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C. F. Mayer Esq.
with the records

His friend

William H. Seward.

No. 4

Mr. Seward's Argument

IN THE

TRIAL AT DETROIT.

1837

ARGUMENT

OF

WILLIAM H. SEWARD,

IN DEFENCE OF

ABEL F. FITCH AND OTHERS,

UNDER AN

INDICTMENT FOR ARSON,

DELIVERED AT DETROIT, ON THE

12th, 13th and 15th days of September, 1851.

PHONOGRAPHICALLY REPORTED BY T. C. LELAND.

AUBURN:
DERBY & MILLER.
1851.

ARGUMENT

WILLIAM H. SHERWARD

IN DEFENSE OF

ABEL F. FITCH AND OTHERS

CHARGE

INDICTMENT FOR ARSON

IN THE DISTRICT COURT OF THE

HENRY OLIPHANT, PRINTER.

THE UNIVERSITY MICROFILMS

DEWEY & MILLER
1881

12382-Law 2011

ARGUMENT.

MAY IT PLEASE THE COURT—GENTLEMEN OF THE JURY—This is Detroit, the Commercial Metropolis of Michigan. It is a prosperous and beautiful city, and is worthy of your pride. I have enjoyed its hospitalities liberal and long. May it stand and grow and flourish forever. Seventy miles westward, toward the centre of the Peninsula, in the county of Jackson, is Leoni, a rural district, containing two new and obscure villages, Leoni and Michigan Centre. Here, in this dock, are the chief members of that community. Either they have committed a great crime against this Capital, or there is here a conspiracy of infamous persons seeking to effect their ruin, by the machinery of the law. A State that allows great criminals to go unpunished or great conspiracies to prevail, can enjoy neither peace, security, nor respect. This trial occurs in the spring-time of the State. It involves so many private and public interests, develops transactions so singular, and is attended by incidents so touching, that it will probably be regarded not only as an important judicial event in the history of Michigan, but also as entitled to a place among the extraordinary State trials of our country and of our times.

Forty and more citizens of this State were accused of a felony, and demanded, what its constitution assured them, a trial by jury. An advocate was indispensable in such a trial. They required me to assume that office, on the ground of necessity. I was an advocate by profession. For me the law had postponed the question of their guilt or innocence. Can any one furnish me with what would have been a sufficient excuse for refusing their demand? *Hoc maxime officii est, ut quisquam maxime opus indigeat, ita ei potissimum opitulari,** was the instruction given by Cicero. Can the American lawyer find a better rule of conduct, or one derived from higher authority?

A word, gentlemen, on the origin and progress of this controversy—not to excuse the defendants nor to arraign the State. Fifteen years ago, Michigan attempted to stretch a railroad across the Peninsula, from shore to shore. It was honorable even to fail in so noble a design. An imperfect road was built, reaching from Detroit to Kalamazoo, and was traveled by a few slothful engines. The State conducted it, as the State conducts every thing, with conciliation and kindness towards the people. Necessity obliged the State to give the enterprise over to a corporation, which speedily extended the road to the western waters and brought it into a perfect condition. Engines increased equally in numbers and in speed, and the road became a thoroughfare alike useful and important to the citizens of Michigan and to the whole country. This public gain was attended by the usual conflict between the corporation and citizens, about routes, titles, prices, stations and property unavoidably taken, injured or destroyed. The regions through which it passed were newly opened. Their inhabitants were *settlers*, and settlers are generally poor. Their farms were not fenced. Public roads, as well as public lands, were habitually used as ranges for pasturage. Cattle, often the settler's only convertible property, were frequently destroyed. The change was sudden and abrupt. The corporation refused to pay damages; the settler insisted

*The clear point of duty is, to assist most readily those who most need assistance.

on them. Litigation ensued, and failed to settle the contested claim. The corporation offered half price, as a compromise. The settler regarded this as a concession of the right and insisted on the whole. Jealousy of wealth and power inflamed the controversy. Occasionally a settler retaliated, and ultimately several united in committing trespasses. The corporation invoked the legal tribunals, but failed for want of evidence. The controversy became embittered, chiefly in Jackson county. On the night of the 19th of November last, the freight depot at Detroit took fire and was reduced to ashes. No one dreamed, or ever would have dreamed of an incendiary, had not a public outcast, lured by the tempting rewards of the corporation, conceived the thought of enriching himself by charging the crime committed here upon persons in Jackson county, obnoxious for trespasses committed there. He secretly gave body and form to that suspicion, and on the 19th of April last it resulted in the alleged disclosure of a long concerted, profoundly contrived and deliberately executed conspiracy by citizens of Leoni for the entire demolition of the rails and structures of the Michigan Central Railroad.

Thus it is seen that the State, by neglecting to provide for the consequences of the sudden change of its policy, caused its citizens "to stumble in their ways from the ancient paths, to walk in paths in a way not cast up."

There has been a wild and fearful conflict. On one side, unbridled, licentious speech, retaliation of private wrongs upon the body politic, by reprisals, reckless of condition, sex or age, and of distinction between the offending and the guiltless; on the other, a corporate police of mercenary spies, pursuing and haunting the steps of all who were exposed to their suspicion or their malice. Secret accusations were laboriously compiled by scribes and verified by oaths before magistrates, with the carefully studied and profoundly concealed purpose of obtaining, in some way, evidence enough to sustain an accusation against citizens of Leoni of some crime or crimes for which they could be tried away from Jackson county.

When all was matured, an indictment was speedily found against Abel F. Fitch and others for burning the depot at Detroit; another for conspiracy to burn the new depot which had arisen in its place; another for burning the depot at Niles; another for conspiring to burn the depot at Marshall; another, in the United States Court, for manufacturing and passing counterfeit money, and still another for burning the public mails. Civil actions were simultaneously brought against the defendants. Bail in frightful sums, was exacted in each of these actions and on every one of these indictments. Able and sympathising friends were ready to become bound; but the wealth of Jackson county could not meet the large demand, and the defendants, ever since, have been held fast as in a cage of iron. The corporation employed ten lawyers among the most eminent within the State, and assuming the direction of the prosecution and defraying a large portion of its expense, has poured forth, through the lips of its witnesses, the compiled volume of secretly gathered accusations. The prisoners have come daily into Court to encounter these accusations and have returned at night to confront pestilential disease in the jail. The press of Michigan received the disclosures as true and proclaimed them to the world. The press throughout the whole country, accepting the disclosures, responded in expressions of horror to what it regarded as evidence of a universal demoralization in Michigan and demanded immediate punishment of the accused, with a restoration of the earlier and more rigorous penal code of the State.

Meanwhile, death, by removing the lowest and the highest of the alleged offenders, has invested the transaction with the solemnity of tragedy. Reaction has come, and with it, division of opinion and of sympathy. It is a strife between a corporation and the city of Detroit on the one side, and the county of Jackson on the other. The question is vehemently discussed, whether Abel F. Fitch died a felon or a victim of cruel oppression. Opposition to the corporation, on whatever grounds, confining itself within legal limits, of course gains strength by moderation. Corporate wealth cannot long oppress the citizen in such a country and under such a government as this. Your verdict against these defendants, if it should appear to be well grounded upon the evidence, should abate a rapidly rising popular commotion; but, if it should not be so sustained by the evidence, a people who

make the wrongs of each one the common cause of all, will pick strong matter of wrath out of the bloody finger's ends of a successful conspiracy. You have discrimination, candor and courage. You have need to exercise them all. You cannot escape present censure, whether you find the defendants guilty or innocent. But if your verdict be a truthful one, it will receive its vindication in history.

Gentlemen, I want a clear understanding of what we are trying. The clerk has read a description of it from his minutes every morning. Let him read it once more. [Here the Clerk read a summary of the indictment.] There, Gentlemen, you see that it is a case of Arson that we are trying; nothing more, nothing different. This certainly is not what the world supposes we are about. The world thinks we are trying a case of conspiracy; but the world has been misled, it is at fault. The clerk shows us, and I hope the world will now take notice, that the indictment requires an answer to these four questions and to nothing else:

1. Did the defendants here on trial, personally burn the depot at Detroit, on the 19th of November last, in the night time?

2. Did George Washington Gay burn it? and then

3. Did they hire and procure him to burn it?

4. Did they, after the fire, with guilty knowledge, harbor and maintain Gay?

There is no proof, and no claim is made for a verdict against the defendants on either the first or the fourth of these questions; therefore, you have to answer only the second and third questions. I wish I could go at once to the discussion of those two questions; but prudence forbids. Near a month was spent in receiving evidence of felonies and misdemeanors in Jackson county, out of your jurisdiction and foreign from this indictment. I must review that evidence. It was received under a promise that it would prove a conspiracy by the defendants to destroy *all* the property and structures of the company and so include a design to burn the depot at Detroit.

It was in vain that we opposed the offer of that evidence. In vain we said it related to crimes that, even if committed by the defendants, could not be proved against them under this indictment—that if they burned the depot, or procured it to be burned, it was no matter whether they had conspired to do it or not—that if they neither burned the depot nor procured it to be burned, then they could not be convicted here, even though they had conspired; that at least the proof of these alleged felonies ought to be rejected until after the existence of such conspiracy should have been established. The Court overruled us, as you must assume, rightly, and we must for the present acquiesce. So the proof came, tumbling in, helter skelter, and we must now remove it out of the way.

Let us understand clearly what is demanded of the defendants in regard to this portion of the case. We are to show you, not that the alleged trespasses were not committed, nor that the alleged meetings were not held, nor that the alleged menaces were not uttered; but that all the trespasses, meetings and menaces which have been proved do not establish the fact of a conspiracy by the defendants, to destroy *all* the property of the Michigan Central Railroad, nor even to destroy the depot at Detroit. When this shall have been demonstrated, this question of conspiracy will clearly appear to be a false issue and will fall out from the case.

The testimony, under this head, presents: 1. Overt acts; 2. Meetings and consultations; 3. Menaces and declarations by defendants.

In examining these several classes of evidence, we will apply two principles, viz: 1. Whatever does not lead at all to the conclusion that a conspiracy existed must be rejected; 2. Whatever looks that way, and yet may easily be explained on a hypothesis different from that of conspiracy, must also be rejected.

1. Overt Acts. I divide these into two classes: 1. Those which were committed by persons not now identified, and which were attended by circumstances which remain unexplained; 2. Those which were committed by persons claimed to be identified as defendants, and the circumstances attending which are explained.

