward of the City of New-York, in the County of New-York aforesaid, being persons of ill fame, name, and dishonest conversation, and wickedly devising, by indirect and unlawful means, to defraud William W. Edwards and Jireh Bull, of the firm of William W. Edwards & Co. of their money, goods, chattels and effects, on the eleventh day of November, in the year of our Lord one thousand eight hundred and twenty-seven, with force and arms, at the City, County and Ward aforesaid, unlawfully and fraudulently, did conspire, combine, confederate and agree between and among themselves, by unlawful and indirect means, to cheat and defraud the said William W. Edwards and Jireh Bull, of their money, goods and chattels, and the more effectually to carry into execution the said unlawful combination and con-
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* This indictment is supposed to be the work of a Mr. Wheeler, in which the name of John W. Fellows is included, apparently for the purpose of shutting out his testimony, though no act is charged against him in the Bill.

spiracy, the said David did then and there, falsely and fraudulently, state to the said William W. Edwards, that the said John was then a merchant of good standing and credit, and was worth and had a capital of eleven hundred or twelve hundred dollars, and that if the said William W. Edwards and Jireh Bull would advance to him, the said David, the sum of four hundred and fifty dollars, the said John would endorse for the said David, and that the endorsement of the said John would be good, ample and sufficient security for the repayment of the money so advanced. And further to carry on and perpetrate the said unlawful combination and conspiracy, the said David did then and there exhibit certain promissory notes to the said William W. Edwards, signed by the said John, and endorsed by the said David, as good, ample and sufficient security for advances of money, to be made by the said William W. Edwards and Jireh Bull, to the said David. The said William W. Edwards and Jireh Bull, by means of the said false and fraudulent assertions, and by means of the said combination and conspiracy aforesaid, did then and there advance to the said David, the sum of four hundred and fifty dollars. Whereas, in truth and in fact, the said John was not then and there a merchant of good standing and credit, but was a minor, within age, nor had the said John then and there eleven hundred or twelve hundred dollars, or any other large sum of money, but the said John was merely a tool and agent of the said David, to assist him to perpetrate and carry into execution the said combination and conspiracy, by false and fraudulent representations, allegations and statements, made by the said David, in relation to the credit and property of the said John. And in pursuance of the said conspiracy, combination and agreement, between and amongst them as aforesaid, the said David T. Chase and John T. Fellows, afterwards, to wit, on the eleventh day of November, in the year aforesaid, with force and arms, and the City, County and Ward aforesaid, by the means aforesaid, and in pursuance of the said fraudulent and unlawful combination and conspiracy, fraudulently and unlawfully, did cheat and defraud William W. Edwards and Jireh Bull of the sum of four hundred and fifty dollars, lawful money of the United States, of the value of four hundred and fifty dollars, and thereby, then and there, by the means aforesaid, did greatly impoverish and injure the said William W. Edwards and Jireh Bull, to the great damage of the said William W. Edwards and Jireh Bull, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New-York, and their dignity.

And the Jurors aforesaid, upon their oath aforesaid, do further present : That the said David T. Chase, and John T. Fellows, afterwards, to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and twenty-seven, at the First Ward of the City of New-York, in the County of New-York aforesaid, wickedly devising, by indirect means, to defraud William Luyster and Abraham R. Luyster, of the firm of William & Abraham R. Luyster, of the goods, chattels and effects of the said William and Abraham, on the eleventh day of November, in the year of our Lord one thousand eight hundred and twenty-seven, with force and arms, and the City, County and Ward aforesaid, unlawfully and fraudulently did conspire, combine, confederate and agree, between and amongst themselves, by unlawful and indirect means, to cheat and defraud the said William and Abraham of

their money, goods and effects, and the more effectually to carry into execution the said unlawful combination and conspiracy, the said David did then and there, falsely and fraudulently, state to the said Abraham R. Luyster, that the said John was a merchant of good standing and credit, and had a cash capital of eleven hundred dollars, and was in good and profitable business. Whereas, in truth and in fact, the said John was not then and there a merchant of good standing, and was not then and there in a good and profitable business, and had not then and there a cash capital of eleven hundred dollars, or any other large sum, but the said John was merely an agent and assistant for the said David, in devising unlawful plans, fraudulently to obtain money, goods and effects, of the good people of the State of New-York, and by means, and in pursuance of the said conspiracy, combination and agreement, between and amongst the said David and John as aforesaid, the said David and John afterwards, to wit, on the eleventh day of November, in the year aforesaid, at the City, County and Ward aforesaid, and in pursuance of the said fraudulent and unlawful combination and conspiracy, fraudulently and unlawfully, did cheat and defraud William Luyster and Abraham R. Luyster, of their goods, chattels and effects, that is to say, one piece of red flannel, of the value of ten dollars; one piece of red flannel, of the value of twelve dollars; four pieces of New-Orleans sheeting, each of the value of four dollars; one piece of red flannel, of the value of twenty dollars; three pieces of dimity, each of the value of twelve dollars; and thereby, then and there, by the means aforesaid, did greatly impoverish and injure the said William Luyster and Abraham R. Luyster, to the great damage of the said William Luyster and Abraham R. Luyster, against the form of the Statute in such case made and provided, and against the peace of the people of the State of New-York, and their dignity.

Mr. Chase entered into recognizances for his appearance, to answer to the charge, himself in \$2000, and two sureties in \$1000 each.

Court of General Sessions, Thursday, June 12, 1828. Present, His Honor the Recorder, and Aldermen Mott and Ostrander.

Mr. Clisbe and Mr. heeler were associated with Mr. Maxwell, the District Attorney, for the People, and Mr. George Sullivan, Counsel for Mr. Chase.

The following gentlemen were sworn to try the issue.

Henry Jackson, Merchant.

Moses Powell, Grocer.

Wilson J. Hunt, Grocer.

William Beck, Horse Feed Store.

George Richards, Distiller.

William H. Shipman, Auctioneer.

John Vanderbilt, Grocer.

Josiah A. Lane, Cabinet Maker.

William C. Boker, Clothier.

Thomas Rich, Grocer.

William Woram, Weaver.

Elijah S. Woolsey, Grocer.

Mr. Sullivan moved the Court for a separate trial for his client. He appealed to their Honors if the purposes of justice would not be better effected, to have the whole truth disclosed relative to this affair, which the cross examination of the defendants would supply.

He was proceeding, when Mr. Clisbe said he should oppose the motion, for *that* would give Fellows an opportunity to swear for Chase, and Chase to swear for Fellows.

Mr. Maxwell. I protest against the gentleman's entering into the merits of the case at this stage of the proceedings, but would thank him to confine himself to the Affidavit.

The following Affidavit was then read by Mr. Sullivan :

<i>David T. Chase</i>	}	In the General Sessions of the Peace. Indictment for Conspiracy.
<i>impleaded with</i>		
<i>John W. Fellows,</i>		
<i>ads.</i>		
<i>The People.</i>		

David T. Chase, one of the above named defendants, being duly sworn, doth, on his oath, depose and say, That John W. Fellows, one of the defendants in the above entitled cause, has been joined with this deponent in the Indictment now pending, and which was procured by certain complainants, as this deponent has reason to believe, with the intention, and for the express purpose, of preventing this deponent from having the benefit of his testimony on his defence, at the trial of this cause, and to prevent a full explanation and clear understanding from being had of the transactions, out of which the said complainants against this deponent have fabricated their false and malicious charges and allegations of conspiracies. That this deponent was arraigned before this honorable Court, at its session in March last, on a certain false criminal accusation preferred against him by some of the said complainants. That on that trial, the testimony of the said John W. Fellows, who was then a witness on the part of the People, threw such light upon the transactions, out of which that charge was fabricated, and which transactions were the very ones out of which this false and malicious charge has been fabricated, that the deponent was then acquitted. And that to prevent this deponent from having the benefit of the testimony of the said Fellows on this trial, and that to clog and impede the administration of justice, by throwing a veil of mystery over the said transactions, and keeping them in the dark, and from being fully and clearly explained to this honorable Court and a Jury of his country, the said complainants have hoped to procure the conviction of this deponent, and for that purpose, and with that view, wickedly and maliciously planning against the liberty, and what is still dearer, the reputation of this deponent, and devising means by which to injure, oppress and ruin him, have not scrupled, the more effectually to accomplish the said wicked and malicious plannings and devisings, to procure the said Fellows, whose testimony is very material, and of the utmost importance to this deponent, to be included in the Indictment, jointly with this deponent. And this deponent further saith, that he cannot safely proceed to the trial of this cause, unless he can have a separate trial, and be allowed the testimony of said Fellows, to the said material facts of said transactions. That said Fellows and this deponent are willing to be examined and cross-examined on said material facts, separately and apart, or in any manner that this honorable Court shall direct. That if these defendants were guilty, such examination would prove it, as in the complicated details of the transactions, out of which said complainants have fabricated their false and malicious charges against these defendants, it would be impossible for said Fellows and this deponent to tell consistent stories, and give a clear, consistent and unreserved account of said transactions, unless they be entirely free and innocent, of

all and every part of the criminal intentions charged against them. And further this deponent saith not. DAVID T. CHASE.

Subscribed and sworn to, this 12th day of June, 1828, in open Court.

RICHARD HATFIELD, Clerk.

His Honor the Recorder, said that the Jury had been sworn to try both Chase and Fellows, and that at that stage of the proceedings, a separate trial could not be granted, without the consent of the District Attorney.

The motion was not granted.

Mr. Clisbe opened the case to the Jury.

Abraham R. Luyster, sworn.

On the 31st. of October last, Chase bid off goods at auction. When his clerk came for the goods he said Mr. Arthur Tappan was his endorser. This was sufficient. The goods were delivered. On the 3d of November Chase bid off another bill of goods. That bill was obtained on the same conditions. Chase said he knew all about Fellows. That Fellows was doing a good business in Canal street, and had a cash capital of \$1100. Continual applications were making to Chase about the notes. I told him I must either have Tappan's endorsement or have cash. I threatened to sue him. He laughed at me. He dared me to sue him. He said he would *non-suit* me as he had done Mills and Minton. He said he could fill his store full of goods without any endorser. In January, the shop in Canal street was closed. I went to Mr. Tappan. He told me that if I wanted Chase I would be most likely to find him in Jail. I went there and found Fellows. Fellows told me that it would be of no use to keep him in Jail, as he had not a single cent when he commenced business, nor was he of age. I then went to Chase's store—his clerk told me that Chase had gone to Brooklyn.

Cross-examined. Never sold goods to Mr. Chase but at three different times. The first bill was on the 31st of October. The whole amount of the three bills was \$395. (The bill of October 31 was then handed to witness.) It contains the initials of my name. It is my order of delivery. Should not know the young man who came for the goods.

Mr. Sullivan here inquired if Mr. Sill was in court? Mr. Sill arose, and the witness continued. I do not know that this was the young man who came for the goods. Chase's clerk stated that he came for the goods, and that Mr. Arthur Tappan was Chase's endorser. He did not, before receiving the goods, shew me a card of Fellows, and state that Fellows would be Mr. Chase's endorser. (The bill of Nov. 3d was handed to witness.) It contains my Brother's order of delivery. Mr. Sullivan then produced Chase's Receipt-Book, it contained the following.

New York, Nov. 12, 1827.

Received from D. T. Chase his two notes at 4 mos. for two hundred and fifty-two 78-100 dollars for bills of Oct. 31. and Nov. 3.

\$252 78

(Signed)

W. & A. R. LUYSER.

The notes for which this receipt was given were drawn by Chase and endorsed by Fellows. These notes were not received from Chase. They were delivered to us by his clerk. I was present when this receipt was given.

But it was given by my Brother. (The bill of Nov. 14. was handed the witness.) This bill was bid off by Chase after we had taken the endorsement of Fellows for the two first bills. It contains my order of delivery. The goods were delivered to Chase's clerk. I afterwards received another note, drawn by Chase and endorsed by Fellows, and gave a receipt in full for the bill of Nov. 14. Never conversed with Mr. Chase about Mr. Fellows until after all the goods were bid off by Mr. Chase and delivered to his clerk. Never knew who Chase was, only by reputation, until after the last bill of goods was bid off and delivered. Did, shortly after, hear that Chase had lost several thousand dollars by the failure of some country merchants. I then went and told him that I had been at Mr. Tappan's and that Mr. Keeler, the partner of Mr. Tappan had told me that Mr. Tappan was his endorser. He said he had not an auction note out, with the name of Arthur Tappan on it. This conversation took place about the last of November. It was then that Chase told me Fellows had \$1100 capital. He never told me so before. I never conversed with him previously. I asked him for Arthur Tappan's endorsement. He said he would do just as he had agreed but no other way. I threatened to sue him. He dared me to sue him. He said he calculated to pay all his debts. He laughed at me because I threatened to sue him. I believe that Chase and Fellows combined to defraud, me. (The witness here became much irritated, and was accordingly dismissed.)

William W. Edwards, sworn.

I loaned Chase \$450. I was induced to advance the money on these two notes, (handed him,) drawn by Fellows, both dated October 25, 1727 at 2 and 3 mos. for \$296 47 and \$280 45. Chase stated that Fellows was a young man who had recently commenced business in Canal street with a cash capital of \$1100 or \$1200. Had not Chase made these representations I should never have let him have the money. He stated that the notes had been received for goods sold to Fellows. I suspected that Fellows was only Chase's clerk, and within two hours after I let him have the money, I met him and charged him with my suspicions. After Fellows was put in Jail he confirmed my suspicions. He then said it was only a plan between him and Chase to raise money.

Henry Jackson, a Juror. O, that is enough!

Cross-examined. Loaned the \$450 to Mr. Chase on the 11th of November.

Mr. Sullivan here arose and requested the Court to notice that this witness now swore that he loaned the \$450 to Mr. Chase on the *eleventh* of Nov. That the *eleventh* of Nov. was *Sunday*, and that this was the first instance within his knowledge of a conspiracy having been entered into on that day; and that every charge in the indictment was alleged to have taken place on the Sabbath.

Cross-examination resumed. There were other notes besides those of Fellows. One of John M. Holley for \$113 40 and another of George N. Sharpe for \$168 66 amounting in all to \$900. The note of Holley has been paid in part, and a new note endorsed by his brother given for the balance. Have very serious doubts about its being paid. Chase has owed us \$1200 borrowed money at a time. I suppose I loaned the \$450 on the

four notes. Might not have let him have it, if there had been no other notes than those of Fellows. Knew Fellows while clerk to Chase. Fellows had dined with me at my house, on one occasion, before he commenced business. Had been at Fellows' store a number of times before Fellows was put in Jail. Fellows had repeatedly declared that these notes had been given for goods he had purchased from Chase, and that he was doing business exclusively on his own account, and not otherwise; and that neither Chase or any one else had any thing to do with his store in Canal street. Fellows never told any other story until after he was put in Jail, but I had my suspicions all the while about it. When Chase got the \$450 he might have said that he was going to apply it to the payment of his note endorsed by Arthur Tappan. Did know about the 20th of Nov. that he had lately lost about \$3000 by the failure of the Messrs. Sharpes. Do not recollect saying to him that from appearances a judgment of \$300 would cover his whole stock. Do not recollect asking him how he was going to pay me and Mr. Tappan.

Mr. Sullivan. Did you not tell Mr. Chase that you had no objection to his going and purchasing goods from any and every body he could, on a credit, to pay you and Mr. Tappan?

Witness. I do not recollect.

Mr. Sullivan. Then I'll make you recollect it.

Mr. S. Did you not tell him that after you and Mr. Tappan were paid, you did not care how soon he failed?

Witness. I don't recollect telling him so.

Mr. S. Did you not tell Fellows, in his store, that you would crush both him and Chase?

Witness. I don't recollect.

Mr. S. Did you not menace him with your clenched fist?

Witness. No.

Mr. S. Were you not sued and held to bail by Mr. Chase, early in January last, for *slander*, and subsequently for a *malicious prosecution*?

Witness. I was.

Mr. S. Did you not tell Mr. Leach that Chase had written you and Arthur Tappan insulting letters, calling you *hypocrites*, and that to be revenged you would have him in the State Prison or Penitentiary, and on the treadmill?

Witness. I don't recollect.

His Honor the Recorder here inquired whether Mr. Chase had not been already tried and acquitted on the same charge? It was his duty to attend to the constitutional proviso which secured every man from having his liberty or life twice jeopardized for the same offence.

Mr. Sullivan challenged a thorough investigation into his client's character, and as he was desirous of removing all suspicions, he would not avail himself of any captious objections, or legal technicalities, but that he would prefer a fair and open investigation on the merits of the case.

His Honor replied, that sitting as he did, under his oath, he could not allow so great a constitutional principle of law to be violated. He would, however, charge the Jury to that effect, and leave it to their decision.

Charles M. Dwight, sworn.

Is clerk to William W. Edwards & Co. (Some letters, purporting to be

from Fellows, were handed to the witness.) Fellows had acknowledged the letters to be his hand writing.

Cross-examined. Fellows afterwards acknowledged that they were only written for the purpose of getting out of jail.

William W. Edwards recalled by the prosecution.

Some letters were handed the witness. He selected and read the following :
New-York, Jan. 30, 1828.

Mr. Arthur Tappan : Sir—The undersigned of this is a young man that has been wronged by Mr. Chase, and the said Mr. Chase is now about taking the benefit of the act, and therefore I wish to communicate to you upon the subject, and if you wish to deter him from taking the act, you will please call on me at the Jail, in the middle room, between doors, and if you wish ocular proof that there is goods which you and Mr. Edwards know nothing about, please call up in the course of the day, before half past 4 o'clock, and by that means you will save yourself, and a young man inexperienced in the acts of villany. Your ever obedient humble servant,

Arthur Tappan, Esq.

JOHN W. FELLOWS.

Some other letters, purporting to be from Fellows to the witness, were also read.

A Juror. Oh, you need not read any more—you have read a plenty of them.

Cross-examined by Mr. S. Fellows acknowledged, at the last trial of Mr. Chase, that he wrote these letters. He acknowledged, under oath, that they were all false, and only written for the purpose of getting out of Jail.

It now being half past 3 o'clock, P. M. the Court adjourned till half past 4, and by consent of the parties, the Jury separated.

When the Court reopened, Mr. Sullivan offered the following motion :

David T. Chase }

ads.

The People.

In General Sessions, June Term, 1828.

The said David T. Chase moves this honorable Court for a *Habeas Corpus ad Testificendum*, to bring up the body of John . Fellows from the Debtors' Jail, in the city of New-York, to testify in behalf of his defendant, in this cause now on trial.

DAVID T. CHASE.

The affidavit of Franklin S. Kinney was then read, by which it appeared, that Fellows had never been arraigned, nor pleaded to the Indictment. The following is a copy :

David T. Chase }

impleaded with

John W. Fellows,

ads.

The People.

Court of Sessions.

New-York, ss.

Franklin S. Kinney, Attorney at Law, being duly sworn, says, That he happened to be in the Court when the defendant, Chase, was called. That this deponent, knowing that his partner, Mr. Sullivan, was counsel for said Chase, informed Mr. Maxwell that Mr. Sullivan was then engaged in another court, but that the deponent understood said Chase was ready for trial. Mr. Maxwell asked deponent if he would plead to the Indictment? And this deponent did accordingly plead *Not Guilty* for said Chase, but did not intend to

be understood to plead for said Fellows, and according to this deponent's recollection, did not use any words which could be understood as entering a plea for said Fellows. That neither this deponent or Mr. Sullivan, are counsel for said Fellows in this prosecution, to this deponent's knowledge, nor have ever, in this deponent's knowledge, been employed for said Fellows in this prosecution.

F. S. KINNEY.

Sworn to in open court, the 12th day of June, 1828.

RICHARD HATFIELD, Clerk.

Mr. Sullivan then read his own affidavit, in the following words :

I, George Sullivan, on oath, depose and say, being duly sworn, That I have not been retained of counsel or attorney for the within named Fellows,* nor have I had any communication with him, directly or indirectly, in relation to this prosecution, nor am I of counsel for him, nor did I authorise any one to appear and plead for him, nor did I put in any plea for said Fellows, nor know that any one was put in, but was under the impression that said Fellows had not put in any plea, even till after the Jury were impanelled, and it appears from the record, as well as from the affidavit of Mr. Kinney, that the said Fellows has not pleaded to this indictment.

GEORGE SULLIVAN.

His Honor the Recorder stated, that if there was any irregularity in the present trial, it would be a good ground for a new one. No order was, however, issued for the appearance of Fellows.

Henry Jackson, one of the Jurors, here reached over to the table and took up a garbled and very erroneous report of the former trial, published in the Journal of Commerce, in which it was alleged that Chase had purchased, within a few days, *thirteen* bills of goods from the Messrs. Luysters, and promised them the endorsement of Arthur Tappan, which he appeared to peruse very attentively.

Hinman, sworn. I went to the Jail to get Fellows to confess a judgment in favor of William W. Edwards & Co. I went at the request of Mr. Bull, the partner of Mr. Edwards. Fellows refused to confess a judgment. He said the property in the store in Canal-street belonged to Chase.

Mr. Maxwell. We shall rest here.

Mr. Sullivan opened the defence.

Henry W. Sill, sworn.

Witness was clerk to Mr. Chase for more than two years. On the 31st of October, Mr. Chase directed me to go down to the store of W. & A. R. Luyster, and get some goods, which he had that day bid off at auction. He directed me to take a card of John W. Fellows along with me, and should the question be asked, who was his endorser, to exhibit the card, and state that John W. Fellows would be his endorser. Before I received the goods, I exhibited the card of Fellows to one or to both of the Messrs. Luysters, and did explicitly and distinctly state that Mr. Chase had instructed me to state that John W. Fellows would be his endorser. I never told either of the Messrs. Luysters, that Mr. Arthur Tappan would be Mr. Chase's endorser. I told them it would be John W. Fellows.

Mr. Luyster sprung up in a great rage, and declared he would not be contradicted. [Much laughter.]

* The affidavit of Mr. Sullivan was written on the same sheet with that of Mr. Kinney.

Mr. Sullivan. I will thank you to keep that man still.

Mr. Maxwell. Sit down, Mr. Luyster.

Mr. Luyster. I will not be contradicted.

The Court. You must keep still, Mr. Luyster.

To the witness: Have you heard the testimony of Mr. Luyster?

Witness. Yes, Sir.

Court. Is it true or false?

Witness. It is *false*.

Mr. Luyster here again broke out most violently, declaring that he would not be contradicted.

Mr. Maxwell. Mr. Luyster, you shall sit down and keep still. (Laughter.)

Direct examination resumed by Mr. Sullivan. I believe both of the Messrs. Luysters were in the store. I called for the bill of D. T. Chase. Mr. Abraham R. Luyster inquired who endorsed for Mr. Chase? I then handed him the card of John W. Fellows and *explicitly* and *distinctly* stated that Mr. Chase had instructed me to tell them that John W. Fellows would be his endorser. Mr. Luyster then asked me who Mr. Fellows was? I told him that he was a young man who had recently commenced business in Canal street, and that I understood that he had a cash capital of \$1100 or \$1200. (The bill of Oct. 31 for \$147 15 was handed to the witness.) I received this bill with the goods, on the 31st of October. (The bill of Nov. 3 for \$105 63 was handed the witness.) I received this bill with the goods, on the 3d of November. On the 12th of Nov. Mr. Chase directed me to take two notes down to the store of W. & A. R. Luyster in payment for those goods. (Mr. Chase's Receipt-Book was handed the witness.) This is the receipt which I received for the bills of Oct. 31 and Nov. 3.* The notes were drawn by Mr. Chase and endorsed by Mr. Fellows. On the 14th of Nov. I received other goods from the Messrs. Luysters, after they had taken the notes endorsed by Fellows for the two first bills. Afterwards Mr. Abraham R. Luyster came and took a third note endorsed by Fellows, and gave a receipt in full for the bill of Nov. 14. The identical goods purchased by Mr. Chase from the Messrs. Luysters, were immediately sold and delivered to the Messrs. Sharpes of Albany and Troy, by whose failure a few days after, Mr. Chase lost several thousand dollars. Mr. Fellows formerly lived with Mr. Chase. Fellows went into business in Canal street, in his own name. Mr. Chase sold him goods on a credit, to the amount of \$1200 and upwards. I charged them myself, and saw them delivered. On the morning of the 13th of Nov., I received these two notes, (handed him) from Mr. Fellows on account of those goods, both dated the 25th of October 1827, at 2 and 3 mos. for \$296 47 and \$280 45. (A note of which the following is a literal copy, was then handed to witness.)

\$592 62

New York, May 10, 1827.

Six months after date, I promise to pay to the order of Mr. Arthur Tappan five hundred and ninety-two 62-100 dollars, value received.

F. 497 Nov. 10-13.

(Signed)

D. T. CHASE.

ARTHUR TAPPAN, }

JOHN HONE & SONS, }

Endorsers.

(Stamped in large capitals) Paid at the Fulton Bank.

* See the receipt of W. & A. R. Luyster, p. 13.

Witness. This note was paid by Mr. Chase on the 13th of November, at the Fulton Bank. The same day this note was paid, Mr. Chase added to the cash account, a check for \$450 signed by Wm. W. Edwards & Co.

It was dated the 13th of November. I believe it was drawn on the City Bank. I made up the Bank account myself, and counted the check as cash. It amounted altogether to \$607 which was deposited in the Bank of America where Mr. Chase kept his account. Previous to this deposit Mr. Chase had only \$12 40 in the Bank of America, as appeared by his check book. The money received in payment of the check signed by Wm. W. Edwards & Co. was applied to the payment of this note of \$592 62 endorsed by Arthur Tappan. (A check, of which the following is a copy, was handed the witness.)

New York, Nov. 13, 1827.

Cashier of the Bank of America. Pay to ——— or Bearer, five hundred and ninety-two 62-100 dollars.

\$592 62.