1st. Trespass. Stones were thrown at the cars on their passage at a time not specified. Alonzo Holmes says "I was confined at home. They came in and said the cars had been stoned." This is all. The testimony charges nobody with the assault. The fact is proved by hearsay only, which is no proof at all.

2d. Trespass. A second instance is proved by Levi Carter. This occurred in June, 1849, fifteen rods east of Leoni. The witness says "that stones were thrown, that he put on the brakes, that he heard the stones strike the cars, that the passengers screamed, that a lady handed him a stone that had fallen in her lap, that a gentleman was struck in the breast and severely hurt." This evidence charges nobody; that is, it charges everybody, and therefore charges nobody.

3d. Trespass, proved by the same witness. This occurred also near Leoni village. The witness says "stones were thrown from bushes by eight or ten persons. One stone, I think, struck the engine." And that is all.

4th. Trespass. An assault of the cars by stones proved by John H. Dexter. "I was sitting in my room. The cars came along. I heard glass rattle. I went down and out. I told Filley that stones had been thrown into the parlor. I found Fitch, Filley and Corwin out towards the railroad. The "Price boys" had been there before I went to bed. There was glass on the track next day." Gentlemen, you know that Fitch, Filley and Corwin all lived hard by. It is true that they may have thrown the stones at the cars on that occasion, yet it is equally true that other persons, and not they, may have committed the assault. It is certain that Mr. Dexter did not participate in it, but went out from curiosity. Fitch, Filley and Corwin may have gone out from curiosity also. The "Price boys" may have remained after the witness went to bed and may have thrown the stones on that occasion; and on the other hand they may have gone home and not have thrown the stones. It is not proved then that all the defendants named threw stones; and if it be inferred that some of them committed that trespass, we cannot distinguish between the guilty and the innocent, and therefore in judgment of law all are guiltless.

5th. Trespass. Three instances of assault of the cars by stones are proved by William Clark. These are probably three of the cases concerning which the witness Wolevar has testified. If they are the same, we shall find the explanation of them in his evidence. If they are different and distinct transactions, then we know not who committed the trespasses nor in what circumstances they committed them, and therefore they may be dismissed from our consideration.

6th. Trespass. The next fact consists of menaces of an assault by stones and guns. Hiram Shearman and John B. Cochran testify that on one occasion in the night time, while they were lying in wait as spies, "two men came out of Filley's house and walked along on the track. One of them whistled. Afterwards a third came out with a gun and bayonet. They spoke of tearing up or of widening the track. They said, 'the cars run so slow we can do nothing, but if we can do nothing more we can stone them like hell;'" and afterwards the witness heard the reports of two pistols. I reserve comment upon the value of this testimony as affected by the character of the witnesses, they being spies and informers, and remark at present that the transaction, having been mysterious and having been observed in the dark, is probably exaggerated. But if it occurred as has been described, then we know not who the two men were who came out of the house unarmed, nor which of them gave the signal, if the whistling was designed as a signal, (which is quite uncertain,) nor yet who the bandit was who was thus "doubly armed," nor which one of the ruffians it was who spoke of tearing up the track or widening it, nor which one consoled himself and his associates by the reasonable reflection that if they could do no more they could stone the cars, nor which of them fired the pistols, nor whether pistols were fired at the cars or not. The witnesses seem not willing to rely with confidence upon their own senses in that respect. But if we knew all this it would still remain true that these three men are not identified as defendants in this cause, that their conversation implied no concert nor agreement with any other person to commit an assault on that occasion, much less any concert or agreement to commit any assaults or depredations elsewhere and on any other occasion. They may have been banded together by previous conspiracy; but, on the other hand, they may have been only accidentally associated. This transaction therefore throws no light upon the issue of the alleged conspiracy.

7th. Trespass. An assault upon the cars with guns, proved by William Clark. This occurred in June, 1848. He says "the passenger train was fired upon, but

without effect; east of the marsh at Michigan Centre, four or five or more guns were discharged; the feed of the engine was marked by a ball;" but neither this witness nor any other has identified any one of the defendants as having been engaged in that assault or having had any knowledge of it, either before or afterwards. They are therefore not responsible for it, and the testimony leads to no conclusion concerning the existence of the alleged conspiracy.

8th. Trespass. An obstruction of the cars at Michigan Centre, at a period not specified, is proved by William Clark. "Pieces of timber were found on the track and were brushed off by the brooms," and this is all that Clark knows. His evidence charges nobody in particular, and of course affects nobody.

I notice here, to avoid misapprehension, an allusion to a mail car which is alleged to have been burned in June, 1848. The only testimony on that subject is given by Wescott. The transaction is alleged to have taken place west of Jackson. This was beyond the actual bounds of the alleged conspiracy, or at least beyond the limits of the vicinity in which the defendants lived. Wescott stated the fact upon hearsay only, and even that hearsay gives us no information showing who burned the mail car or what were the circumstances of the crime.

Here then, gentlemen, are seven assaults on the cars with stones, one demonstration against them with a gun or pistols, one assault with guns, one obstruction with timbers and one alleged burning of a mail car—in all eleven outrages. They are undoubtedly to be condemned. The actors in them ought to be and I hope will be detected and punished; but we have no proof that these outrages were committed by all or by any one or more of the defendants on trial here. We have no knowledge of the circumstances in which they were committed. We know that they were criminal, but we have no evidence that they were preconcerted nor that they were connected with each other; still less that they were connected with any purpose of burning the depot at Detroit or any other depot. On the principle, therefore, of rejecting such evidence as leads to no conclusion concerning the existence of the conspiracy alleged, I claim that these transactions be laid by altogether in the consideration of that question, or, at least, that they shall weigh no more than successive demonstrations of malice and guilt occurring within the region where the defendants lived.

I come next to consider *Overt Acts* in which defendants are claimed to be identified as offenders, and of which the attending circumstances are given or claimed to be given. Of these I notice first, the breaking of a hand car as alleged by the witness Horace Caswell. He states it thus: "Filley in May, 1849, wanted to borrow a hand car of Miller, agent of the Company, to go to Leoni. Miller refused. Filley said that a hand car should not stay at Michigan Centre, it would be broken every night." Caswell adds that "a hand car was found broken in the morning. Filley, who had gone out before daylight, returned and asked who they laid the breaking of the hand car to. I answered nobody. He replied, 'never mind; the man who broke it knows who did it, and he probably is the man who lives nearest to it.'" Although I think this witness will be found unworthy of credit, I assume, for argument's sake, that this transaction occurred as proved, and I grant also that Filley admitted sufficiently the breaking of the hand car. Nevertheless it was an act of peevish, personal retaliation for a present unkindness. It proceeded from that act of unkindness. It had no origin before; certainly not in any combination with any other party. It had an immediate object and end—retaliation for that unkindness. Nobody advised it beforehand, nobody had any knowledge that it was to be committed, nobody knew when it was committed or participated in the trespass; nobody knew of it or approved of it afterwards. The act was unjustifiable, but Filley alone was responsible for it. He was responsible elsewhere, not here; in another way, not in a trial for arson. It is simply absurd to claim that this is evidence of a plot or conspiracy between Filley and other defendants to burn the depot at Detroit six months afterwards.

2. An obstruction of the railroad late in 1849 or early in 1850, claimed to be proved by Isaac S. Smith. He says "the cars had stopped at the White Bridge by reason of the obstruction of a mud-sill, as I supposed. I went down with Marsh, Terrill, Earl and Grant." Terrill and Grant are defendants. The proof

does not show that the cars were obstructed by a mud-sill. If that was the case, Terrill and Grant, the only defendants implicated, certainly did not lay the mud-sill on the track. But Smith says farther, that, on returning from the railroad, Terrill fell behind, and that he (Smith) saw Terrill putting a piece of strap rail on the track. Marsh says that Smith pointed out to him the strap iron lying on the track, and he saw Terrill walking away from it. You remember, gentlemen, that the track of the railroad was strewed with broken pieces of the flat or strap rail. It may well be doubted whether Smith did not mistake what Terrill was doing. These broken straps lying about the track were liable to be thrown upon it, by the cars, when passing. Such a piece of iron could not throw the cars off nor impede their motion. But if that were the case, the mischievous act was nevertheless one of sudden or, at least, immediate impulse. It was Terrill's own act, and no other person was concerned in it at the time, nor before, nor afterwards.

3. Amos Van Valen and George Knox relate, that on a summer afternoon, when they were driving their cows near the railroad in the vicinity of Marshall, they saw Doctor Ebenezer Farnham, one of the defendants who resided at Jackson, 40 miles distant from Marshall, but who was then at that place, walking on the track and swinging a piece of strap iron for the purpose, as they supposed, of knocking out the wedges. They describe the motion of the Doctor's arm in such a manner, as to leave no doubt that they mistook his cane for an iron bar, and its playful motion for a trespass. However that may have been, the defendant, even with an iron bar, under such a motion, could not have displaced a wedge that would not have been shaken out by a passing engine.

4. The prosecution dwell upon the burning of a culvert east of Filley's house in June, 1850, proved by W. P. Stanton. He says that he was at Filley's, "that Mrs. Filley came in and gave the alarm, that the culvert was on fire. Stanton and Fitch went up to see it. Stanton proposed to get water and put out the fire. Fitch, with his usual smile, (for he was always pleasant to me) answered, 'you will have to go out of this town to find anybody to put it out.'" Fitch's remark certainly does not show that he or any other person fired the culvert. It was a suggestion naturally arising from the aggravated state of public feeling in that town, but it proves no previous knowledge nor design on the part of Fitch, much less of any other defendant. The transaction, however, was one capable of being perverted to the use of the informers, and so it was noted in the diary of Phelps and Lake, to be the subject of admissions or declarations made by the defendants. Lake says that Phelps asked Filley how it was done. Filley replied, "we can say the wind blew the rails in the culvert and the engine dropped fire upon them." But Lake informs us that Filley said that the culvert was burned one or two days before his conversation with Filley, that is to say, in February, 1851, whereas the culvert was burned in June, 1850. Phelps stumbles into the same error. He says, "we talked about the culvert that was burned. Filley said the wind blew the rails into the culvert, and the engine set them on fire, and Champlin said, if they lived, there would be more of such accidents." But Phelps speaks of the accident as having occurred while he was gone to Niles, in March, 1851, and he locates the burning of the culvert, not at Michigan Centre, in sight of Filley's house, but at Leoni, four miles distant, where it most certainly did not occur. These contradictory admissions or declarations leave the transaction still more harmless than it was without them, and certainly it is of no value in the present case.