D. T. CHASE.

Witness. I drew this check myself, and Mr. Chase signed it. After the deposit was made, the money was drawn out of the Bank of America, and the note paid. I have since received this check from the Bank. (The Day-Book B. was handed to witness by which it appeared that on the 13th of November, page 162, two notes of John W. Fellows for \$296 47 and \$280 45, one of John M. Holley for \$113 46, and another of George N. Sharpe of 168 66 were charged to Edwards & Co and \$450 credited.)

Witness. This entry was made on the 13th of November. Mr. Chase's Books were kept correctly. His payments during the last year were much greater than the amount of his purchases. His affairs became involved in consequence of the failure of the Sharpes. His character and habits were good. I do not believe he ever intended to wrong any one. I slept in the store with him. He manifested the greatest concern and anxiety for my morals.

By the Court. Is positive that the money received in payment of the check of \$450 signed by Wm. W. Edwards & Co. was applied to the payment of Mr. Chase's note of \$592 62 endorsed by Arthur Tappan, and that the goods purchased by Mr. Chase from the Messrs Luysters were sold to the Messrs. Sharpes, by whose failure a few days after Mr. Chase sustained loss of the amount.

Cross-examined. Mr. Chase did not tell me to tell the Messrs. Luysters when I went for the goods, that Fellows had \$1100 or \$1200 capital. I told Mr. Luyster so of my own accord and from my own impression and belief of the facts. Mr. Chase never instructed me to tell any one that Mr. Fellows had any capital whatever. Some person called to inquire about Fellows, about the time Fellows first commenced business. I then heard Mr. Chase say that he sold Fellows goods on a credit, and that he had a capital of \$1100. I do not recollect of ever having heard Mr. Chase say so more than once. I took it for granted that Fellows had that amount of capital. If Mr. Chase had known that Mr. Fellows had no capital, I do not believe he would have credited him. Mr. Chase has lost upwards of

\$600 by the failure of Fellows. The flannels, circassians, sheetings, and dimities with a number of other articles purchased from the Luysters were sold to the Messrs. Sharpes. Has seen Fellows in Chase's store. Has seen a great many people in Mr. Chase's store. Is confident that Mr. Chase was not in any manner interested in Mr. Fellows' store except as a creditor. Left Mr. Chase in April last. I am perfectly independent of him. I now live with Fellows & Storm in Maiden-lane.

Testimony of this witness produced an impression seldom witnessed in a Court of Justice ; a fine looking young man, apparently about 19 years of age, and perfectly calm and deliberate throughout.

Samuel C. Howe, sworn.

Witness was clerk to Mr. Fellows from about the time Fellows first commenced business in Canal street, to the time of his failure in January last. Lodged in the store. Mr. Fellows slept there also. Mr. Fellows was doing business in his own proper person as principal and exclusively on his own account. Mr. Fellows purchased a good many goods from Mr. Chase. Mr. Chase sometimes purchased some articles from Mr. Fellows. Those articles were all regularly charged to Mr. Chase, and many of them were charged by me by direction of Mr. Fellows. I was present at the time Mr. Chase's clerk called and obtained the notes now held by Mr. Edwards. I saw Mr. Fellows draw them. They were given in consideration of goods purchased from Mr. Chase. I have no doubt Mr. Fellows would have got along in business and made his payments, if he had not been sued and put in Jail by Mr. Edwards. He was both industrious and prudent. He appeared very careful in the management of his business. I still think him an active and intelligent young man. I have seen Mr. Edwards in the store of Mr. Fellows a number of times. The last time he came he threatened Mr. Fellows and menaced him with his clenched fist. He said he would crush both Mr. Fellows and Chase. I am confident Mr. Chase had nothing to do with Mr. Fellows' store except as a creditor. I believe Mr. Chase has lost upwards of \$600 by the failure of Fellows. I never saw any thing out of the way in Mr. Fellows until after he was put in Jail. (The witness says, that in making exception to the conduct of Fellows, he referred to the letters written at the instigation of Edwards.) He appeared very uneasy and anxious to get out.

Cross-examined. I have seen Mr. Chase at Mr. Fellows' store. I have frequently heard them converse together. After Mr. Fellows was put in Jail, Mr. Chase came and told me that Mr. Fellows had authorised him to come and take an account of stock. We went to work and measured and invoiced the whole of it accordingly. The goods were taken away by the order of Mr. Chase. They were afterwards sold at auction. Mr. Fellows had confessed a judgment in favour of Mr. Chase. The same or following day I went and told Mr. Fellows what had taken place. He said it was all right, as the principal part of what he owed was to Mr. Chase, and that it was his duty to secure him first. After Mr. Chase was put in Jail at the suit of Edwards & Co. he gave me a note of \$290 27 drawn by Augustus V. Sharpe and endorsed by Wm. W. Edwards & Co. and himself, and requested me to have it collected forthwith. I went and sued Edwards and Bull and obtained an order from the Judge to hold them to bail. I brought

the action in my own name. Mr. Chase afterwards told me I should have brought the action in the name of Amos Chase as the note had been assigned to him. I know nothing against Mr. Chase. Is positive that all the dealings between Mr. Chase and Fellows were perfectly regular business transactions. Had there been any conspiracy between them I must have known it.

James Cummings, sworn.

I have known Mr. Chase about four years. He lived with me about six months when he first came to New York. I have frequently sold him goods and bought goods from him. I have lent him money a great number of times, and have went and borrowed money for him when I did not have it myself. I believe him entitled to the fullest confidence. I believe his general character good. After he had lost about \$3000 by the Sharpes, and it had become well known, Abraham R. Luyster came and told me that Tappan ought to pay his demands against him, as Tappan had recommended him. When he failed he owed me about \$250. He confessed a judgment in my favour. He has always paid me very honourably.

Cross-examined. I am one of Mr. Chase's bail. About the time he failed, some goods came to my store. He afterwards confessed a judgment in my favor, and the Sheriff came and levied on them and took them away. Has heard all the testimony on the part of the prosecution. Have the same confidence in him now that I ever had. I would credit him again without hesitation, were he out of his present embarrassments.

Francis Woods, sworn.

Witness resides at Saco, in the state of Maine. Is well acquainted with Mr. Chase, and with the whole family. They are highly respectable. I have had frequent dealings with him. His character stood fair, and I never heard any thing to the contrary.

Cross-examined. Has known Mr. Chase ever since he was a boy. Has not seen so much of him since he resided in New-York as formerly. Has heard the testimony on the part of the prosecution. I have the same confidence in him now that I ever had.

The affidavit of Jacob Bininger was then read, by consent of the parties, Mr. Bininger having left the city. It was as follows :

Jacob Bininger, being duly affirmed, doth declare and say, That he has been acquainted with David T. Chase for more than two years last past, and immediately preceding the date hereof. That in May, 1826, said Chase rented a store of this affirmant, at No. 12 Maiden Lane, where he kept during that and the greater part of the succeeding year, at a rent of \$600 and \$650 per annum. That on first applying for said store, said Chase referred this affirmant to Arthur Tappan, who gave him a satisfactory character for probity and integrity, which, as far as I could observe, he afterwards fully supported. And this affirmant further saith, That he has had frequent dealings with the said David T. Chase, that he has frequently lent to said Chase, money to a considerable amount, and his engagements have always been fulfilled. That this affirmant lived with his family, in the residence of the premises occupied by Mr. Chase as a store, No. 12 Maiden Lane, and having had a good opportunity to observe, can without hesitation declare that he believes said Chase to be a young gentleman of industry and perseverance, and that this af-

firmant believes that he has, previous to this, sustained an unblemished reputation; and further this affirmant saith not.

JACOB BININGER.

Subscribed and affirmed to, this 7th day of June, 1828, before me,

F. S. KINNEY, Commissioner, &c.

William E. Champlin, sworn.

I have been acquainted with Mr. Chase for more than two years. His general character is good. I believe his principles good. I have the same confidence in him now that I ever had.

Cross-examined. I am not at all intimate with Mr. Chase. He used at some times to stop into our store. Has heard the testimony on the part of the prosecution. Would credit him now, were he out of his present embarrassments. My confidence in him is not in the least impaired.

David S. Turner, sworn.

I have been acquainted with Mr. Chase about two years. I have heard the testimony on the part of the prosecution. I believe his general character good. I have the same confidence in him now as ever. Would credit him again to a moderate amount, were he out of his present embarrassments.

Cross-examined. Is not intimate with Mr. Chase.

Daniel E. Rapelye, sworn.

I have been acquainted with Mr. Chase about four years. I believe his general character good. I never heard any thing against him until this affair. I have had dealings with him, and have the same confidence in him now that I ever had. Would credit him again, were he out of his present embarrassments.

Cross-examined. Has heard the testimony on the part of the prosecution. Is not at all intimate with Mr. Chase.

John M. Holley, sworn.

William W. Edwards & Co. held my note for \$113 40. It was a note I had given Mr. Chase for goods. When the note became due, I paid \$13 40 on it, and gave a new note for the balance, endorsed by my brother, of the firm of Hyde & Holley. I have no doubt but that the note is good, and will be paid. I have known Mr. Chase about two years. His general character is good. I have bought goods from him, and have also sold him goods. I have the same confidence in him now as ever. I would trust him as soon as I would any man, were he out of his present difficulties. I believe his principles are good.

Cross-examined. Has heard the whole of the testimony on the part of the prosecution. Is not at variance with Mr. Edwards, nor intimate with Mr. Chase.

William W. Holley, sworn.

I belong to the firm of Hyde & Holley. William W. Edwards & Co. hold our check for \$100. It was given on account of a note of \$100, drawn by my brother, and endorsed by me. The check is good, and will be paid.

Mark Leach, sworn.

I had an interview with Mr. Edwards about the 20th of January last. Mr. Edwards said Chase had written him and Arthur Tappan insulting letters, in which he had called them hypocrites, and that to be revenged on him he would

send him to the *Penitentiary*, or *State Prison*, and he further said he would have him on the *treadmill*.

Franklin S. Kinney, sworn.

I went to Troy, and from what I saw and learned of the Sharpes, I am convinced that Mr. Chase's sales to them were *bona fide*.

Mr. Sullivan said he would rest the defence.

Thomas W. Pearsall called by the prosecution.

We hold notes of Mr. Chase that are now protested.

Cross examined. I know nothing against Mr. Chase. Never heard any thing against him until this affair. He has bought goods from us a number of years. He owed us less when he failed than at any other time.

Sylvester Mills, sworn.*

Chase bought goods from us at auction. The goods were delivered. It was a bill of \$100. He promised to pay us on the following Saturday. He did not pay according to his promise. I think him a man of doubtful character.

Cross-examined. Mr. Chase does not now owe us any thing. Has not been on good terms with Chase. Has had some difficulty with him relative to some business transactions. He would not give us the endorser we wanted.

Arthur Tappan, sworn.

I profess to know very little about this affair. Chase came recommended as a relation of mine. I felt disposed to assist him. He promised to consult me in relation to his affairs, but did not. I asked him one day why he had a store in Canal-street? He hung down his head, and gave me no answer. On repeating the question, he said he should not have done it if he could have got along without. I conceive that his representations, from his first coming to New-York, three or four years ago, have been a system of fraud from beginning to end, in stating that he had a capital when he had none. I have no doubt, from Chase's own words, but that he was concerned in the store in Canal-street; at least, that is my suspicion.

Cross-examined. I never told Chase I would sooner go to the *Theatre* than to the *Unitarian Church*. Bad as I believe the *Unitarian Church* is, I think the *Theatre* worse.

[The following remarks upon this part of the testimony are from the *Morning Courier*.]

"What will the Unitarians think of this denouncement, under oath, of their religion? Was it called for? or will the opposers of their doctrine approve of its being thus publicly denounced? The sanctity of this witness was so extremely shocked at the profane allusions of Mr. Sullivan to these abodes of the *wicked*, that he was obliged to demand the protection of the Court. But his Honor the Recorder, not having been accustomed by nature to *grin* just so religiously as this witness, could afford him no protection, but desired him to answer as well as he possibly could, under all the circumstances."

Cross-examination resumed. I know Chase had no capital, by the letters he wrote me while in jail. My lawyer, Mr. Mulligan, has those letters. I gave them to Mr. Mulligan to prevent Chase from getting the *benefit of the act*.

* See Appendix A.

Mr. Sullivan. Can't you send to Mulligan and get those letters, Mr. Tappan?

Witness. No, Sir, I cannot.

Mr. Sullivan. Have you not held a judgment bond over Mr. Chase's head?

Witness. I have; but I did not get it for my own security, but for the security of the other creditors.

Mr. Sullivan. Did any of the other creditors ever ask you to get one?

Witness. No.

Mr. Sullivan. Did any of the other creditors ever know that you had one, till you entered up judgment on it?

Witness. No.

Mr. Sullivan. Did you ever tell any of the other creditors, or any one else, that you had a judgment bond?

Witness. No.

Mr. Sullivan. Did you obtain the bond before or after Mr. Chase commenced business in New-York?

Witness. Before he commenced business.

Mr. Sullivan. When you sued him on the bond, did you sue him for the benefit of his other creditors, or for your own benefit?

Witness. I sued him for my own benefit.