5. A pile of lumber near the storehouse at Michigan Centre took fire during the last summer. John H. Dexter testifies that he was in his room up stairs in Filley's house; that he heard some one come in, as he thought, barefoot, through the house below, towards Filley's bed-room; that twenty minutes afterwards, he saw the fire; that he called Filley and told him that Grant's house was on fire; and that Filley and he went out to see, and Filley turned round and said, "it is only a board kiln; let us go back or some of the railroad spies will see us." William H. Hudson testifies that he found naked footprints about the board-kiln in the morning, and he thought they corresponded to Filley's foot. Hudson asked Filley if he burned the lumber. Filley replied, "there shall be no fence made till they settle with me for the land." Isaac Minkler says that "Filley spoke of the accident, and said the lumber took fire, that he smiled and seemed glad of it."

I will not speak of the danger of convicting men upon *smiles and seemings*, and upon inferences from indirect admissions; but will grant, for the sake of argument, that Filley fired the lumber which had been deposited there to build a fence, for the purpose of obliging the Railroad Company, to pay him for the land to be fenced; and then I say that the act was a secret misdemeanor. It was his own solitary act, resulting from his own individual impulse, committed for his own improper purpose of interest or of revenge, without accomplice, and without consultation or concert with any other defendant, and it therefore excludes all idea of connection with the alleged conspiracy.

6. Jacob Wolevar describes an attempt to obstruct the cars near Michigan Centre in September, 1850. "I and Corwin went to Fitch's yard and got an old mill-iron that was lying there. We laid the bar in the frog of the switch. The cars did not run off. Corwin proposed it, saying 'we will throw them off and keep them here to-night.' The next morning Fitch said, 'you must not take anything from my house or they will suspect me. Take anything else you can find, but nothing from my house.'" Corwin is a defendant, and if this statement is true, this trespass originated in his own solitary suggestion. No other defendant was an accomplice. It was unpremeditated even by Corwin and Wolevar. Fitch's knowledge of it was acquired the next morning, and no other defendant ever knew it until the transaction was proved in this court. Fitch's rebuke is evidently perverted so as to imply a pleasure in such depredations; but even as it stands, it effectually disproves concert in the trespass, and that is all that is necessary for the present purpose.

7. An engine, the Rocket, was thrown off at Michigan Centre about the 28th of October last. Shearman says, "I asked Corwin what was the matter. Corwin answered that Spaulding had said to him, 'Well, Bill, you have run us off this time,' and that Corwin added, 'I'll learn old Spaulding not to insult me. We threw them off, and mean to give them hell right along for a month. I'll let old Spaulding know there will be more done for a month to come than there has been for a year past.'" The word *we* is dwelt upon by the prosecution, but who does that "we" mean? If any body, it means, besides Corwin, Wolevar and Shearman who are not defendants; that is, for the present purpose it means Corwin alone. The threat is Corwin's only. The "hell" threatened in that vocabulary, so far as it has been explained here, meant obstruction of the cars, and assailing them with stones or guns in Leoni and its vicinity, and comprehended no more. By no fair implication can it be made to indicate the destruction of railroad depots at distant places. The threat was passionate, turbulent, malicious, felonious, fiendish if you please, for I do not mean to palliate the misconduct of any of these defendants. Nevertheless it indicates no pre-concert in any crime actually committed, and certainly no ulterior design to commit greater crimes elsewhere, but, only to prosecute similar offences at the same point of conflict.

8. We have next a baffled design to detach some cars from the freight train, near Michigan Centre, in November, 1850, for the purpose of producing a collision between the part to be detached and the incoming passenger train. Shearman says, "I went to Terrill's store. A freight train came along very slow. Corwin then said, 'Let us cut 'em off, and the next train that comes along will run into the cars.' We went up to the cars to cut 'em off. The conductor was sitting on the top. Corwin said, 'G—d d—n him, let us knock him off with a stone,' and looked around but found no stone. Corwin said, 'next time we will go down to the old tavern; there is plenty of brick there, and we will give them hell.'" "

The criminal and inhuman purpose here disclosed was the unconcerted and unpremeditated thought of the defendant Corwin alone, and therefore the attempt to execute it in the manner described by the witness, furnishes no evidence of the supposed conspiracy.

9. An attempt was made to displace the rails east of the marsh, at Michigan Centre, in September, 1850, according to the statement of Woliver. He says, "Filley asked me to go with him; 'I am going to give 'em hell to-night at the east end of the switch.' This was an hour after dark. Filley said, 'I must look around and see if any one is coming.' He tried to get the switch bar loose, but failed. He then fixed the bars so that one bar crossed the other, two or three in-

ches. He said he guessed that was enough. We can do no more, and we will go home. His design was to injure the Company all he could, and he'd be damned if he didn't do it." Assuming this testimony to be true, this fearful act began with Filley, and ended with him and Woliver only. The explanation which accompanied it, showed that it was some motive of private malice or retaliation that prompted the transaction. No one else advised it; no one else knew of it. It is a transaction that deserves punishment in Jackson County, but it has nothing to do with the case which you are trying here.

10. A lamp was broken in consequence of an obstruction of a culvert in 1850. Woliver says, "we, (Filley and I,) went down west of Fitch's, and placed a tie in a culvert to break the lamp, and a mud-sill across the track, and went back to Filley's. Next morning Fitch told me that he went down to the cars, when they had stopped, and that after the cars got under way, he and Filley got on behind and turned the brakes." Filley and Woliver alone were engaged in this transaction. We learn from the testimony elsewhere that Fitch arrived at home after the obstruction had occurred. The story of the brakes is puerile. There is, I believe, only one brake at the end of a car. One man turns it with ease and effect, when the cars are under a slow motion. The cars had only begun to move, and were on an ascending grade. A pressure upon the rails through the brakes could do no possible injury. They could have been used in this case only for a petty annoyance. Dear to Abel F. Fitch as his vindication in this case was declared by him, in his dying hours, to be—dear as it is to the community in which he lived, and evermore will be to me, I am glad that this charge, puerile and pitiable as it is, rests on the authority of Woliver alone. How worthless that authority is, we shall have occasion to see in the sequel of this argument.

11. It is alleged that the cars were assailed with stones on the occasion of a ball which came off at Leoni, on the 11th of August. The charge rests on the testimony of Woliver alone. He says, "E. J. Price, L. Champlin, Hewitt Davis and I were in the ball-room. Price said, 'the cars are coming; let's go and stone them.' We four went. Price and I together, Champlin and Davis further on together. Stones were thrown. I threw none, but I heard the rattling of the stones against the cars." Hewitt Davis says that he attended the ball; that no such transaction occurred; that he was in the arbor in which the ball was celebrated, and neither he nor Price, nor Champlin left the ball for any such outrage, nor proposed to do any such thing. Ira W. Kellogg was door-keeper on that occasion, and he proves that Price, Champlin and Davis did not leave the ball-room, when the cars passed. These witnesses agree that Woliver was in a state of absolute drunkenness in the bar-room during the whole night, which rendered him unable to move, and that he never entered the arbor at all. This aggression, then, must have been an invention of the witness Woliver. Where a witness is found to have stated a deliberate falsehood in regard to one material fact, the law applies the rule *Falsus in uno, falsus in omnibus*, and we are relieved, therefore, from all obligation to account, in this cause, for any crimes resting upon the evidence of Woliver alone.

12. Woliver described an assault of the cars with stones on another occasion, much in the same manner. He says, "We were together—the Price boys, Corwin and I. Corwin said, 'the cars are coming; we will go and give 'em hell.' We threw stones at the cars from Filley's orchard. I saw glass along the road the next day." If the fact of this assault is to be assumed, then I have to remark only this: that it implicates Price and Corwin—that it was an unpremeditated and unconcerted act, obviously disconnected with all the outrages which preceded and followed, and that it furnishes no evidence in support of the pretended conspiracy.

13. The cars were again assailed with stones, according to Woliver, in September, 1850. He says, "The Prices, Corwins and I were together at Filley's house. The Prices and Corwins proposed to stone the cars."—(Woliver is always innocent, but he yields with wonderful ease to seduction.)—"We went beyond Fitch's garden and there threw stones. We heard glass rattle, and I found glass there the next day." The transaction is subject to the strictures before made.

14. An engine, the Goliah, was thrown off the track at Leoni. Shearman states

that, "Corwin said, when the Goliah was thrown off, he went home fearing it hadn't been done up right, but by morning he found it had been done up brown." H. H. Bingham says that he was traveling from Michigan Centre to Grass Lake that night; two men passed him in a wagon. One of them spoke to the other about being too late for the cars. He recognized Corwin's voice. He thought the voice of the other was Williams', but feigned. He recognized the person of neither. If it were Williams, and he spoke with a feigned voice, then the voice must have been unlike his; so, if the voice was unlike that of Williams, then it furnished no evidence that Williams was the person who spoke. Williams is not proved to have been present at the throwing off of the Goliah, nor to have had any connection with it. Corwin's action rests on his alleged admission. This, like his other crimes, was his own, and it fails to cast any responsibility on the other defendants, and equally fails in giving support to the alleged conspiracy.

15. One of the most important incidents in this strange and painful history is the burning of the wood pile at Michigan Centre. Shearman relates it thus, "I was at Jackson, Corwin and Holcomb were at Morrison's grocery. They told me they had laid a plan to get some flour; that perhaps I might not fall in with them, but, if I did not, I must keep still. 'We will go to-night and take three barrels of flour from the cars. We will set the wood-pile on fire to divert the spies and take the flour while the fire is burning.' The three then returned to Leoni. Holcomb and Shearman put up Corwin's horses, while he went and examined the cars. Corwin came back and said it was all right. One of the doors of the cars was half open. E. J. Price afterwards came up. Price proposed to drink. They drank at Filley's. Filley asked me if I was going a fishing. I said yes. Corwin got an axe. Price said he hadn't the first damned thing to fight with. Filley handed him a knife, and said he hoped they would have good luck, and if they should want anything to drink when they came back there was a bottle, and, if that was not enough, they knew where the key was. Corwin, Price and Shearman set the wood-pile on fire and were arrested in pursuance of an arrangement pre-concerted by Shearman with the agents of the Rail-Road Company." Shearman added, that on their way to Michigan Centre, he asked what they were going to do with the flour? Corwin said, 'as big a man as Fitch is, I'd as soon let him know it as not. He will keep me along with it, and out of it.'

I exclude for the present, for an obvious reason, the evidence of Phelps, involving admissions alleged to have been made by Fitch and other defendants, all interested in screening Corwin from this crime. That will come up more properly in another part of the case. Standing, then, upon the testimony of Shearman alone, it is apparent that this crime was Corwin's, and *his* only; that it was conceived by him, for his own felonious gain. Holcomb and Wells are not defendants. Price went into it on a suggestion at the moment. There is no reason to suppose that Filley knew Corwin's purpose, except what is found in the suggestion of Price, that it might be necessary to fight. I do not know whether fishing at Michigan Centre, at those times when Railroad spies abounded, was supposed to require those who practiced it to go armed, though I can well understand that they may have habitually visited a tavern on their way out and on their return. But if Filley's remark connected him with the transaction, then the crime rests with him, Price, and Corwin. It was unconcerted. No other defendant was consulted, nor was it connected with any other crime, committed before or afterwards. Corwin's remark, that he would not be afraid to let Fitch know it, might lead to an unfavorable opinion of Fitch's integrity, but to nothing more. But it may have been presumptuous on the part of Corwin. It manifestly proves, in the most conclusive manner, that Fitch had no knowledge of the intended crime, and therefore places the transaction out of the evidence in support of the conspiracy.

16. The "Gazelle" engine was thrown off the track near the dry marsh at Michigan Centre, August 20th, 1850. Woliver, as usual, was hero and historian. "I was at Price's haying for Filley. Filley came up and proposed to throw the cars off. We took an iron bar from Penfield's saw-mill, and an axe from Price's; Filley, the two Prices' and myself. We broke the chairs, moved the track aside, and threw off the western train instead of the eastern. I went back to Price's. They said, no matter how many were killed. Damn you, don't you say a word about

it." This transaction, then, if Woliver is to be believed, was suggested by Filley, adopted by the two Prices and Woliver, and executed by them all, within the space of two hours from its suggestion. Only three defendants were engaged in it, and they suddenly, without the participation or knowledge of the other defendants. It was a desultory crime, and black and terrible as it was, was nevertheless disconnected with any other transactions, whatever their character may have been. It not only furnishes no evidence of a conspiracy, but, as explained, repels the idea of such a conspiracy as is alleged. But this transaction of the Gazelle re-appears in two other versions.

First, there is an attempt to connect the defendant, Willard W. Champlin, with it. Taylor produces a paper which he says was found sticking out from under some wood in the culvert where the transaction occurred, which is marked, "The Price Boys Warning." That extraordinary paper is in these words:

"Michigan Centre, Aug. 19, 1850.

MR. PRICE—Sir—I want you to be at the mild stake, this side Leoni, on Monday night at about half past 9 o'clock. We intend to run the cars somewheare's about there; be sure and be there at the time.

By order of the Committee. W. CHAMPLAIN."

This letter was permitted to be read, upon the opinion expressed by Holmes that it was in the hand writing of the defendant, Willard W. Champlin; but at a subsequent stage of the trial, Holmes, who appears to be an honest and truthful witness, came upon the stand and declared, that after farther examination of the writing, and comparison of it with other known writings of the defendant, he was of opinion that it was not; that he thought it resembled more the hand writing of the witness Taylor, who produced it, which he knew well, than it did that of the defendant Champlin. Michael Coy, who knows Willard Champlin, declares that it is not his, as indeed it manifestly is not, since the signature, which is without any affectation or disguise, differs both in style of execution, and in the christian and surnames assumed. I do not press the testimony of James Champlin on that point—he was evidently illiterate and imbecile. The paper, then, in the first place, is not in evidence, being disproved by the same witness whose testimony procured it to be admitted. Secondly, it is a forgery, and being such, is pregnant with warning against yielding credit to the tales of venal and prostitute informers. It is needless to remark, that it is to be presumed that Champlin himself would have been present at the time appointed, if he had, by order of a committee, or otherwise, sent this notice to the Prices; but Wolevar proves not only that Champlin was not there at all, but that the proposition to throw the cars off was made to the Prices by Filley, as a new one not on the day before the transaction occurred, but on the same day, and within an hour before it. But the throwing off of the Gazelle, in the language of these spies, has furnished a *basis to predicate a plot upon*, and this has been artfully done by Wescott and Lake. Wescott says, that on the Sunday when Sacrider had his duck-pie at Filley's, he overheard Williams ask Filley for money, and Filley replied "I thought the Gazelle matter was settled." Williams made some reply not heard, whereupon Filley said, "Fitch has paid you \$12, and I have paid you 10, and I'll now give you 3, if that will make it right;" and thereupon Filley, after obtaining from Wescott change for a \$5 bill, paid Williams \$3. Lake, at a far distant period, procures and offers confirmation by saying that Williams gave him a history of the throwing off of the Gazelle; that he said that "Fitch planned it; that Filley, Wolevar and Corwin executed it; that he, Williams, lent them the bar with which to break the chairs and remove the track, and then went to bed so as to be able to swear that the Prices slept all that night with him. A word or two will dispose of this joint invention. If Williams earned \$25 by going to bed and leaving others to commit the crime, how much were they to be paid who performed the labor and incurred the entire danger? Again, Wolevar, who was of the party, excludes Fitch altogether from a knowledge of it, and excludes him as well as Williams and Corwin from all agency in it, and says that he himself got the crow-bar which was used, and that he got it not from Williams, but from Penfield's mill, which was impossible, if the history said to have been given by Williams was true.

Gentlemen, the long discussion which I have bestowed upon this one of many

incidents in the history of this pretended conspiracy will not be lost, if it shall serve as a caution that the way of this prosecution has been traced by fraud and cast up by perjury.

17. I come now to one of the most remarkable portions of this extraordinary case, that of the alleged delivery of pistols by the deceased defendant Fitch from his bedroom window. Joshua Wells testifies that he and Miner T. Lacock, one of the defendants, "received pistols from Fitch at his bedroom window, in the month of August, 1850." He says, "it was just dark, and Fitch after delivering the pistols, went into a shed, and there delivered to the witness Caswell a rifle pistol, and told them to go down close to the cars at the dry marsh, and to get as near the engineer's house as they could." Caswell asked Fitch if the pistols were loaded, and he said they were, and told them to shoot right through the engineer's house, and Caswell said that he afterwards tried with a ram rod the pistol which was given him, and found it loaded. Caswell says, "Fitch handed me a rifle pistol in the shed." Lacock and Wells each had a pistol. Fitch wanted us to go out near the marsh and shoot at the engineer. I asked if the pistols were loaded. He said "yes, with a ball." Deloss J. Holden says that Fitch once admitted to him, in speaking of this transaction, that he gave Wells and Lacock pistols, but they were loaded with powder only, to frighten people in the cars or on the engine. Elizabeth Hargrave says that Lacock told her, in speaking of the complaint against himself, that they had got pistols or guns out of Fitch's window; that Fitch told them they could shoot, but they did not shoot. Barnet Culver says that Lacock said, in speaking of some declarations imputed to him, that all he had said was, that Fitch had handed him and two others pistols out of the window and said "shoot 'em, damn 'em;" but they didn't shoot.

Gentlemen, you will take notice that Wells and Caswell, before coming here to testify, were taken into employment by the railroad company, at salaries, I think, of \$15 a month, and that Lacock was taken into their service at the same time, but was afterwards discharged by the company and then charged as a defendant in this indictment. You will take notice of another fact. Caswell says, that the rifle pistol delivered to him is one which Lacock had before borrowed of Moulton. You will remember also that Fitch had been a captain of dragoons, and that his pistols and sword were kept always upon the desk containing his papers, resting upon the safe in his bedroom. You will now oppose against the evidence given by the prosecution, the fact that Caswell is not only an accomplice taken into favor and reward by the company, but that he stands self-impeached. After giving a succession of employments that he followed, changing so often as to prove himself little better than a vagrant, he said "that he went to cutting grubs for a darky." Being pressed for an answer who the darky was, he replied, "I have been fooling now, I didn't cut no grubs." He denied that he had been charged with arson in the place he had left before going to Michigan Centre, yet he refused to answer whether he had not been examined on a complaint of arson, upon the ground, that it would subject him to punishment for a felony. I understood the counsel for the people to disavow a claim of credit for his evidence.

Anson H. Delamater, than whom the state seems to me to possess no worthier citizen, says that Joshua Wells told him in June last, when speaking of this charge, that he did not know anything against Fitch, and that he had wished himself dead a thousand times before he got into this scrape. J.V. Carmer, an equally respectable man, says that Joshua Wells told him, when speaking of his attitude as a witness, "unless I had come out for the railroad company, I should now be where they are;" that is, in jail under an indictment for burning the depot. Carmer adds, "I said to him I understand that Fitch requested you to shoot one of the engineers." He said it was not so, and he never thought of it. As for Lacock, the declarations imputed to him are sufficiently contradicted by the fact, that by refusing to testify for the railroad company, in corroboration of Wells and Caswell, he lost his position in their employment, and took his place among the defendants, and "is now where they are." You are prepared now, I think, to recur with favor to that touching scene in the trial, when Amanda Fitch, the adopted daughter of Abel F. Fitch, she of whom he said in the very last words he uttered—"poor dear little Amanda, I had quite forgotten her, remember me to her"—I say

you will recall with pleasure the occasion, when that child, of only fourteen years, appeared upon the stand, and gave her account of the transaction, of which venal informers have manufactured a tale so full of horrors. "Mr. Fitch was standing by his desk. Lacock and Wells came to the window which was open. Lacock said, "Fitch, I want to borrow your pistols." Mr. Fitch took them down from the desk, wiped them off, and handed them to him. Lacock said, "Fitch, I want some paper." Mr. Fitch asked me "to get some paper," and then taking up a piece of newspaper lying by his side, he said "there is some," and handed it to Lacock. Lacock and Wells withdrew. Mr. Fitch resumed the examination of his account-book, then laid it by, took up his flute, sat down in the sitting-room and remained there" until a period too late to allow of the occurrence which is alleged to have taken place in the wood shed. You remember the womanlike firmness and sincerity with which this testimony was given. You remember how, during nearly half a day, this child baffled the studied arts of the able counsel, in their attempt to entrap her and to involve her in self contradiction. I do not dwell upon the attempt to contradict Amanda Fitch by the testimony of Euphemia Coy on a point which was irrelevant and trivial, to wit, the alleged assistance rendered to Amanda in preparing her testimony by her mother. That mother has appeared here and has been offered to sustain her daughter's denial of such assistance. Gentlemen, you have heard Amanda Fitch's recital, confirmed as it is by Delamater and Carmer, and by the scarcely less than martyrdom of Lacock. Weigh it against the testimony of Wells and Caswell, impeached as they stand by self-contradictions. There is perjury on one side or on the other. It is for you to decide whether it is on the part of the informers who sustain this prosecution, or on the part of this child. It grew into a proverb in ancient Rome, that in seasons of public confusion a citizen could not be quietly undone, nor could his family escape from being involved in his ruin. The defendant Fitch has been hurled from his estate into his grave. His wife, when she appeared upon the stand, a lawful witness to redeem his name from reproach, has been refused a hearing, because she had become a widow too late. Complete if you will and if you can this domestic desolation, by stamping the brand of perjury upon the brow of that cherished orphan child; but remember, before you do so, that you and I, in one of those various excursions which have relieved the weariness of this protracted trial, once visited together the state prison of Michigan, and that we found there one hundred and fifty malefactors, all of whom were men, and that within those dreary walls there was found not one woman.