Did you not propose to endorse for Mr. Chase after he commenced business?

Witness. I did.

Mr. Sullivan. Did you not shortly after induce Mr. Chase to sign an instrument, by which he became obliged not to ask or receive the endorsement of any other person besides yourself?

Witness. I suppose I did.

Mr. Sullivan. Did you ever endorse more than three auction notes for Mr. Chase?

Witness. I did not like his conduct, and I withdrew my assistance.

Mr. Sullivan. Did you not endorse all three of the notes to which I allude on the same day?

Witness. I don't recollect, but I believe I did.

Mr. Sullivan. Did you not get Mr. Chase to sign the judgment bond, and another instrument or two, the same day you endorsed these notes?

Witness. It was the same day, or day following.

Mr. Sullivan. This was before Mr. Chase commenced business, was it not, Mr. Tappan?

Witness. No. It was two or three years after.

Mr. Sullivan. Did you not say but just now, that you obtained the judgment bond of Mr. Chase before he commenced business?

Witness. I suppose I did, but it was after he commenced business?

Mr. Sullivan. Did not Mr. Chase purchase a good many goods from you the first year after he commenced business?

Witness. He did not purchase a *great* many from me.

Mr. Sullivan. Did Mr. Chase purchase any goods from you the second year he was in business?

Witness. Very few, if any.

Mr. Sullivan. Now I'll ask you, Mr. Tappan, if it was not in June, 1827, that you obtained this judgment bond, and other instrument, from Mr. Chase?

Witness. Come to think of it, I believe it was.

Mr. Sullivan. This was the *third* year he was in business, was it not?

Witness. I think it was.

Mr. Sullivan. Was it not also in June, 1827, that you endorsed these notes for Mr. Chase?

Witness. Yes.

Mr. Sullivan. When Mr. Chase applied to you to endorse for his next auction purchase, did you not tell him that he had no business to go to auction at all, but to purchase his goods at private sale, and from those who had but one price?

Witness. I did. I kept the kind of goods which were best for him to keep.

Mr. Sullivan. Is it not generally understood that you have but *one price*, Mr. Tappan?

Witness. I never abate any thing from the price first asked.

Mr. Sullivan. Did you not at that time urge him to purchase umbrellas from you?

Witness. No. I never did.*

Mr. Sullivan. Did you not tell him that you would give him a credit of four months on account of *relationship*?

Witness. No, never.* He is of a vindictive disposition. He quarrelled with Chalmers, Cross & Leach.

Mr. Sullivan. Mr. Leach is one of his witnesses, and is now in court.

Witness. Well, it was either Chalmers or Cross, then; and he fell out with one of the banks, and offered a note for discount, for \$10,000, payable in ninety years after date. He is always engaged in law. He is always in court. He is eternally in court.

Mr. Sullivan. Answer me one question at a time, if you please, Mr. Tappan. [The note of \$592 62,† endorsed by the witness, was handed him by Mr. Sullivan.] Do you not know that this note has been paid, Mr. Tappan?

Witness. All I know about it, is, that it is endorsed by me. I do not know that it has ever been paid. I would not say I thought it had ever been paid.

Mr. Sullivan. You will not pretend to deny that it is endorsed by you, will you, Mr. Tappan?

Witness. I have told you as plain as I could speak, that I knew nothing about it.

Mr. Sullivan. How do you suppose Mr. Chase came in possession of this note, if he had not paid it?

Witness. I am not going to s'pose any thing about it.

Mr. Sullivan. Had not this note been paid by Mr. Chase the day it became due, would you not, as endorser, have been notified of the fact the next morning?

Witness. I s'pose I should.

* See the testimony of this witness on the preceding trial, page 8.

† See the note mentioned in the testimony of Henry W. Sill, page 18.

Mr. Sullivan. Now I'll ask you, Mr. Tappan, if you believe, or have any reason to think, that this note was paid by any other person than Mr. Chase?

Witness. I didn't pay it, and I'm not going to think or suppose any thing about it.

Mr. Sullivan. Did you not threaten to shut Mr. Chase up, after you had got the bond and the other instrument from him?

Witness. I thought it would be for his interest to purchase his goods at private sale.

Mr. Sullivan. He still persisted in going to auction, after you told him you would give him a credit of four months on account of relationship, did he not.

Witness. When he first came to New-York, he promssed to consult me in relation to his affairs, but did not.

Mr. Sullivan. Did you not get the bond and other instrument from Mr. Chase, to prevent him from purchasing at auction, and with the intention of compelling him to purchase his goods of you?

Witness. I kept the kind of goods he wanted, and I thought it best for him to buy at private sale.

Mr. Sullivan. After you had got him cleverly tied up, you refused to endorse any more for his auction purchases, did you not?

Witness. I have told you over and over again, that I did not like his manner of conducting his affairs, and I withdrew my assistance.

Mr. Sullivan. You are a creditor of Mr. Chase's, are you not, Mr. Tappan?

Witness. Yes.

Mr. Sullivan. You have sued him, have you not?

Witness. I have.

Mr. Sullivan. Was he not held in jail on the bond he had executed in your favor?

Witness. I suppose he was. I could not find any property to levy on.

The witness having become extremely irritated in the course of his cross-examination, Mr. Sullivan permitted him to retire.

William W. Edwards, recalled.

I had a note of Augustus W. Sharpe for \$290 27. It was endorsed *Wm. W. Edwards & Co.* I let Chase have it to collect. He went and sued us on that very note.

Cross-examined by Mr. Sullivan. I first had the note from Mr. Chase. Since we gave him that note, we have furnished him with a *general account current*. There is no mention made of the note in that account current. He first let us have the note, and afterwards came and said he wanted that note, and we left our name on it when we gave it him. The suit on that note is still pending against us.

The testimony on both sides here closed.

Mr. Sullivan addressed the Jury in a speech of about one hour, and was followed by Mr. Maxwell on the part of the People.

His Honor the Recorder, in charging the Jury, briefly recapitulated the evidence. He dwelt particularly on the two prominent points in the case: The one—that the \$450 charged in the indictment to have been fraudulently obtained from Edwards & Co. was, on the same day it was obtained, applied

by Chase to the payment of his note of \$592 62, payable to the order of and endorsed by, Arthur Tappan. The other—that the identical goods purchased by Chase from the Luysters, were sold to the Sharpes, by whose failure a few days after, he sustained not only loss of the amount, but an actual loss of several thousand dollars. This, said his Honor, is precisely the state of the proof, as it regards the material facts, and in the opinion of the Court, it is supported by evidence the most direct and unequivocal. The testimony of Mr. Sill is conclusive on this head. He stands before you unimpeached, and a variety of circumstances, independent of his oath, go conclusively to show the truth of his statement.

That the \$450 in question was applied to the payment of this note endorsed by Tappan, the Court entertains not a solitary doubt.

It appears that the notes of Fellows, as well as the other notes negotiated to Edwards, were given to Chase for goods sold, and in the regular course of business, and that Chase was in no manner interested in the business of Fellows, except as a Creditor.

Both Sill, and Howe, the clerk of Fellows, swear positively to this. Does it not appear reasonable that Chase supposed, at the time when he made those representations to Edwards, that Fellows had actually commenced business with a capital? This may fairly be inferred, from the decisive circumstance, that Chase sold goods to Fellows to the amount of more than \$1200, on credit. It also appears that he is, in fact, himself the greatest sufferer by the failure of Fellows. Now, gentlemen, it remains for you to determine whether fraud was intended, at the time this money was obtained. Would it not seem more reasonable to suppose, that in case fraud was his intention, he would have put the money into his pocket, instead of devoting it to the payment of Tappan's note? In order to find a verdict against him on this count, you must be satisfied, that at the time he obtained this money, *he intended to defraud Edwards in order to pay Tappan.*

Mr. Luyster stands contradicted in a material point of view. He swears that previously to the delivery of the first bill of goods bid off by Chase, he had been promised the endorsement of Tappan. On his cross-examination, however, it appears that he never saw Chase, and that Chase made no representation to him whatever, relative to Fellows, until after all the goods bid off by him had been duly delivered, and the principal part of them settled for. That notwithstanding he had been promised the endorsement of Tappan, he received from Sill two notes drawn by Chase and endorsed by Fellows, and gave a receipt in full for the two first purchases. If he had been promised the endorsement of Tappan, does it not appear strange that he should take the endorsement of Fellows, and still more strange that he should afterwards deliver other goods, and receive *a third note endorsed by Fellows?* Sill swears positively, that before he received the first parcel of goods, he exhibited the card of Fellows to Mr. Luyster, in accordance with his instructions, and explicitly and distinctly stated, that Fellows would be Chase's endorser. There does not appear to be any testimony whatever, in support of the allegations in the indictment, that Chase made any representations to induce Luyster to part with his goods. Sill admits, that when he delivered the notes to Luyster, he remarked that he believed Fellows commenced business with a capital of \$1100 or \$1200, but he also says that Chase never instructed him

to state to any one that Fellows had any capital whatever. It seems that the identical goods purchased by Chase from Luyster, were sold by him a few days afterwards to some country merchants, by whose failure shortly afterwards he sustained loss of the amount. And here the same question may with propriety be again asked, whether, in case Chase had intended fraud at the time he purchased these goods, he would not have converted them into cash, and put the money into his pocket?

It seems that his affairs became involved in consequence of the failure of the Sharpes, and that their notes, on which he chiefly depended to meet his own payments, became worthless in his hands.

Mr. James Cummings, who relates his conversation with Mr. Luyster, testifies that Luyster, by his own confession, did not expect the endorsement of Tappan, until after it had become well known that Chase had lost several thousand dollars by the failure of the Sharpes. It also appears that Chase's payments, during the last year, were much greater than the amount of his purchases, which is a circumstance much in his favor; and that the losses he sustained, by impairing his credit, compelled him to stop payment. If an individual is to be subject to criminal prosecution on account of misfortunes beyond his control, there will be no safety in doing business.

A number of highly respectable witnesses have here come forward and testified that the general character of Chase is good, that he is entitled to the fullest confidence, and that were he out of his present embarrassments, they would credit him again. You, gentlemen, have heard all the testimony produced on both sides. Should you be of opinion that the defendants, at the time specified in the indictment, entered into a conspiracy to defraud Edwards and the Luysters of their money and goods, let the consequence be what it may, it will be your duty to convict them. But if, under all the circumstances, you should have in your minds a reasonable doubt of their guilt, it will be your imperative duty to acquit them. It is an established maxim of the law, and one based on the immutable principles of Justice, that where a reasonable doubt exists in the minds of the Jury, it ought to be exercised in favor of the accused.

The Jury retired at twenty minutes past eleven o'clock. About twelve o'clock, the Court directed an officer to go and ask the Jury if they were likely to agree upon their verdict soon. He returned, with answer that they said "they could not agree, nor ever should." The Court therefore adjourned.

Friday, June 13th. On the opening of the Court, the Jury returned a general verdict of *Guilty*, against both of the defendants.

Mr. Sullivan immediately arose and moved that the verdict in this cause be set aside, and a new trial granted, on the grounds, that it was contrary to the evidence—that illegal testimony had been introduced on the part of the prosecution—that his client had been *twice* before indicted, and *once* tried, for the same offence, and thereupon acquitted—and lastly, that one of the defendants (Fellows) had never been arraigned, nor pleaded to the indictment.

Saturday, June 14th. On the opening of the Court, Mr. Sullivan moved that the motion be taken up in the case of the People against Chase.

The Court adjudged, that the motion lie over till the next term of the Court.

The District Attorney hereupon moved that the recognizance of Chase be doubled; that he be held himself in the sum of \$4000, with two sufficient sureties in \$2000 each; and that he be committed till the motion be complied with.

Mr. Sullivan said he rose to protest against the motion of the District Attorney. Not that his client would be unable to procure the requisite amount of bail, but that it would convey an erroneous impression to the public mind, and one that this case did in no wise warrant; that their Honors could not but be well aware of the merits of this cause; and was proceeding, when the court said it was unnecessary, and decided that his former recognizances only be renewed.

This was immediately complied with by two of Mr. Chase's friends coming forward and justifying in the amount.

Mr. Sullivan then filed the following motion with the clerk, and afterwards caused copies of the same to be served upon the District Attorney, and the respective counsel for the prosecution.

<i>David T. Chase</i> <i>impleaded with</i> <i>John W. Fellows,</i> ads. <i>The People.</i>	}	In the General Sessions of the Peace.
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And now after verdict, and before judgment, the said defendant moves this honorable Court that the said verdict may be set aside, and a new or further trial granted him, because he says, that the said verdict was taken against law, inasmuch as it appears of record, and from the affidavit of Franklin S. Kinney, Esquire, and the counsel for said Chase, that the Jurors in this case were impanelled to try the said David T. Chase and John W. Fellows, whereas the said John W. Fellows was never arraigned nor put to plead to the indictment whereon said verdict was returned.