Thus, there are seventeen overt acts attended by circumstantial explanations, to wit: One breaking of a hand car by Filley alone, rejected as a trivial, personal and unpremeditated transaction: One obstruction by a mud-sill, and by strap iron, charged against the defendant Terrill alone, insufficiently proved, and trivial if proved: One like charge against Dr. Farnham, rejected as both trivial and false: One burning of a culvert, rejected because the evidence is insufficient and contradictory: One burning of a pile of lumber, an act of personal retaliation by one of the defendants alone: One attempt to obstruct the cars, by placing a spindle in a switch, in which only one defendant was concerned: One throwing of the engine "Rocket" from the track, which was Corwin's individual act: One design by Corwin to detach the freight cars, proceeding from sudden impulse, and not carried into execution: One obstruction of the cars, west of the switch, by Filley and Wolevar, without concert with any other defendants: One breaking of a lamp, and obstruction of the cars, by a mud-sill, the act of Filley, without concert with other defendants: One alledged assault of the cars with stones, at the ball at Leoni, actually disproved: Two assaults of a like kind, by the Prices, Corwin and Wolevar, acts unpremeditated, and without concert: One throwing off of the "Goliath," the act of Corwin alone: One burning of a wood-pile by Corwin and Price, to cover a larceny, for the benefit of Corwin alone: One throwing off of the "Gazelle" by Filley and the Prices, without the knowledge of the other defendants; and the exaggerated pistol scene at Fitch's house, disproved and rejected. Among these transactions, Filley is compromised in four distinct cases; Corwin in six, and the two Prices in three. No other defendants were connected with them by actual co-operation, no one case of preconcert by any other defendant with the

aggressors has been established, not one instance of guilty knowledge by any of the other defendants has been proved, nor was there, among them all, an aggression committed in pursuance of a previous design or plan formed or projected, even by the defendants who committed it. You will readily agree that if a conspiracy, such as is alleged by the prosecution, did exist, Wolevar, Caswell and Shearman, were guilty parties in it; yet you see at once that, although you could convict them of so many crimes committed, by their own confession, you could not for a moment uphold an indictment against them charging a previous *conspiracy* to commit the acts which they have confessed. They cannot be innocent of such a conspiracy and leave the defendants guilty; the defendants cannot be guilty of a conspiracy if these witnesses are innocent of it. The overt acts then which have been given in evidence neither prove, nor tend to prove, the existence of the alleged conspiracy. Let me not be misunderstood in regard to them. Not only do I rejoice that no human life has been lost, nor limb broken, but I condemn these outrages as atrocious, cruel and inhuman. Their only alleviation is that they proceeded from passion; and passion, dark and stumbling, in individual men, is blinder still in masses, where a sense of individual responsibility is lost. But that constitutes no justification. I sympathise in no hostility to the Michigan Central Railroad—in no hostility to corporations—in no hostility to wealth. I rejoice in the completion of every new link in that chain of internal communication, upon which I rely to bind together the ever changing boundaries of this vast empire. I would indeed hold corporations, as I would private citizens, to the practice of justice and moderation; but I know of no legitimate redress, in a government of laws, but redress by law, and by constitutional change of laws. I regret that these aggressions remain unpunished. I trust they will yet be punished, and that the majesty of the law will yet receive its ample vindication. But it belongs not to you, nor to me, to effect that vindication. These aggressions were committed in a foreign jurisdiction. Our present duty in regard to them is performed, when we have shown that they have no relation to the question under consideration here.

The prosecution, gentlemen, apprised you that, in addition to the overt acts of the defendants, they would give in evidence the fact, that numerous, even daily, unlawful meetings were held by them, in which they framed the stupendous conspiracy which is proclaimed to have existed, and contrived how and when it should be executed; that in those meetings they agreed upon the aggressions which should be committed, assigning to each defendant his part, and resolved that if they should fail to bring the company to their terms, by these aggressions, that they then would effect that purpose by the burning of edifices and structures throughout the whole length of the road. The prosecution alleged farther that in those meetings solemn resolutions were adopted to defeat the administration of justice, by combination, fraud and perjury; and, finally, that in those same assemblies the defendants severally contributed inventions and horrible machines for the work of desolation and destruction in which they were engaged. This was the promise of the prosecution. Days and even weeks were spent in the attempt to fulfil it, and with what result? I cannot descend into a minute examination of the shapeless mass of evidence laid before you to redeem this promise—but I shall call your attention to a few marked and distinct features of it; and upon these I shall challenge contradiction.

1. There was never a concerted, nor even an appointed meeting of the defendants.
2. There was never an unlawful assemblage of the defendants.
3. There never was a meeting or gathering of all the defendants, nor of half of them, nor even of a fourth of their number.
4. Those who came together at any one time were never the same persons who came together on a previous or on a subsequent time. Whether the number who came together was greater or less, they came together always in the most public places. They came together in the bar-room, in the ninepin-alley, in the street, at the post office, in the day time, and in the early hours of the evening.
5. They came together casually, on occasions of sheer broad publicity, on Christmas day, at shooting matches, on the arrival of the cars, at balls, at law-suits. They came together as accident determined, on their way to or from the mill, from

the blacksmith's shop, from the village store. These assemblages, such as they were, were open to all comers, whether village gossips or travellers. There was no tyler at the door. It stood wide open. These modern 'forty thieves' had no 'open sesame' nor 'shut sesame' to secure themselves against intrusion and detection. They were neighbors who came together, sometimes two, sometimes three, four, six, or eight; most frequently in the only village bar-room, and the traveller and the laboring man of the village, whether white or black, whether in the interest of the railroad company or against it, had free admission. There never was a meeting organized, there never was a resolution adopted nor a debate opened. Joshua Wells gives you an idea of their conversation on the one subject of common and engrossing interest. "There was something said about the railroad being a monopoly, that a feeling was getting up against the railroad company that would hold against them for a long time, because they hired help very cheap and didn't pay wages enough, that it had a tendency to render wages low, that he heard not much said about cattle being killed." They planned nothing, neither the burning of depots nor assaults upon cars with stones and muskets. If they discoursed in threats it was in individual, impulsive, passionate, but idle threats. It was just like what often occurs in every village bar-room in the state and in the United States. "They talked by squads, and drank by platoons." To hold such gatherings of citizens to be seditious meetings is a construction forced, false and fraudulent. To present such meetings in a court of justice as evidence of a conspiracy is to conspire against the freedom of the citizen.

If then a conspiracy has existed in Leoni, the evidence of it is to be derived elsewhere than from overt acts committed or from deliberations of meetings held there. And this brings us to the proof, thirdly, of individual declarations and admissions. In regard to this class of testimony, I am obliged to confess that the difficulty consists not so much in a deficiency of quantity or perhaps even of directness, as in the absolute unreliability of the testimony itself. The railroad company, unable to convince the farmers of Jackson county that half price was enough for cattle destroyed, and unable to arrest the depredations which were committed by way of reprisal, resorted to a system of espionage. On the 10th of August, 1849 they offered a reward of \$500 for proof sufficient to convict any one person of any one unlawful overt act, past, present or to come. I am not complaining of this. It becomes necessary to expose this system before you, for the purpose of testing the value of the evidence which has been procured by it. The railroad company employed a corps of spies to watch and to circumvent suspected citizens, paying them compensation, varying from seven shillings and \$2 per day or night, to \$40 per month. How large that corps was is unknown. But it numbered one hundred at one time, and no less than fifteen of its members have appeared here as witnesses to sustain this prosecution. Here they are—Phelps and Lake, recently discharged from the State prison; Van Arman, a lawyer from Marshall; Clark, a member of the legislature from the same place; Cochran and Shearman, laborers; Dixon, a sheriff from Marshall, acting in the character of a wheat buyer; Holden and Gillespie, gentlemen; Taylor, an employee of the railroad company; Wolevar, Wells and Caswell, accomplices in the crimes they denounced; Wescott, a discharged bar-keeper; and Faulkner, a carman. You see that they are called from all the various occupations of society and all the conditions of life, from the state prison the brothel, the merchant's desk, the farm, the sheriff's office, the bar and the legislative hall. The witness Phelps, enlisted among the last, took rank at the head of the corps, displacing Wescott, and like him was entrusted with the disposal of the patronage of the company as a broker. Phelps employs Lake. Wescott employs J. Wells. Wescott offers J. Tyler a good place "if he will come out for the railroad company; while Michael Coy is told by Phelps that if he will only come out and "swear for the company there shall be no lack of money in his pockets." This system was in operation six months. It is no wonder if oblivious memories have been awakened, malicious memories quickened, and feeble memories strengthened. All has been activity; all was activity from the beginning.

"Some tell what they have heard or tales devise,
Each fiction still improve with added lies."

A corporation, enjoying a monopoly of carrying the persons and property of citizens over a great national highway, and deriving from it an income exceeding by three-fold the revenues of the State, has become, in this season of alarm, a power behind the State, greater than the State itself; and now we see the wisdom of a saying of the son of Sirach, himself a sovereign. Beyond a doubt his own court was infested by a nest of caterpillars like these, when he admonished the unwary: "Curse not the king; no, not in thy thought; and curse not the rich, even in thy bed-chamber; for a bird of the air shall carry thy voice, and that which hath wings shall tell of the matter."

Regarding these witnesses as mere spies and informers, unconvicted of crime, uncontradicted and unimpeached, what is their moral standard in a virtuous commonwealth? Hear what Addison said, for he was not only a moralist but a Secretary of State, "A man who is capable of so infamous a calling as that of a spy is not very much to be relied upon. He can have no great ties of honor or checks of conscience to restrain him in those *covert* evidences, where the accused has no opportunity of vindicating himself. He will be more industrious to carry that which is *grateful* than that which is *true*. There will be no occasion for him, if he do not hear and see things worth discovering; so that he naturally inflames every word and every circumstance, aggravates what is faulty, perverts what is good, and misrepresents what is indifferent. Nor is it to be doubted that such ignominious wretches let their *private passions into these their clandestine informations*, and often wreak their particular spite and malice against those they are set to watch." If this is wise morality, (and it has been universally received,) and if there is sound philosophy in the old Spanish proverb, "bad the crow, bad the egg," we shall be at no loss to appreciate the evidence before us. It is a mountain of falsehood with here and there a grain of truth. When I look upon the men who occupy the place on my right hand, and recognize among them pioneers of the State, its farmers, its mechanics and its citizens; and then on this legion of spies, and find there on the witness-stand convicts yet wearing the look and the gait contracted in the State Prison, and see others come reeking from the stews of the city; I ask myself, can it be real? Does honesty dwell in the penitentiary, and crime stalk abroad over the State? Is the city pure, and the country polluted? Has truth fled from the hearth of the farmer in the country, and taken shelter in the purlieus of the metropolis? No! I am not in Michigan. I am in Venice, where an aristocratic Senate keeps always open the lion's mouth, as well by day as by night, gaping for accusations against the plebian and the patriot. I am in Syracuse, and see before me the dungeon which the tyrant has erected, with cells in which he has imprisoned those he fears, and with walls constructed on the model of the human ear, so that its curious channels convey to him even suppressed groans, and sighs, and whispered complaints.

But first, where is the truth of these accusations to be tried? They are accusations of local offences which ought of right to be tried at home where the accused parties live, by a jury of that vicinage, and not elsewhere nor by a jury of strangers. The accused ought to be at large on bail, to procure the evidence to confront the calumniators; and yet they have been dragged seventy miles from their homes, out of their own county of Jackson, through the intervening county of Washtenaw, and have been put on trial for local offences, here before a foreign court, by a jury of strangers, in a community which, in judgement of law, is to them a community of aliens and enemies. Nay more, when sickness has befallen a juror, and when disease has prostrated a defendant in his cell, the prosecution have complained of the cost of delay, and have vehemently reproached the prisoners, because they would not surrender almost the only constitutional rights left them of being tried by twelve jurors and by no less, and of being present in person during their trial. But I mistake. This is not the act of citizens of Detroit, for they are a humane people. It is not the act of Michigan, for it is a just and benignant commonwealth. It is not the act even of the Michigan Central Railroad Company. It is the act of agents of that corporation, who have dared to misuse their powers, and to assume the police authority of the State. I know, and I feel well assured that the acquittal of these defendants will be received with satisfaction by the citizens of the metropolis, and will be approved even by the corporation itself; while

it will go abroad with healing on its wings for public discontents pervading the State.

We inquire now whether the existence of the alleged conspiracy is established by the admissions and declarations of the defendants, and the inquiry involves the credibility of the witnesses by whom they are proved. William D. Wescott contributes the greater part of the evidence. You recognize in him the early leader of the legion of informers. He is rendered a suspicious witness, first, by his attitude of hireling informer. His testimony begins at the time when he went into the employment of the railroad company, in that character, at the rate of \$40 per month. He still retains the place and its emoluments. Secondly, he is discredited by his former life. He was indicted for perjury at Mackinaw, and the indictment abated by the death of Dr. Rankin, the prosecutor, who was an eminently respectable man. Wescott alleged on his examination that Dr. Rankin was himself indicted for perjury in preferring the complaint, and that he committed suicide to escape conviction. It was proved by the clerk of Mackinaw that Dr. Rankin was never indicted, and that he died a natural death. Thirdly, Wescott is discredited by his personal and groundless malice against the deceased defendant, Fitch. Mr. Toll and Mrs. Toll proved that Wescott said last summer, that "Fitch was a notorious scoundrel; that he would appear as a friend to your face, and the moment you turned your back he would run a dagger to your heart, and that he would yet see Fitch peeping through the grates of the State Prison." Mr. Tyler declares that Wescott told him that "a web was being woven around Fitch that would draw him into state prison." Such is the character, and such is the temper of the witness. He is rendered still more unworthy of belief by his denial of having uttered the malicious remarks against Fitch which have been proved. He shows himself equally timid and false. He would have us believe that his life has been in continued perils while he has been prosecuting his private services in a public cause. But all these perils are proved to have been fabricated and false. Thus he has entertained us with a pretended plot, by several of the defendants, in which it was contrived that he should take a seat at the card table near the window, in Filley's house, and that the defendants should then assassinate him, by a simultaneous assault with stones through the window. The very heap of stones which was to be used was pointed out by him to a witness, and they probably were deposited there with his own hands. However that may have been, you have seen the spot. You have seen that a piazza some three feet wide intervenes between the window and the high, close-latticed verandah. No mortal arm could hurl a stone from the piazza through the window with force enough to commit an injury. No mortal eye could see through the verandah, nor mortal force throw a stone that would reach through the verandah and the window. But, gentlemen, you will recollect that Wescott obtained his knowledge of this plot by drawing himself through a hole in the wall, and listening to the conspirators through the floor of the bar-room. Unfortunately for Wescott's veracity, Mr. L. A. Hildreth, who opened that hole in the wall for the purpose of driving the joints of a water-pipe, testifies that it was not large enough for a man to enter. Darius Clark comes to the relief of Wescott, and testifies that in November last Wescott pointed out the place to him, and that it was then as large as now; but Ammi Filley, Jr., a lad of fourteen, proves that Clark must have erred in date, because on Christmas day, when a piece of coin had dropped through the floor in the bar-room, he found it impossible to pass through the aperture to find it. And this child is corroborated by the witness who first opened the aperture at a day later than that fixed by Clark. Wescott describes a second peril—that, pursued by an infuriated man with a ferocious dog, through the deer park, he plunged to his armpits into the mud and mire of Wolf Creek, and he gives us, for confirmation of that peril and escape, his assertion that his wife removed the mud from his clothes. I admit that some unknown person, lurking in the park, was chased by a dog into Wolf Creek, but I still must withhold my belief that Wescott was the fugitive. I can scarcely believe that a man who would be thus engaged could have a wife, much less that any woman, who is a woman, would have lent her hand to take a stain from his garments thus contracted. Wescott gives a touching narrative of a third peril through which he passed. A quarrel arose in the ball-alley, between

one of the defendants and C. Palmer. Wescott represents, or causes it to be proved, that Fitch and himself were standing at the door looking on upon the strife, and that Fitch afterwards remarked, that, if he had known Wescott at that time to have been a spy, he would have thrown him in among the combatants that they might have beaten him to death. Unfortunately for the effect of this fearful narrative, it is disproved by Almon Cozier, who says that neither Wescott nor Fitch was at, or near the door of the ball-alley, from the time when the controversy began until the combatants had retired to adjust it, as I presume, over a bottle in Filley's bar-room. The testimony throws but a dim and shadowy light over the fourth and last critical escape of the *ci-devant* leader of the band of spies. *The Tribune* in this city, published on some authority, "A leaf in the history of the conspiracy," and it was re-published generally by the papers throughout the United States. This leaf revealed the dreadful fact that one of the informers was actually present, in disguise, at a regular meeting of the conspirators, in which it was solemnly resolved to put him to death, and that the *job* of executing that sentence was put up at auction and sold to the lowest bidder at \$100, the bidder reserving to himself the right to decide on the manner of execution, but being bound to perform it within four days. Wescott denied that he had put that report in circulation. William Harsha, one of your most respectable citizens, came upon the stand and offered to testify that Wescott, referring to the publication, by implication confirmed its truthfulness and its application to himself. But the rule of evidence, insisted on by the prosecution and sustained by the court, excluded the testimony.

I proceed to examine the evidence of Wescott, promising you that, in the first place, what there is of it that is not contradicted directly or by internal evidence, is worthless; and, secondly, that what has any pertinency, is thus contradicted. His testimony is to this effect: that, when he repaired to Michigan Centre, in the fall of 1850, he placed himself on an apparent footing of intimate friendship with the defendant Fitch; that Fitch, under those circumstances, gave him a narrative of what "the boys" had done, in 1849; that they had secreted themselves in timbered lands, then rushed out and obstructed the cars, after the hand-car had passed; that Fitch said, "the boys had stoned the cars, had placed strap-iron between the joints of the rails, and, mockingly said, also, that Elder Limbocker and Priest Foster committed these depredations; that he had remonstrated with them, but they were hard cases, and would not desist; that in speaking of the accident which had befallen the *Gazelle*, he said the locomotive got dry, and ran down to the marsh for water; that he had advised the boys not to throw trains off at the dry marsh, as that would be *too bad*; that one morning, at sunrise, at Michigan Centre, when the cars were due, Fitch looked up into the sky, and predicted that they would not arrive till afternoon; that this occurred, as Wescott says, on the day when the cars ran off at Galesburg, ninety miles distant; that Fitch said he had written to Chicago and had ordered hand-bills warning people not to travel on the road, on account of the obstructions; that this was the only way to bring the company to terms, and make them pay for cattle; that the company had offered a reward for Fitch's detection in committing depredations against them; that, suppose he should be arrested, he could find witnesses enough in the State, if not in Jackson county; that they never would convict him; that Fitch said he would shoot Wescott on the stand, if he should swear against him; that his friends would do so, if he should be unable to do it himself; that he could prove any thing he wanted; that he had friends who would stand by him, who were little suspected, and named among them Harry Holcomb, Col. Delamater, and many others of the most respectable citizens of the county in which he lived; that he would defy all hell to convict him, and that he could never lack witnesses."

So Wescott testifies that Filley, when speaking of the accident to the *Gazelle*, said that "they had got a big coon, but had lost its tail; that the damned railroad had sued him for timber, that in ten days he would make them wish that a Fitch or a Filley had never been born; that Filley said the company had sued him for stealing lumber, that they would want more, for he proposed burning the depot at Jackson; that on the same day Filley proposed to Corwin to burn the depot there, saying that there were shavings around it which would make it easy.

Thus far the admissions or declarations proved by Wescott, if they have been made, are valueless, for they show nothing more than feelings of hostility on the part of Fitch, and of passion and hatred on the part of Filley. They show no connection of both of these defendants with any trespasses which were actually committed, nor any connection between those defendants themselves; still more, no connection between either or both of those persons and the other defendants.