Also, because the verdict in this cause was against evidence, in this, that it clearly appeared by witnesses on the part of the people as well as on the part of the defendant, that the two notes made by the said John W. Fellows to the said David T. Chase bearing date the 25th of October 1827 and endorsed by said Chase to William W. Edwards & Co. as named in the indictment, were in fact made by said Fellows to said Chase for goods actually sold and for no other consideration; and that the money \$450 loaned by said Edwards thereon to said Chase was by said Chase applied to the payment of a note of said Chase, payable to the order of, and endorsed by Arthur Tappan on the day of said loan, to wit, on the 13th day of November, A. D. 1827, being a note for \$592 62.

Also, because it appeared in evidence on the part of the people and by William W. Edwards, that the said sum of \$450 was loaned to said Chase on two other notes together with the aforesaid two notes made by said Fellows and endorsed by Chase, viz. a note of John M. Holley for \$113 40 and a note of George N. Sharpe for \$168 66, the former of which was paid in part and secured for the remainder, whereas in said indictment it is alleged that the said money was obtained upon said Fellows' said notes.

Also, because it appeared in evidence on the part of the people by Abraham R. Luyster, and on the part of the said defendant, that the clerk of said

Chase of his own accord and from his own impressions and belief of the facts, made the representation to said Luyster relative to the capital of said Fellows by which said Luyster was induced to deliver the goods purchased by said Chase so as aforesaid, together with those purchased by said Chase on the 3d and 14th of November 1827, from said Luysters, was not made by said Chase as alleged in the indictment.

Also, because it appears from the records of this court that the said Chase has been once before indicted and tried for the same cause and thereupon acquitted.

Also, because evidence was admitted at the trial of this cause on the part of the people against law, viz., evidence of Sylvester Mills of particular transactions between the said Chase and said Mills, being mercantile transactions respecting the dealings only of the said Chase with the said Mills, that said Chase was indebted to the said Mills in the sum of one hundred dollars and promised payment, but did not pay according to his promise—and that this was offered to affect the general character of said Chase.

Also, evidence by said Edwards that said Chase having legally obtained upon said Edwards' order, possession of a certain promissory note of one Augustus V. Sharpe for two hundred and twenty-seven dollars and twenty-seven cents, whereon the said Edwards has made himself endorser, the said Chase had caused the said note to be put in suit against the said Edwards; and that this, also, was offered against said Chase's general character, together with other evidence of the like kind.

Also, because on the motion in writing of the said Chase for the admission of said Fellows as a witness, the said Fellows not being arraigned nor having pleaded as aforesaid, the Court refused to admit said Fellows as a witness, on the ground that said Fellows was then on his trial.

Also, because said verdict is against law and the weight of the evidence in the trial.

Also, because the District Attorney in summing up on behalf of the people, admitted to the Jury, that the cause of complaint set out in the first count of the indictment was the same cause of complaint for which said Chase had been indicted and tried by this Honourable Court heretofore, and thereof been acquitted; but nevertheless a general verdict of *guilty* on both counts was returned by the jury, and received by order of this Honourable Court.

Also, because the said District Attorney in summing up to the Jury as last aforesaid, stated to the Jury that although the said Chase could not be tried twice for the same cause, yet they, the said Jurors, might legally consider all the facts adduced in behalf of the people in support of said cause and constituting said cause, as legal and proper evidence in support of the other cause of complaint set out in the second count of said indictment, and the Court did not direct to the contrary.

And also, for that Arthur Tappan a witness called on the part of the people in said trial, was permitted to testify and declare his belief as to defendant's guilt, and his inferences, and his belief in relation to the defendant's conduct, stating that he, said Tappan, believed said Chase's conduct was from the beginning of his, (said Chase's) coming to New York, three or four years since, a system of fraud, but did not state facts to support said

assertions; and nevertheless his belief was permitted to go to the Jury as evidence.

DAVID T. CHASE.

Mr. George Wilson, who had just been retained of counsel for John W. Fellows, also moved the Court in his behalf, and submitted an affidavit, of which the following is a copy :

<i>John W. Fellows,</i>	}	In the General Sessions of the Peace. Indictment for Conspiracy.
<i>impleaded with</i>		
<i>David T. Chase,</i>		
<i>ads.</i>		
<i>The People.</i>		

John W. Fellows, the above named defendant, being duly sworn, doth on his oath depose and say, That this defendant hath never been arraigned on the indictment in the above entitled cause, and has never pleaded or appeared thereto in person or by counsel. That this deponent has never authorized any person to plead in his behalf, and that on the trial of his cause in this honorable Court on the 12th of June inst. he was neither brought into Court himself, nor had he any counsel employed, nor did he appear at such trial. And this deponent further saith, That he had not the opportunity of stating to this honorable Court, that he was not prepared to go to trial, nor was allowed the privilege of a hearing in his own defence. And further this deponent saith, That he has never been apprehended on any warrant at the suit of the People of the State of New-York, or otherwise, in the above entitled cause, nor hath he ever received, or been served with any process summons, or notice, of any kind whatsoever, from this Court or otherwise, to attend or defend the same suit, nor hath he ever received or been served with any legal intimation whatever of any hearing of the said cause, nor hath he in any manner or way whatever been apprised by the said Court, or by its officers, directly or indirectly, that this deponent was a party defendant to the above entitled cause. Nor hath he, this deponent, ever directly or indirectly, in any manner or way whatsoever, authorized or employed any professional gentleman, or other agent, to defend the above cause, but hath been left wholly undefended therein. And this deponent saith, That he hath a good and substantial defence to make to the above cause, on the trial thereof, on the merits of the same, as he is advised by counsel, and verily believes to be true. And this deponent saith, That he never heard of the trial of said cause except from report; and further this deponent saith not.

JOHN W. FELLOWS.

Sworn to before me, this 14th June, 1828.

JAMES FLANAGAN, Commissioner, &c.

Tuesday, July 17.

Mr. Sullivan moved the court to take up the former motion to set aside the verdict in the case of the People against Chase.

The Court replied, that they should be unable to hear the argument which the counsel for the prosecution intended to make, this term, for want of time, but that they would hear the counsel for the prosecution first, at the open-

ing of the Court at its next session, but that they were at present unanimous in their opinion that a new trial must be granted.

Tuesday, August 5.

Mr. Sullivan again moved the Court to take up the motion in this cause.

Mr. Wheeler said he wished to be heard, and that he doubted not he should be able to convince the Court beyond a doubt that neither of the defendants were entitled to a new trial.

The Court differed in opinion from the learned gentleman. His Honor the Recorder stated that one of the defendants had not been tried at all; and that if the position assumed by Mr. Wheeler was correct, the Court might proceed to try and sentence any man in this or another state, without his knowing any thing about it.

Mr. Wheeler. If the Court will not hear me, it is not to be presumed that I can convince them of the truth of what I assert.

Mr. Maxwell. If the Court are so decided about the matter it will be of no use to make an argument about it. I contend that Chase has been properly convicted, and I shall oppose his having a new trial. These men are very anxious to have him punished.

Mr. Wheeler. I differ in opinion entirely with the District Attorney. If the Court will but hear me, I will cite authorities in support of my opinions.

Mr. Maxwell. If you differ in opinion you may sit down and mind your own business.

Mr. Wheeler. I was employed to come here by the complainants, and I did not come to be insulted.

Mr. Maxwell. As Public Prosecutor, I feel competent to discharge my duty without your assistance.

The Court adjudged that Mr. Fellows have a new trial, without any argument, and that the motion for a new trial on the part of Chase, lie over until after the trial of Fellows, as Mr. Sullivan might want to bring Mr. Chase forward as a witness.

Mr. Maxwell. If that is the decision of the Court, I shall move that we have it argued now, so that they both be tried together again.

Mr. Sullivan. I had rather abide by the decision of the Court.

Monday, August 11th of the Term of August 1828.

Mr. Wilson of Counsel for Fellows, presented the following petition to the Court.

To the Honorable Richard Riker, Recorder, and the Honorable the Aldermen of the City of New York, constituting a Court of General Sessions of the Peace in and for the City and County of New York, at the August Term thereof, A. D. 1828.

The petition of John W. Fellows humbly shews, That he was indicted at the last April Term of this Court, and has been held ever since, and still is held in Jail, by reason of said indictment. That he has never been arraigned, nor had an opportunity of making his defence. That he is accused most

unjustly and prosecuted most maliciously by the complainants against him, and is, in truth, innocent of all the charges alleged or pretended to be alleged against him. That he is ready for his trial, and after imprisonment for so many months on an indictment found in the April term, he claims, with respectful confidence in the justice of this Court, as a right which they will not deny him, a trial at this present term ; and your petitioner, as in duty bound, will ever pray.

(Signed)

JOHN W. FELLOWS.

The Court ordered the petition to be filed with the clerk, and said that if the District Attorney did not bring on the trial of Fellows during the present term, they would, on motion of counsel, discharge him from his recognizances.

Tuesday, Sept. 9th of September Term 1828.

Mr. Wilson as counsel for Fellows, presented the following petition.

To the Honorable Richard Riker, &c.

The petition of John W. Fellows humbly shews, that your petitioner was indicted at the April term of this Honorable Court. That he has been imprisoned for about eight calendar months, and that during a great part of the said time he has been held in jail, and still is, by reason of the said Indictment. That your petitioner has never been arraigned, nor has he had an opportunity of making his defence before this Honorable Court. That he is accused most unjustly, and is prosecuted most maliciously by the complainants, against him, and that he is, in truth, innocent of all the charges alleged, or pretended to be alleged against him. That he has repeatedly petitioned this Honorable Court to grant him a hearing, but hitherto without effect. That he is now ready for his trial, and that after an imprisonment of so many months, he claims with respectful confidence, in the justice of this Honorable Court, as a right which they cannot deny him, a trial at this present term. And your petitioner, as in duty bound, will ever pray.

(Signed)

JOHN W. FELLOWS.

The Court. Let the petition be filed.

District Attorney. I believe there is a motion before the Court for a new trial on the part of Chase. I shall oppose their having a separate trial for the purpose of giving these conspirators an opportunity of swearing each other through any difficulty. If they are to have a new trial, I shall insist upon trying them both together again.

Mr. Wilson. My learned friend, the District Attorney, is not the first man that I have seen carried away by the external sanctity of pharisaical hypocrisy, or the glitter of immense wealth. This man has been kept in jail eight months by reason of this indictment, and I leave it for the learned gentleman himself, to say, if this is a prompt administration of public justice.

The next in order in the history of these trials and proceedings, is the indictment against Jireh Bull, (the co-partner of William W. Edwards,) who was indicted and tried for *perjury* in an Affidavit of debt against Amos Chase sworn to before the Recorder. The affidavit is as follows.

<i>City and County</i> { <i>of New-York,</i> }	ss.	Jireh Bull of the firm or co-partnership of W. Edwards & Co., buing duly sworn, saith, that Amos Chase of Saco in the State of Maine
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is justly indebted to them in the sum of one hundred dollars and upwards, over and above all discounts, and that he verily believes that the said Amos Chase resides out of the State of New York.

(Signed)

JIREH BULL.

Sworn this 1st day of Feb. 1828, before me. (Signed) R. RIKER.

Endorsed. Warrant to attach, issued 1st Feb. 1828.*

On Friday, September 12th, the following indictment was sent down to the Grand Jury, accompanied by the necessary papers.

City and County }
of New-York, } ss.

The Jurors of the People of the State of New York, in and for the body of the City and County of New York, upon their oath present. That

heretofore, to wit on the first day of February in the year of our Lord one thousand eight hundred and twenty-eight, at the sixth ward of the city of New York in the county of New York, one Jireh Bull, late of the first ward of the city of New York in the county of New York aforesaid, labourer, being a person of an evil disposition, and unlawfully, wickedly, and maliciously, intending and contriving, one Amos Chase late of the town of Saco in the county of York and state of Maine, to aggrieve, injure, and oppress, and the said Amos Chase to great charges and expense of his moneys to put, and also to cause a certain warrant to be issued to the sheriff of the city and county of New York, to attach and safely keep, all the estate, real and personal of the said Amos Chase in the said county of New York, he, the said Jireh Bull, did then and there, to wit, on the aforesaid first day of February, in the year of our Lord one thousand eight hundred and twenty-eight, at the sixth ward of the city of New York, in the county of New York aforesaid, in his own proper person come before the Honorable Richard Riker, Recorder of the city of New York, and then and there, in due form of law was sworn, and did take his corporal oath, before the said Richard Riker, (he, the said Richard Riker, then and there having and possessing full and sufficient power and competent authority to administer such oath to the said Jireh Bull, in that behalf,) and that the said Jireh Bull, being so sworn as aforesaid, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, before the said Richard Riker, upon his oath aforesaid, falsely, maliciously, wickedly, wilfully, and corruptly, did say, depose, swear, and make affidavit in writing, in substance, and to the effect following, to wit, "City and county of New York, ss: Jireh Bull of the firm or co-partnership of W. W. Edwards & Co. (meaning one William W. Edwards of the first ward of the city of New York in the county of New York aforesaid, and the said Jireh Bull,) being duly sworn, saith, that Amos Chase of Saco in the state of Maine, (meaning the aforesaid Amos Chase,) is justly indebted to them, (meaning the said William W. Edwards and the said Jireh Bull,) in the sum of one hundred

* Immediately on the failure of David T. Chase, he confessed a judgment in favour of several of his creditors, among the number of whom was his brother Amos Chase. His goods were sold by order of the Sheriff, and after satisfying the other creditors, a balance of \$182 07 was left in hands of the Sheriff on the judgment in favour of Amos Chase. This amount was attached by Messrs. Edwards and Bull by virtue of Bull's affidavit. Amos Chase gave bonds to the Sheriff to meet the event, should any suit be brought against him by Edwards & Bull, and to pay any judgment which they might recover. He then received the money, and though more than one year has elapsed, they have not thought fit to bring any suit against him.

dollars and upwards, over and above all discounts," as by the said affidavit filed in the office of the said Richard Riker, at the City Hall, in the sixth ward of the city of New York, in the county of New York aforesaid, more fully appears.

And the Jurors aforesaid, upon their oath aforesaid, do further say, that it was then and there material that the said Jireh Bull should, on oath, testify and declare, that said Amos Chase was so indebted to said Bull and Edwards, as in the said affidavit of the said Jireh Bull is declared, in order to obtain the order of said Recorder, and thereby effect the attachment of the property and effects of the said Amos Chase, in the city and county of New-York, according to the provisions of law in cases of attachment issued out against the property of absent and absconding debtors.

Whereas, in truth and in fact, the said Amos Chase, in the said affidavit mentioned, was not indebted to the said William W. Edwards and the said Jireh Bull, or to either of them, in the said sum of one hundred dollars, over and above all discounts; and whereas the said Amos Chase, in the said affidavit named, did not, at the time when the said Jireh Bull so made such affidavit as aforesaid, or at any other time whatsoever, owe to the said William W. Edwards and Jireh Bull, or to either of them, the sum of one hundred dollars; and whereas, in truth and in fact, the said Amos Chase was not, at the time of making such affidavit, or at any other time, indebted to the said William W. Edwards and Jireh Bull in the sum of one hundred dollars, or in any other sum, on any account whatever, which he, the said Jireh Bull, at the time of making his said affidavit, well knew, to wit, on the said first day of February, in the year of our Lord one thousand eight hundred and twenty-eight, at the sixth ward of the city of New-York, in the county of New-York aforesaid.

And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Jireh Bull, on the said first day of February, in the year of our Lord one thousand eight hundred and twenty-eight, at the sixth ward of the city of New-York, in the county of New-York aforesaid, before the said Richard Riker, as such Recorder as aforesaid, upon his oath aforesaid, (he, the said Richard Riker, then and there having and possessing full and sufficient power and competent authority to administer the said oath to him, the said Jireh Bull, so as aforesaid,) by his own act and consent, and in form and manner aforesaid, did knowingly, falsely, maliciously, wilfully and corruptly commit wilful and corrupt perjury, to the great displeasure of Almighty God, in contempt of the laws, to the great damage, vexation and injury of the said Amos Chase, to the evil and pernicious example of all others in the like case offending, against the form of the Statute in such case made and provided, and against the peace of the people of the state of New-York, and their dignity.

The Grand Jury found the indictment a true bill, and on presenting it, Mr. Bull was immediately arrested and held to bail in the sum of \$2000, to answer to the charge.

COURT OF SESSIONS.

Thursday, October 16th, of October Term, 1828.

The People }
vs. } Indictment for Perjury.
Jireh Bull, }

Ogden Hoffman, Esq. was associated with Mr. Maxwell, the District At-

torney, for the People, and David B. Ogden, William M. Price and Ira Clisbe, Esquires, for the defence.

Mr. Maxwell opened the case to the Jury. He stated that Jireh Bull, one of the firm of William W. Edwards & Co. was indicted for *wilful* and *corrupt* perjury ; and that to constitute the offence, it must not only appear to the Jury that the defendant had sworn *falsely*, but that he had done so *wilfully* and *corruptly*.

Amos Chase, sworn, and examined by Mr. Maxwell.

I reside at Saco, in the state of Maine. I never saw either Jireh Bull, or William W. Edwards, to my knowledge. I never was in New-York previous to September last. I never had any business transactions with them, of any name or nature. I never authorized any person or persons to contract any debts with them or either of them.

Mr. Maxwell. Are you indebted to them in the sum of \$100, over and above all discounts, or are you indebted to them or either of them, in any other sum whatever ?

Witness. I am not indebted to them or either of them, in the sum of \$100, over and above all discounts, or in any other sum on any account whatever.

Mr. Maxwell. Is the affidavit of Jireh Bull true or false ?

Witness. It is entirely false.

Cross-examined by Mr. Clisbe.

Q. Did you ever execute a letter of credit to your brother ?

A. I never did. I with another person signed a blank. My brother stated that he wanted to have it executed to some one who might endorse for him to a certain amount. The blank was handed to my brother on the 8th of September, 1827, in Maine. A few days afterwards I received our signatures, torn off and enclosed by mail, and was at the same time informed by my brother, that he could get no one to endorse for him, who would have the blank executed and receive it as security, and that as it was of no use to him, he had enclosed our signatures. *I believe the blank was never executed to any one.*

James Cummings, called and sworn.

Examined by Mr. Maxwell.

Q. Did Mr. Edwards acknowledge to you, that the firm of William W. Edwards & Co. had no demand against Amos Chase, after Mr. Bull swore to this affidavit ?

A. I received a letter from Amos Chase in April last, in which I was requested to demand of William W. Edwards & Co. what their claim against him was, and to state to them that he was both able and ready to pay any just demand that could be brought against him. I called at the store of Edwards & Co. a number of times, to make the inquiry. I met William W. Edwards shortly after in the Recorder's office. I there showed Edwards the affidavit of Amos Chase, in which he swore that he was not indebted to Edwards & Co. in any sum, on any account whatever. Edwards then looked confused, and acknowledged that they had no demand against Amos Chase of any name or nature.

Cross-examined by Mr. Clisbe.

Mr. Clisbe. Mr. Edwards then told you, did he not, that they had no *account* against Amos Chase?

Witness. I do not wish Mr. Clisbe to tell me what I *shall* swear to. Edwards told me what I *have* sworn to.

David T. Chase, called by the prosecution.

The witness here stated that he had been subpoenaed on the part of Mr. Bull.

Mr. Maxwell. Well, I choose to have you examined, Sir, on the part of the prosecution.

Mr. Clisbe here rose and objected to this witness, on the ground of his having been convicted, in June last, of a conspiracy. He said he did not see any good reason why judgment had not been entered up long ago. That if such had been the case, his client would never have been indicted for this infamous crime. That this restless spirit, Mr. David Tappan Chase, was the sole prosecutor in this cause; and closed by adverting to the number of times this same Mr. David Tappan Chase had been indicted on a criminal charge.

Mr. Hoffman said he should contend that Mr. Chase was as competent a witness as any in court. That even admitting he had been convicted of a conspiracy, which was not the case, it was only a misdemeanor at most. In this case the verdict was not sustained, and as the matter stands, Mr. Chase has not been convicted of any offence whatever.

The Court decided that he was a perfectly competent witness. That in point of law no conviction could be considered as perfect till the final entering up of judgment. Besides, in this case, the Court entertained very serious doubts whether the verdict was a legal one. The other person, Fellows, had not been tried at all. Common reason teaches us that no one person can conspire alone; there must be two, and should Fellows be tried and acquitted, it is at once apparent that the indictment cannot be sustained in regard to Mr. Chase, notwithstanding the verdict of the Jury. Yet all these circumstances of his having been indicted and tried so many times, will have a tendency in some measure to discredit his testimony.*

Mr. Ogden. We admit that he is a competent witness.

David T. Chase was accordingly sworn.

Mr. Maxwell. Do you know William W. Edwards and Jireh Bull, and is the affidavit of Jireh Bull true or false?

Witness. I know them both. The affidavit of Jireh Bull is utterly false, so far as relates to any debt contracted with them by Amos Chase through me.

Mr. Maxwell to Mr. Clisbe. He is your witness.

Mr. Clisbe. Did you not draw this indictment and lay the same before the Grand Jury?

Witness. I do not consider this question material to the matter at issue. But I have no objection to answer it in case the Court so adjudge.

The Court, (with surprise.) He draw this indictment!

* During all this time, Mr. Chase occupied the stand reserved for witnesses while testifying, which was nearly equally elevated with the bench occupied by the Court, and where every eye was intently fixed upon him. He appeared perfectly composed, and looked around upon the multitude with the utmost calmness and deliberation.

Mr. Clisbe. O yes, your Honor. He has become a District-Attorney-General-Volunteer. He is a jack at all trades. It would be difficult to conceive of a more capable gentleman in every department, or one actuated by baser motives, than this same Mr. David Tappan Chase.

Mr. Maxwell arose and stated to the Court, that he never saw the indictment, nor heard of it, until the bill was found and returned into Court by the Grand Jury.

The Court. Let the witness state the particulars.

Witness. I drew the indictment, with the exception of one clause, the clause to which I refer, was drawn by Mr. Sullivan.*

The Court. Where is Mr. Sullivan?

Witness. He is sick, or he would have been here. My brother wrote to me, and directed me to have an indictment prepared against Jireh Bull for perjury.

Mr. Clisbe. We don't want to hear that. How do you know that Amos Chase is not indebted to William W. Edwards & Co.? and how do you know that they do not now hold the notes of Amos Chase?

Witness. This is a thing about which it is impossible for me to *know*. I do not *believe* he owes them any thing, or that they hold any of his notes.

Mr. Clisbe. We don't want you to tell what you *believe*, but what you *know*. Did you not borrow from Jireh Bull \$350, on a certain bond signed by Amos Chase?

Witness. On the 13th of September, 1827, I arrived in New-York from Maine—

Mr. Clisbe. You must answer such questions as are asked you, Sir. When I ask one question, you seem very much disposed to evade it by answering another.

Mr. Hoffman said he should insist upon the witness' being permitted to make his statement of the facts as he thought proper, and in his own way. That there was a beginning and an end to every thing, and that the gentleman need be under no apprehension that the witness would seek to evade answering any question by equivocation.

Recorder. The usual way is, to let the witness tell his story as he pleases.

Witness. On the day of my return, this note (holding up one) endorsed by William W. Edwards & Co. became payable. It is for \$367 60. It was given for goods I had bought from them. I went to the store of Edwards & Co. to borrow \$350 towards taking it up. Bull told me that Edwards had gone to the country; that he had no doubts but Mr. Edwards would let me have the money, if he were at home; but that he (Bull) had just become a partner in the concern, and was not much acquainted with me. I told Bull that Edwards had always lent me money, and that I then owed them several hundred dollars; that the money was immediately coming back into their hands again, as it was to take up their own note with. Bull remarked that he had no doubt but it was all right, but Mr. Edwards had said nothing about it. I then showed Bull the blank signed by my brother, and stated to him that I intended to execute it to Tappan, in case he

* See second clause in the indictment, page 35.

would receive it and extend his co-operation, and that if he had any doubts about the propriety of lending me the sum of \$350, I would leave the blank with him until the money was returned. Bull looked it over, and said he did not know as it was good for any thing, but as the note was theirs, he supposed he must lend me the money. He then drew a check for \$350, which he gave me, and I left the blank on the desk. The money was immediately applied to the payment of their note. On the 14th or 15th, I borrowed \$100 more from Edwards, and on the morning of the 18th, Edwards informed me that he should want the \$100 that day. I saw Bull shortly after, and he said he should want the \$350 that day, as they had considerable to pay. I asked him if he would not be able to get along with a part of it? He said no, he should not. I then went home and sent Bull a check for \$450. It was drawn on the Phoenix Bank. *That very check* is charged to me in this bank book, (shewing one.) This was in payment of the \$350 which I borrowed from Bull, and the \$100 borrowed from Edwards.* A day or two afterwards I called at the store of Edwards & Co. and told Bull I wanted that paper. He, after going to the desk, said it was locked up, and that Mr. Edwards had the key, and was gone out; but that as soon as Mr. Edwards came in, he would get it and send it to me. A few days afterwards I went to their store, and they were both in; the blank was handed me by either Edwards or Bull, I do not recollect which; I immediately took it over to Arthur Tappan's; Tappan refused to have it executed to him, and receive it as security, and extend his co-operation, and alleged as his reason, that I already had sufficient means to do business with; besides, he said, it was good for nothing, as it was a sealed instrument, and was interlined without being noticed at the bottom. I immediately tore off the names, and enclosed them by mail to my brother in Maine, and tore up the body. The blank was drawn by me, *but was never executed to any one.* I continued to borrow money from Edwards & Co. as formerly. Some days after it had become known that I had lost about \$3000 by the failure of the Sharpes, Edwards came to my store, and after very attentively examining my stock of goods, and lifting up the covers of a number of boxes to see if there was any thing in them, inquired if the report that I had sustained such loss, was true? On the same day, or the day following, he sent for me to come to his store, and after taking me into one corner of it, asked how I was going to pay him and Mr. Tappan? *He said he had no objection to have me go and purchase goods on a credit from any body and every body I could, and pay him and Mr. Tappan, and then he did not care how soon I failed. He said it was no more than the Neilsons had done, for that they came and purchased goods from him, or his former firm of Barrell & Edwards, after they knew they were going to fail!* I sold goods to different people on a credit, to the amount of about \$900, for which I took their notes, and on the 13th of November I borrowed from Edwards on these notes, the sum of \$450, which within one hour afterwards I applied to the payment of Arthur Tappan's note of \$592 62; and strange as it may appear, for this very transaction, I have been, by Tappan and Edwards, indicted *three* times, and tried *twice* already. The whole amount of my purchases, from May 25th, 1827, to the time of my failure in January,

* Since the above report was written I have seen a general account current furnished by Edwards to Chase and in *his own hand writing* by which it appears that the very identical \$450 in question is duly credited on the 18th Sept. 1827.—REPORTER.