I pass to some more material statements of Wescott. He says that at Barrett's lawsuit Fitch was active in behalf of Barrett, as a volunteer. Fitch, in fact, attended as a witness, and as this is a free country, Fitch had a right to give in evidence facts within his own knowledge, and even to utter his opinions on the merits of that controversy, and to express his own sympathies with either party. Wescott represents that Fitch told him then, that "he would like to take him into the lodge that night; that there was to be something up;" that the next day he asked Fitch what was up, and Fitch replied, "there was a fuss the night before, (alluding to an obstruction of the cars by a mud sill, and the breaking of a lamp.) but, damn 'em, I told 'em I wasn't at home."

We have proved, that after the law-suit, Fitch attended a democratic caucus, and, still later, a theatrical performance; that he arrived at home after the accident to the cars had taken place, and that he went down with the defendant Lemm, to learn what had occurred. Wescott further says that Fitch told him that he "had advised Barrett to bring three suits against the railroad company for cattle killed, not meaning to have them tried, but to fuss in the law till the spies should leave, and then they would have a grand smash, worth a dozen lawsuits, and the company would begin to think "there was a God in Israel;" that Fitch, subsequently, in his parlor, explained to Wescott alone what "was intended by this grand smash;" that he was determined, with the boys, to bring the company to terms before the State Fair was over; that, in order to show that the prevailing feeling was not a local one, he intended to throw the cars off at the white bridge at Jackson, at the dry marsh, and at the high embankment, "three places of peculiar danger;" that "he would thus kill a hundred and fifty passengers at the State Fair, and that thus they would bring the company to terms; and if this wouldn't, then, in God's name, what would? If we fail in this, then, God damn 'em, we'll burn 'em out." Wescott says that Fitch, in the same connection, "offered him a thousand dollars to burn the depots, at Detroit, Ann Arbor, Jackson and Niles, or two hundred and fifty dollars for burning either, saying that they had men who could do it, but it could be better done by strangers; that he was determined to make the company pay a hundred thousand dollars or come to terms; and he adds that Filley also mentioned the grand smash which they intended to make at the State Fair, and said, that if they could get the entire train off at the dry marsh, there would be no need of coffins; that the passengers would be buried deep enough without the aid of sextons; that if they could get the cars off at the high embankment, while the survivors were looking down upon the mangled remains of the dying and the dead, it would be a good time to feel of Uncle Sam's mail bags; and that the railroad company would be liable to Uncle Sam for the detention of the mails."

Who believes Abel F. Fitch to have been insane? No one. Who believes that a sane, educated man, living in such a country as this, could conceive a purpose so atrocious, or that, conceiving it, he would impart it to another? Abel F. Fitch was a man of education, position and fortune—in all these respects surpassed by few in Michigan. He was a public officer, respected and honored at home, with troops of friends bound to him by clasps of steel, in various parts of the State. Is there no truth in the ancient maxim: "*Nemo repente fuit turpissimus!*"* Is there any height of crime towering above what is here alleged to have been reconnoitered? Four months ago Abel F. Fitch came here an object of public fear and hatred, borne down by the scorn of his country, and of mankind. He went in and out before you. You saw him every day harrassed, insulted, reviled, by such testimony as this—you saw him meek, gentle, confiding, cheerful, and enduring. You know his death. It was peaceful, tranquil,—the death of a man loving all

* "No man reaches the heights of crime at once?"

good things on earth, yet resigning them cheerfully in hope of better things in heaven. Judge between him and his venal accuser, by the probabilities arising out of such a life and such a death.

Who does not see that the conception of such crimes is absurd, because it exceeds the experienced depravity and folly of the human heart. The depots of the Michigan Central Railroad Company were safe against the incendiary, if the conflagrations were to be postponed until the commission of a hundred or a hundred and fifty murders. Where was the defendant Fitch to find shelter after the commission of those fearful crimes? No one has ever heard of that projected "grand smash" but Wescott. On the very first day of the State Fair, when it was to take place, Fitch with his wife and daughter, Col. Delamater and other friends, arrived at the State Fair by the cars which were to be thrown from the track. A portion of his family and friends came by the cars on the second day. They all returned by the cars on the third day; and it happened that there was no train of cars passing between Ypsilanti and Michigan Centre during the three days of the Fair, in which himself or some of his family or immediate personal friends were not found.

The remark imputed to Filley, that there would be no need of coffins, bears intrinsic evidence of having been coined by Wescott's own turgid imagination. So the remark about the scene, where the survivors should be looking down on the mangled remains of the dead and the dying, while the conspirators should be feeling of the mail bags and subjecting the railroad to damages to Uncle Sam for the detention of letters, could have proceeded from no other brain; and evidence enough that these high swelling and gigantic words, with their lame and impotent conclusion, never proceeded from the mouth of Filley, is found in the fact that Wescott equally draws the same terrific phrase from off the tongue of William Corwin, a teamster, and from off the lips of Orlando D. Williams, a common stone mason.

Of course, gentlemen, even though these declarations and admissions were not made by Fitch and Filley, Corwin and Williams, no one can prove that fact, because they are alleged to have been made to Wescott by these parties in private conversations with him alone. But, fortunately, when a witness stands impeached in character, his testimony is to be rejected, unless it be confirmed, and when he is contradicted in one essential fact, that one contradiction overthrows his entire evidence. You have had his refutation and contradiction in regard to several essential facts. There are more such refutations. We find one in the celebrated window scene. Wescott testifies that, one evening in August, 1850, he crept into the court-yard of Fitch's house through the space made by displacing the lower end or base of one of the pickets, while it hung by a nail on the upper bar, drew himself under the bed-room window, looking through the gauze curtain saw Mr. and Mrs. Fitch retiring to bed, and there heard him say to her that "they were watched close; that they must hold up till the thing settled down a little; that the boys had within a few weeks past, knocked the company to the tune of \$20,000."

You cannot have forgotten, that Wescott, in giving this narrative on his direct examination, altogether omitted Mrs. Fitch's reply, and with what suspicious promptness he supplied the defect when it was pointed out to him on his cross-examination: "Mrs. Fitch said she thought he had better let the railroad company alone, and mind his own business." You cannot have forgotten that he saw in the room the safe, which was a dark object, on one side, while he could not see the bed, which was a large white one, lying almost before him. The identical fence, through which he alleges he passed, stands before you. Neither in that panel, nor in any other is a picket that was loosened, and the whole was new and painted about a year before that transaction is said to have occurred. If a picket had been displaced, it would have made a space of only four inches. Wescott is a very Falstaff. When pursued by dogs into Mud Creek, like his great prototype when cast in the buckbasket into the Thames, he could have exclaimed, "if the bottom had been as deep as hell I should have found it." But even Calvin Edson, who was exhibited as a living skeleton, could not have gone through that fence. Amanda Fitch and Charlotte Beman prove that from July to the middle of September Mr. and Mrs. Fitch slept in an upper chamber. I waive the testimony of Miss Clark, because of the confusion into which she fell about dates. An attempt was made to show that

Mr. and Mrs. Fitch occupied the lower bed-room in the summer, but it totally failed. The witness Burr testifies that on the 29th of August, at about 8 o'clock in the morning, he found Mr. Fitch in bed in that room, which might have happened in consequence of temporary illness; but Mrs. Fitch, who came upon the stand to support the testimony of her daughter and Miss Beman, and who was denied leave, could not be excluded from contradicting the testimony of Burr, and so the *alibi* is sustained beyond dispute or contradiction.

Wescott made a strong point by a conversation, before adverted to, in which Filley paid Williams money on account of the Gazelle, but this is disproved by Crowell, who was present, and who testifies that the three dollars, so paid, was paid in return for so much money borrowed. Again, Wescott testifies that the defendant Fitch said "he had got Lester clear from the indictment found against him, by false swearing." No such admission could have been made, because we have produced and read here the order of the Court discharging Lester upon the ground of a *nolle prosequi*, on motion made by the counsel for the people. But even with all this testimony, if it had been received as true, the evidence was insufficient to establish a conspiracy. Wescott attempts to furnish such evidence with directness and effect. To that end, he says that Fitch, Filley and Corwin called themselves 'the Leoni band,' and when required to state how and in what manner, he says, "Fitch called himself, Filley and Corwin, the Leoni band;" Filley said, "Leoni against the world;" Fitch said, he, Corwin, Filley and Williams were banded and conspired together for the entire destruction of the road, unless they paid for cattle; and Wescott being asked what Corwin said, repeats the same thing in the same words, "I, Fitch, Freeland and Williams are banded together for the entire destruction of the road, unless they pay for cattle." Do you not see how admirably this testimony is adopted to the exigencies of the prosecution? I imagine I hear the counsel, Van Arman say "Wanted—proof of a conspiracy." Wescott: "They called themselves the Leoni band." Van Arman: "Wanted—evidence that Fitch belonged to the Leoni band." Wescott: "Fitch said he, Filley and Corwin, were the Leoni band." Van Arman: "Wanted—proof that the band was *banded* together." Wescott: "Fitch said 'we are banded and conspired together against the railroad company.'" Van Arman: "Wanted—proof that the object of the conspiracy was the destruction of the railroad." Wescott: "Fitch said 'we are banded and conspired together for the entire destruction of the railroad.'" Van Arman: "Wanted—evidence of a design to extort money from the company." Wescott: "Fitch said he meant to make the company pay a hundred thousand dollars." Van Arman: "Wanted—evidence that Williams proposed to extort money from the company." Wescott: "Williams suggested a proposition to be made to the railroad company, through Mr. Joy, for five thousand dollars a year for five years." What a solemn and fearful scene must that have been when these conspirators threw off the mask—"Leoni against the world!" Where and what was this Leoni? It was a hamlet among the oak-openings of Michigan. What was its magnitude? It consisted of a country tavern, a storehouse, a school-house, a church, and a dozen humble tenements. Who were the members of this band? One country gentleman, one keeper of a tavern and ball-alley, one drinking teamster, one back-woodsman, and one village mason; and they acted their parts with as much boldness, and even more, than the clowns in the interlude in *Midsummer Night's Dream*. For when Bottom proposed to act the part of Lion he was overruled, lest he might roar too loudly, and so "frighten the duchess and the ladies." No such timidity distinguished the clowns of Leoni. They proclaimed themselves the unterrified—"Leoni against the world!"

This testimony is too ludicrous for grave discussion; but if you think it worthy of consideration, I submit first, that it proves too much in regard to the extent of the conspiracy. What was wanted, was a conspiracy against the Michigan Central Railroad; but we have here a conspiracy against all mankind. Secondly. It proves too little, in regard to the number of the conspirators, for at most there are but five, which is forty-five less than the whole number of defendants charged. Thirdly. It is too general and too vague, for it does not at all show how this Leoni Band carried on their wicked warfare against either the world or the Michigan Central Railroad.