1828, amount to only \$1750 85, and during this period I paid upwards of \$15,000, a large proportion of which was for goods purchased on a credit, previous to May, 1827,* and now I'll ask if *this* looks like fraud?

By Mr. Clisbe. Have you not drawn other indictments? Have you not drawn one against William W. Edwards and laid it before the Grand Jury?

Witness. Yes, I have. [The witness here produced a copy of an affidavit made before the Police in February, 1828, by Edwards.] This affidavit is utterly and absolutely false. I believe there are *three* other witnesses who will swear this affidavit is utterly false.

The prosecution here rested.

Mr. Clisbe opened for the defence.

John Haggerty, sworn.†

I know Mr. David Tappan Chase; his character is bad.

Recorder. Oh! it's bad, is it?

Witness. Yes, 'tis very bad; I would not take his word in any case; I think him a man devoid of principle.

Horace Holden, sworn.

I was formerly Chase's counsel; he showed me an instrument drawn in his own peculiar way; I cannot say whether it was the one afterwards signed by his brother or not; I thought the one I saw rather informal; he informed me that Tappan had refused to endorse for him, or that he had stopped endorsing for him, and that he could get his brother to become responsible to some one who would. I think that the words "endorsements, acceptances, and money lent," were stated in the paper I saw. I never saw the paper purporting to have been signed by Amos Chase.

Mr. Clisbe. What is the general character of Mr. David Tappan Chase?

Witness. It is very bad.

Recorder. *O! very bad, is it?*

Witness. His character has suffered materially from the indictments.

Mr. Clisbe. Would you believe him on oath?

Witness. I would not, especially when he charges a man of so good a character as Mr. Bull, with a crime like this.

Mr. D. T. Chase. I think the general character of his Honor would be *very bad*, to be indicted as often as I have been.

William W. Edwards, sworn.

I was in the country when Mr. Bull lent Chase the money. After I returned, Mr. Bull informed me that he had lent Chase \$350, but that he had obtained good security for it. The paper was signed by Amos Chase and Benjamin Chase, and the name of the obligee left blank. It was made to cover notes, money and endorsements. It was left with Mr. Bull on the 13th of September, and Mr. Bull lent Chase \$350 upon it. On the 14th I lent him \$100 more, which he afterwards paid, *but the \$350 was not paid*. Afterwards Chase called and said he wanted the bond to get it formally drawn. I gave it to him under these considerations. He was afterwards asked for it, but I was not urgent, thinking him good from his own statements. After D. T. Chase failed, we sent a young man to the Eastward to see whether the

* See affidavit of Henry W. Sill, in the Appendix.

† See Appendix A. by which the perfect understanding between William W. Edwards, John Haggerty, and Sylvester Mills, is shown.

claim could be secured there. A lawyer there stated that a claim against Amos Chase was good. When the *suit** against Amos Chase was commenced, the affidavit was drawn for me to swear to. I started to go up to the City Hall to swear to it, but feeling unwell I returned home, and Mr. Bull went up and swore to it. I would have sworn to the same thing. The character of Chase is bad.

Recorder. Bad, is it?

The witness left the stand and retired.

Recorder. Oh! Mr. Edwards, one more question. Did you urge Mr. Chase to go and purchase goods from other people to pay yourself and Mr. Tappan?

Witness. Chase has sworn to a falsehood. I did not *say* that I wanted him to go and purchase goods from other people to pay me and Mr. Tappan.

James Cummings, recalled.

The character of Chase was good until the indictments were found against him; and I believe all these stories are got up, merely to injure him.

Jacob Bining, affirmed.

Mr. Chase occupied a store of ours. He referred us to Mr. Tappan. Mr. Tappan gave him a good character. We let him have the store upon his own responsibility, from what Mr. Tappan said.

Mr. Maxwell. We don't want to hear any thing about what Mr. Tappan said.

Witness. I have known Mr. Chase about two years.

Mr. Clisbe. Oh, that's enough.

Arthur Tappan, sworn.

Chase first came to this city recommended to me, and being a distant relation of mine, I was anxious to assist him; but from a further knowledge of him, I think him a man of no kind of character at all. Latterly, his character has been very bad. I would not believe him at all.

Recorder. His character is *bad*, is it?

Witness. I know Mr. Bull, and have the greatest confidence in his integrity. He is in company with my nephew, Mr. Edwards, and I constantly entrust from \$30,000 to \$50,000 worth of property in their hands. I think his character unimpeachable. I think both Mr. Edwards and Mr. Bull are gentlemen without reproach. I should as soon think of my own character's being impeached as Mr. Bull's.

Recorder. Haven't you gone far enough, gentlemen?

Mr. Hoffman. May it please your Honor, we have a list of nearly fifty witnesses, some of the most respectable names in this city, who will testify as to the general good character of Mr. Chase. I will call Mr. Myndert Van Schaick.

Mr. Hatfield. He is on the Grand Jury.

Recorder. There appears to be two oaths against two, and it will only consume time to go further.

Mr. Maxwell. I think it my duty to state to the Jury, that I have thought from the beginning, there was no ground for this prosecution. The manner in which the indictment was procured does not meet with my approbation. I was not consulted at all upon the subject, nor my advice asked by the Grand Jury.†

The Jury, after deliberating a few moments, returned a verdict of *Not Guilty*!‡

* *No suit* has been commenced by Edwards & Bull against Amos Chase.

† See remarks on Grand Juries, in Appendix B.

‡ See Mr. Sullivan's letter to the Editors of the Com. Adv. Appendix C.

Friday, October 17th, 1828.

Mr. Wilson, counsel for J. W. Fellows, appeared in Court and stated that his client had determined to demur to the indictment, and inquired if it were necessary that he should come in person, since he could only be brought up on *Habeas Corpus*? The Court answered that it was not necessary that he should demur in person, but that he might do so by counsel. Mr. Wilson then submitted the following demurrer:

John W. Fellows, impleaded by the name of John T. Fellows, ads. The People.
Of October Term, in the year of our Lord 1828.

And the said John W. Fellows, in his own proper person, cometh into Court here, and having heard the said indictment read, saith, That the said indictment, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law; and that he, the said John W. Fellows, is not bound to answer the same, and this he is ready to verify. Wherefore, for want of a sufficient indictment, in this behalf, the said John W. Fellows prays judgment, and that by the Court here, he may be dismissed and discharged from the said premises in the said indictment specified.

JOHN W. FELLOWS.

Court. Let the demurrer be filed.

Monday, Nov. 10th, of November Term, 1828.

Mr. Sullivan appeared with Mr. Wilson, as counsel for Fellows, and moved the Court for judgment upon the demurrer. He remarked that their Honors would perceive, on perusing the indictment, that there was nothing charged against Fellows; and that, as no overt act was alleged to have been committed by him, he deemed it unnecessary to say more, than to move for the decision of the Court.

Recorder. Mr. Maxwell, come here.*

Mr. Maxwell contended that no overt act was necessary on the part of Fellows; that the act of one was the act of both.

Mr. Wilson. If that proposition be correct, you may indict one man for an offence, and try a dozen other persons, with him, if you please to insert their names in the indictment.

Recorder. In our† opinion, it is sufficient to aver in the indictment, that the defendants did conspire, and it is then only necessary to go on and say, that in pursuance of such conspiracy, such acts were committed, without stating the means agreed on by the defendants.

Mr. Wilson. Will your Honor defer your decision for a single moment, while I can read to you the decision of the Supreme Court on this point. The case to which I allude, is that of Eckford, Barker, and others. It was there held, that no indictment for a conspiracy could be sustained, unless the means agreed upon were stated in the indictment, and the overt acts alleged to have been committed distinctly set forth. And—

* Mr. Maxwell was by the fire, in a corner of the room.

† It is said that shortly after the trial of Jireh Bull for *perjury*, Mr. Sullivan received a large number of anonymous letters, supposed to have been written by the coadjutors of Tappan and Edwards, *threatening him with vengeance if he did not give up "THIS RESTLESS SPIRIT,"* David Tappan Chase. It is very possible that his Honor the Recorder may have received similar communications which may in some measure account for his "OPINION" in direct opposition to the known laws of the land, as established by the Supreme Court.

Recorder. Oh, you had better withdraw your demurrer, gentlemen, and plead the general issue.

Mr. Wilson. *Oh, we perfectly understand your Honor. We perfectly understand your Honor.*

Mr. Sullivan. Will the Court grant separate trials to the defendants, in that case?

Mr. Maxwell. Should the Court conclude to grant them separate trials, I shall move to have judgment entered up against Fellows at once.*

Mr. Wilson. I hope your Honor will not think of entering up judgment against my client before he is tried at all. Such a course would be establishing a new principle in criminal jurisprudence.

Recorder. We made up our minds some time ago to grant them both a new trial; but I don't think it would be correct to allow them separate trials. I don't see that we can allow your demurrer, gentlemen. Fellows seems to be about as much implicated as the other one, Mr. Chase, and I think *he* stands a pretty good chance of getting into the Penitentiary. If the jury find them guilty again, I shall enter up judgment immediately.

Mr. Sullivan. Well, as your Honor pleases about that.

Mr. Maxwell to Mr. Sullivan. The only remedy that your client will then have, will be by *writ of error*.

Mr. Wilson. The Supreme Court have laid it down as an established maxim, that no indictment can be sustained, unless—

Recorder. It is quite probable, Mr. Wilson, that the Supreme Court have so decided the matter; but as we have never seen any such decision in print, we are bound to decide upon the law as it before stood. You had better be prepared to go to trial immediately, gentlemen, for I want it done with. It has been hanging on a great while, and I want to have it out of the way.

Mr. Wilson. Well, I hope your Honors will give us some intimation, and not try and sentence them in their *absence*, without their knowing it.

Wednesday, November 12.

Mr. Wilson appeared and read to the Court, from 7 Cowan, the decision of the Supreme Court in the case of Eckford and others, referred to on Monday while arguing the demurrer, and showed it to the Court, as "*they had not seen it in print.*"

Recorder. It is already decided, Mr. Wilson, and cannot be altered now. When will you be ready to proceed to trial?

Mr. Wilson. I will consult with my associate counsel, Mr. Sullivan, and inform your Honor.

Mr. Maxwell. This is trifling with the Court, Mr. Wilson, and unless you give your answer to-morrow, and agree to proceed to the trial, or set it down for the first of next Term, I will move the Court for bench warrants against both the defendants, and have them brought up and tried immediately.

Mr. Wilson. Oh, very well, Mr. Maxwell, we'll attend to it.

Friday, Dec. 5th, of December Term.

At the opening of the Court, the following Certiorari was served on his Honor the Recorder:

* It was evidently the intention of Maxwell, to *link* them both together, and make use of the *pretended confessions* of Fellows that were made at the instigation of Edwards for the purpose of getting out of gaol, as evidence against them both; though the confessions of Fellows are *no evidence* against Chase.

The People of the State of New-York, by the Grace of God, Free and Independent:—

L. S. To the Judges or Justices of the Court of General Sessions of the Peace, in and for the City and County of New-York, Greeting : We being willing, for certain reasons, that a certain indictment for a Conspiracy, whereof John W. Fellows, impleaded by the name of John T. Fellows, was indicted in our said Court before you, with one David T. Chase, as it is said, be determined in our Supreme Court of Judicature, before our Justices thereof, and not elsewhere. Do command you, and every of you, that you send, under your seals, before our Justices of our said Supreme Court of Judicature of the People of the State of New-York, at the Capitol in the City of Albany, on the third Monday of February next, the said Indictment or Indictments, with all things touching the same, by whatsoever name the said John W. Fellows may be called in the same, together with this, our writ, that our said Court may thereupon further cause to be done therein, what of right ought to be done.

Witness, John Savage, Esquire, our Chief Justice, at the Capitol in the City of Albany, the first day of November, in the Year of our Lord one thousand eight hundred and twenty-eight.*

(Endorsed) I allow the within Certiorari.

Dec. 3d, 1828.

JACOB SUTHERLAND.

Mr. Maxwell. The case of *The People* against *Fellows* and *Chase* was put down for trial this day. I now perceive that the Supreme Court have granted a Certiorari, taking the cause out of this Court.

Recorder. We can do nothing but submit. The order of the Judge is imperative.

Mr. Maxwell. The witnesses in this case, on the part of the prosecution, may go home.

Supreme Court, of February Term, 1829.

Chase and Fellows, ads. The People.

The argument of this cause is put off till May Term, by consent of counsel.

Supreme Court, of May Term, A. D. 1829.

Chase and Fellows Plaintiffs in Error, }
vs. }
The People.

Mr. Wilson, Counsel for Fellows, having neglected to notice this cause for argument *for the first day of Term*, and Mr. Maxwell having peremptorily refused to enter into any arrangement in the matter, or to submit the same to the decision of the Court without argument, it unavoidably lies over till the next Term of this Court, to be holden at Utica, in August next.

Note. The publication of these Reports has been delayed with the hope of rendering them complete by the decision of the Supreme Court. As that cannot be obtained without too long a delay, they are submitted to the public.

* The recognizance of Mr. Chase to the Sessions became *null* and *void*, on the *certiorari's* being granted. The *Bench Warrant* that had been lodged with the gaoler, by virtue of which Fellows would have been transported to Bridewell, in case he should come out, also ceased to take effect. Judge Sutherland adjudged that the defendants recognize each in the sum of \$125, and no more. Fellows was shortly after liberated, after having been kept in *durance vile* at the suit of Edwards & Co. upwards of *eleven* months.

APPENDIX.

A.

City and County }
of New-York, } ss.

David T. Chase being duly sworn, saith, that in the fall of 1824, or spring of 1825 *William W. Edwards handed deponent a memorandum in the hand writing of said Edwards containing an invoice of goods with a price affixed to each article, and informed deponent that the goods mentioned in said Invoice would be sold on the day following by *Mills and Minton, and that he wanted deponent should attend the sale and purchase all such articles, in deponent's name, as sold below the prices marked on said memorandum. That deponent accordingly attended at the sale and bid off goods to a considerable amount. That shortly after said Edwards gave deponent another invoice in the hand writing of said Edwards, on which the price of each article was also designated, and told deponent that the goods mentioned therein would be sold next day by *Haggerty, Austen & Co., and requested deponent to go and bid for them as on a former occasion at Mills and Minton's. That deponent attended said sale and bought goods to a large amount in deponent's name. That deponent asked said Edwards whether deponent should not go to Mills and Minton's and Haggerty, Austen & Co's. and direct them to alter the name of the purchaser, as said Edwards and not deponent was the *bona fide* purchaser? That said Edwards laughed and said it was all a sham; that the goods belonged to him, said Edwards; that deponent need take no trouble about it, as Haggerty, Austen & Co. and Mills & Minton perfectly understood the manœuvre; and that it was only a plan between him and them "to give the *Broad-way* and *Maiden-lane* boys a chance to scorch their fingers a little." And further deponent saith not.

DAVID T. CHASE.

Sworn this 17th day of October, 1828, before me,

F. S. KINNEY, Commissioner, &c.

B.

The following appeared in the Evening Post soon after the trial of Jireh Bull, as an editorial article.

Grand Juries.—We find in the Statesman of last evening an article on the subject of Grand Juries, in which it seems to be taken for granted that this body are never to proceed without the presence and assistance of the District Attorney. There can be no greater mistake than this. The District Attorney is not the director of the consciences of the Grand Jury, nor is it for him to say who shall be indicted or who shall not. The oath of in-

* There appears not only to have been an understanding between Edwards, Mills, and Haggerty, but there appears to have been a variance of long standing, between Chase and the two latter gentlemen, the former of which, was much offended on being asked, by Chase, if "*he could make a good mince pie out of the tripe of a horse?*" It is said that Mills had been a butcher, and *swore* never to forgive the insult. The house of Haggerty, Austen & Co. was advertised, by Chase, a year or two since, in the public prints, relative to some business transactions he had with them. In regard to Horace Holden, Esq. who appeared as a witness against him on the trial of Bull, it may not be amiss to state, that Chase was a party to a suit in which Holden was counsel for both plaintiff and defendant, and that during its litigation, Chase is said to have addressed him thus: "Sir, you are playing a *double game*, your functions relative to this suit will cease upon the reception of this. I shall ever consider you as a most *despicable insect*."

vestigating into the offences of the law and of making a true presentment is laid upon the Grand Jury, and not upon the District Attorney, and they cannot even if they would, shift the responsibility from their own shoulders and throw it upon his. They have a right to ask his advice upon questions of law concerning which they may be doubtful, or employ him to draw up their bills of indictment, but if they choose to dispense with his advice, he cannot force it upon them ; and if they prefer to draw up a bill of indictment themselves, and to sign it, he cannot interfere to take the work of justice out of their hands. There may be lawyers on the Grand Jury quite as learned in the principles of jurisprudence, and as apt and exact in special pleading as the District Attorney himself. Besides, what if they wish to indict the father, the brother, the son, or the bosom friend of the District Attorney ? What if they are about to indict the District Attorney himself ? Are they to call him in, to tell him what they are about, and ask him to draw up the bill ?

It is very proper without doubt that the Grand Jury should request the presence of the District Attorney when legal doubts arise, and indeed in any case where they think that his assistance may be useful in enabling them to proceed discreetly in the duties they have to perform. But they should remember at the same time, that it is their duty to exclude him from their deliberations, and to keep them from his knowledge whenever they may have reason to believe that his friendships, enmities, or prejudices, may render him an improper adviser.

C.

To the Editors of the Commercial Advertiser.

The excitement against Mr. Chase for his prosecution of Mr. Jireh Bull, and the mention made in the papers of his counsel's name, seem to require a word in defence, lest a client who is a merchant residing in a distant State of equal respectability with his adversary here, should suffer by the silence of his counsel.

Mr. Amos Chase, of Saco, State of Maine, and not his brother, of New York, was the complainant against Mr. Bull ; and, since an appeal has been made to the public on this subject, the public, who sooner or later judge rightly on all matters, must be enabled to pass a right judgment on this. The public, too, are interested in the question ; because one of their Grand Juries has been charged with misconduct in this affair ; and an attempt is now made to arraign all Grand Juries on their individual responsibility before the public, in respect to the discharge of their high and important duties as a body. This tends to destroy their independence, and subjects them to the controlling influence of that very fear, favor, and affection, which Grand Juries are sworn to disregard,

Mr. Amos Chase had a considerable amount of property in this city in the time of his brother's failure last January. His brother was indebted to the house of W. W. Edwards & Co. in a few hundred dollars ; and with a view to the satisfaction of this demand, Mr. Bull attached the property of Mr. Amos Chase, on the pretence that Mr. Amos Chase was debtor to the firm of W. W. Edwards & Co. as guarantor of this little debt. *There was not the slightest foundation for this pretence ;* and accordingly, Messrs. W. W. Edwards & Co. never instituted any action against Mr. Amos Chase to maintain this pretended claim ; although he had property in this city the whole of the last spring and summer months, and has himself been twice in the city this fall.

This unjustifiable attachment of Mr. Amos Chase's property, under the

absent and absconding debtor's act, cast a reproach upon his mercantile character; and he came to this city in September last, with the determination to vindicate his credit. With this view, he resolved to put his complaint before the Grand Jury of this city; and in furtherance of his purpose, he desired an indictment to be prepared and submitted to counsel with his own affidavit, and that of Mr. James Cummings, a merchant, number 45 Maiden-lane.

The only question which could arise between these parties, was the existence of a debt from Amos Chase to Messrs. W. W. Edwards & Co. at the time Mr. Bull made his affidavit before the Recorder, that a debt of one hundred dollars or upwards, was due from Mr. Amos Chase to Messrs. W. W. Edwards & Co. Mr. Amos Chase in his affidavit, exhibited to counsel with the indictment, swore positively that he was not indebted to Messrs. W. W. Edwards & Co.; and Mr. James Cummings in his affidavit, also exhibited with the indictment to Mr. Chase's counsel, expressly swore to the unqualified admission of Mr. W. W. Edwards to deponent, that the said firm had not any demand or account whatever against said Amos Chase. On these affidavits no counsel could doubt; and no Grand Jury could refuse to indict the party complained of. But the proof how far Mr. Amos Chase was in the right, may be found in the decisive circumstance that Messrs. Wm. W. Edwards & Co. have never brought an action against Mr. Amos Chase to recover this pretended debt; although it is so manifest they have had the strongest motives and impulses of interest and of character, to prove this debt.

In regard to Mr. Amos Chase's brother, Mr. David Tappan Chase, I think proper to state my entire confidence that he is innocent of the crime of which he stands accused, but not convicted, and far from being the atrocious malefactor he has been represented, he is a *much injured and persecuted* young man.

GEORGE SULLIVAN,

New York, October 23, 1828.

of counsel for Mr. Amos Chase.

City and County }
of New York. } ss.

Henry W. Sill being duly sworn doth on his oath depose and say, that this deponent was a clerk to David Tappan Chase for about two years immediately preceding his failure in January last. That during the whole period of deponent's clerkship with said Chase, said Chase kept a certain Invoice book for the purpose of entering a copy of all bills of purchases made by him, that according to the best of the knowledge and belief of this deponent, every article of merchandise so purchased, with the exception of wearing apparel, was duly and regularly entered in the said Invoice book so kept for that express purpose. That by a reference to the said Invoice book, the sum total of all the purchases made by said Chase from the 25th May A. D. 1827 to the time of his failure in January A. D. 1828 appears to amount to only one thousand seven hundred and fifty dollars and eighty-five cents, and that to the certain knowledge of this deponent, said Chase had payable, and did actually pay, during the period as last aforesaid, certain notes to the amount of ten thousand one hundred and seventy-two dollars and fifty-one cents, besides other considerable amounts for which said Chase gave no notes, and that a large proportion of the whole amount of notes as last aforesaid, was for goods purchased on a credit, by said Chase, previous to the said 25th day of May as aforesaid. And further this deponent saith not. HENRY W. SILL.

Subscribed and sworn to this 9th day of October 1828, before me,

JOHN S. MITCHELL, Commissioner, &c.

The following affidavits seem to pourtray a *religious feeling* with a *vengeance* :

City and County of New-York, } ss. Hiram Woods, of Saco, in Maine, merchant, being duly sworn, doth on his oath depose and say, That on or about the first day of February last, William W. Edwards stated to this deponent, that David T. Chase had written him and Arthur Tappan certain insulting letters, one of which said Edwards exhibited to this deponent, in which said Chase stated that said Edwards and Tappan were *hypocrites*. That said Edwards appeared to tremble with anger, and after making use of much abusive language towards said Chase, declared that in order to be *revenged* on said Chase, he would have him in the Penitentiary, and that he should be glad to see said Chase on the treadmill. And further this deponent saith not.

(Signed)

HIRAM WOODS.

Subscribed and sworn to, this 29th day of November, 1828, before me,

F. S. KINNEY, Commissioner, &c.

City and County of New-York, } ss. John Saunders, of the City of New-York, being duly sworn, saith, That he is one of the special bail for David T. Chase, at the suits of Arthur Tappan & Co. and William W. Edwards & Co. and that on the day of justifying as such bail in May last, before the Hon. Judge Irving, some person, to this deponent unknown, offered deponent fifty dollars not to enter bail for said Chase; and that shortly after, some other person, also unknown to this deponent, said he would sooner give one hundred dollars, than this deponent should enter bail for said Chase. And further deponent saith not.

JOHN SAUNDERS.

Sworn, this 19th day of August, 1828, before me,

WILLIAM S. SEARS, Com'r, &c.

City and County of New-York, ss.

Walter F. Osgood, of said city, attorney at law, being duly sworn, doth on his oath depose and say, That on or about the 5th day of February, A. D. 1828, David T. Chase handed to this deponent a certain memorandum, containing a list of his property, credit, &c. amounting, according to the best of the recollection of this deponent, to about five thousand dollars, together with a list of the debts due from him to others of the said city, to about the same amount, and requested this deponent to attend a meeting of his creditors, and in his name to inform them, that the said memorandum contained a just and true account of every thing he possessed in the world, like property, and that in case his said creditors would discharge him, he would immediately make over the whole of his property as aforesaid, for the benefit of his said creditors, in which case his brother, who was the largest individual creditor, would relinquish his claim altogether, for the benefit of the other creditors. That this deponent did, in pursuance of the above request, attend the meeting aforesaid, and make such proposition so as aforesaid. That all the said creditors who were then present at the said meeting, appeared to acquiesce in the said proposition, with the exception of Jireh Bull, who represented at the said meeting the houses of Arthur Tappan and Co. and William W. Edwards and Co., of which last mentioned house he is a copartner. That said Bull alleged as the reason for not accepting the proposition so made as aforesaid, that said Chase had written said Tappan and Edwards certain letters, in which he represented them to be *hypocrites*. And this deponent further saith, That the statement of the debts, as well as of the credits of the said Chase, as given under oath, on his application for the benefit of the act entitled "An act to abolish imprisonment for debt in certain cases," on the 7th day of February aforesaid, was in all respects precisely similar to that presented by this deponent at the said meeting of the said creditors. And further this deponent saith not.

(Signed)

W. F. OSGOOD.

Sworn this 21st day of April, 1829, before me,

JOHN G. TARDY, Commissioner, &c.