Adieu, Mr. William D. Wescott,

"We know thee to the bottom; from within
Thy shallow centre to the utmost skin."

I pass to other evidence in support of the conspiracy. Here is a letter from Abel F. Fitch to Mr. Brooks, the Superintendent of the Railroad Company:

"Michigan Centre, Oct. 29, 1849.

"MR. J. W. BROOKS—Dear Sir:—Almost every day some persons wish to take passage on the cars at this place, but the trains refuse to stop for them. Yesterday Mr. G. C. Chatfield, mother and sister, wished to take the cars for Detroit, and gave the usual signal, but no notice was taken of them. Now, if this policy comes from you or your legal advisers, as did the insulting half-pay proposition for killing cattle, if serious accidents do occur on the road, on your head, and yours alone, must rest the responsibility. Yours, &c. ABEL F. FITCH."

And here is the answer, which we have proved was given to this letter: [Here Mr. Seward read the answer.]

A perusal of these documents shows that Fitch's communication was a friendly though earnest remonstrance against proceedings of the Company, and that it was received and regarded as such. Had it been heeded all would have been well. Five hundred dollars would have paid all the damages claimed by complaining parties for the destruction of their cattle; and the payment would have prevented all danger and all tumult.

Henry Brown testifies that Fitch, Freeland and Filley said, not when together, but separately, and on different occasions, "we will let them know that there is a God in Israel; that they could have no sympathy for the company; that the way the company acted, the dry marsh would be a good place to let them down." Brown was a poor illiterate negro, doubtless honest, but incapable of correctly reporting a declaration or admission, as is seen in the fact that he attributes precisely the same remark to three different persons. The threats which he proves, if his testimony is reliable, were nothing more than outbreaks of popular passion, in a private conversation.

I shall waste little time upon the declarations proved by Woliver. He says that "all the defendants," (although they were never together,) "seemed to coincide in tearing up the track, and in saying that they had had their property killed, and if they could not revenge it one way, they would in another. They would never give up until the place was satisfied for damages; that they would carry out their objects in some shape, and that Fitch said they would hang together." This is testifying upon a new principle of swearing made easy—that is, Woliver gives us the effect of what forty different men said on different occasions, individually, under the general caption, known in the law books by the term *il semble*—it seems. Woliver was a vagabond, and, as has been already shown, a false one. The testimony convicts him of having consumed a whole barrel of whiskey in a single summer. The evidence he gives of the depredations, which were actually committed, shows that they were individual, casual, unpremeditated crimes, and disproves what he says for the purpose of showing a confederacy among the defendants.

Joshua Wells says that "Fitch said, that they could not convict any one of the offences that had been committed; that when Filley said they could prove they were at Bear Creek, Fitch replied they could get what witnesses they wanted there; that on one occasion Fitch showed how a car could be thrown off by a wedge, and how a rail could be placed so as to strike the lamp of a locomotive." It is easy to see that these are mere speculations of Fitch, arising out of the transactions of the times, produced here with some little perversion, to sustain the charge of conspiracy. A prudent man—a prudent jury—will require evidence of the whole conversation, or reject such fragments.

The counsel have dwelt upon the reply of Fitch to Spaulding, when he declared himself ready to take arms in defence of the railroad, to wit: that "he had two double barreled guns, and he could get as many men as he wanted, and he was prepared 'for the whole damned company.'" The witness Burr shows that Fitch was a sportsman. His guns were kept for exercise. The remark was made in reply to an insulting threat made by Spaulding. You will take the same view of the reply which one of the witnesses says was given by Filley, and another says,

was given by Fitch, to Stone and others, when extinguishing the fire of the wood pile, that they ought to be burned up with the wood, and then the company would pay their wives half price for them—mere idle and unmeaning, passionate words. In the same category are Fitch's reply to Holden, at Gardner's grocery, when asked what they meant by stoning the cars, "that the company would get worse than that if they didn't pay for the cattle killed, and that every animal killed had cost them a hundred dollars; a similar remark made to William J. Welling, "that the cows cost the company one hundred and fifty dollars each;" a saying of Corwin's to the witness Henry, "d—n 'em, let them pay for the cattle, if they don't want to be shot;" Corwin's comments upon the railroad dream, when, upon reading "how a rich corporation killed a poor man's cow, and the poor man prosecuted and yet had to withdraw his suit," Corwin said, "By G—d, the people of this town won't stand such operations," the threat of O. D. Williams that "he had stoned the cars, and would, as long as he staid in Michigan Centre," and another proved by Henry, to wit: that Williams, when he had a cow killed said, "if they didn't pay her value, it would be a dear cow to them;" also, his declaration that the "road ought to be torn up till they paid for the cattle, and then they would go along peaceably;" so also Freeland's remark, "that a plan could be laid to blow up the railroad, by placing powder under the rails;" and a remark imputed by Dexter to Fitch, to wit: "on one occasion, when the cars run off, he said he wished that it had injured them more;" and his declaration proved by Knickerbocker, "that the judges of courts could be brought under the influence of the company and there was no redress for the poor man, and that the company was an aristocracy and a monopoly." These and other kindred expressions, abounding in the case, are intemperate, but casual utterances of individual exasperation, made in public places and on public occasions, under circumstances totally inconsistent with an idea of a connected plot, or organized conspiracy. They are, evidently, dissevered, disjointed parts of popular debates of which the spirit can no more be gathered from the dismembered sentences, than the system of the theology of the Bible from cross-readings in the concordance. Discussion of the wisdom and impartiality of judges is not interdicted by the constitution, and error in that respect, like error on other political subjects, may be safely tolerated, where "reason is left free to combat it."

A word only will be bestowed upon the testimony of William Dobbs, who gravely tells us that "Williams offered him five hundred dollars to burn the May Flower and the Atlantic steamboats, and that Williams said Fitch, Filley and Champlin would be his backers." Dobbs was a city runner and bully, who was rustivating at Leoni; Williams, a village mechanic, given to occasional intoxication, especially when visited by such worthies from the capital. He probably was not worth at that time five hundred cents. He may have magnified himself and his relations with Fitch, Filley and Champlin, in saying they would be his endorsers; but if such conversation occurred at all, it was in some bar-room revel, as an interlude between those interesting "fights," in which he and Dobbs knocked each other down, by way of settling the important dispute whether a gold dollar was larger than a five cent piece.

Mark English contributes, in aid of the prosecution, a statement that Fitch, in September, 1849, said, "we have laid a plan to fix the road in such a shape that the company will be unable to find an engineer to run on the road;" when I asked the reason, English adds, "he said they would not be willing to run the risk of their lives—that it would not answer for Brooks to go over the road." English was a laboring man, employed by Fitch for a short period. Ignorant of the force of the terms used, he gives, doubtlessly, the designation of "plan" to speculations in which Fitch may have indulged concerning the condition of questions then agitating the public mind; and this, probably, involuntary error is all that gives his testimony any effect.

Charles Rogers says he worked two days in harvest for Fitch in 1849; that he heard "Filley speak of a piece of timber to be placed in a culvert, so as to be drawn by a rope after the hand-car had passed; and he heard Fitch speak of percussion caps, and of a machine to throw the cars off in the right place, and then to be removed and saved to be used at some other time; that he heard Fitch say he was

willing to turn out with his team, and tear up the track, *but didn't say how far he would tear it up!*" What an unfortunate forgetfulness! Fitch must have assigned limits—at his garden wall, at the end of his orchard, or deer park, or at the high embankment, or at Dexter, or at Ann Arbor, or at the gates of Detroit, or on the banks of the river; but conscientious Charles Rogers forgets them.

In regard to these two last witnesses, it is only necessary to recall the remark before made—that testimony consisting of detached sentences, severed from long and probably frequent conversations, without explanation how those conversations arose, to what they related, what were the points involved, and what the conclusions arrived at, is utterly valueless. It is simply incredible that Fitch should have bestowed just this amount of confidence and no more, and no less, upon a laboring man during two days in the harvest field. The testimony disproves itself by its absurdity. The machinery to be applied to draw timbers upon the road, after the passage of the hand-car, is quite too clumsy; the use of powder and percussion caps quite too artistical, while the idea of the portable engines for throwing the cars from the track savors quite too much of frugality. The counsel for the people allege that Charles Rogers is a man of unquestionable veracity. Their standard of veracity accommodates even Wescott. Adopting that standard, I think Rogers excels Wescott in fertility of invention.

A large portion of the evidence consists of threats alleged to have been made by the defendants against spies, of which I shall produce a few samples only, by way of illustration, viz: Fitch's alleged warning against spies; his supposed attempt to soothe and pacify Woliver, when he was leaving Filley; Corwin's expressions of solicitude on that occasion; Filley's alleged visit to him, after he had gone; Champlin's conversation with Shearman, warning him of the dangers of infidelity, the alleged threats of Williams, Corwin, Price, and others against Wescott; Williams' assault upon Holmes; Fitch's alleged remark, as proved by Caswell, that if Shearman had betrayed him, as he had the boys, he would like to feel his knife about his ribs; the threats against Wescott on the occasion of Gleason's visit to the Centre; and threats by Williams and others that they would kill a spy as soon as they would a dog, a bear, or a masassauga.

In regard to this class of evidence you will remember, gentlemen, in the first place, that it is by exaggerating the danger they incur in the cause of the railroad, that these "miscreants" expect to gain greater confidence and higher rewards. In the next place, all these threats and demonstrations were such as would naturally occur when such spies were employed; and there is no necessity to look for any motive, other than indignation, and the desire of safety on the part of the parties watched, whether they were innocent or guilty. Remember these spies, how they abounded like the locusts—how they waylaid suspected men by day and by night, in the open streets, or concealed by hedges, how they sat disguised at their tables, lurked under windows, under the bed, under the floor—how no one living at Michigan Centre could enter or depart from his own door without danger of stumbling over them. You will easily imagine the apprehension, and fear and indignation which such an unlawful and self-constituted police would awaken. Answer then, whether it is not wonderful that although this state of things continued in so rude a society six months, yet no life was sacrificed, no limb broken, and with the exception of the injury committed by Williams upon Holmes in a drunken revel, no violence was committed. It is immaterial, for our present purpose whether testimony of this description be true or false; if true, it is accounted for on a principle different from that of a conspiracy; and if false, it may be dismissed at once from consideration.

I remark, however, in regard to all these alleged declarations and admissions that the testimony bears the unequivocal impress of fraud and fabrication. A conspiracy was to be proved. That was essential in the case. What else was indicated by Wescott's remark to Taylor, that a web would be wound around Fitch, which would drag him to States Prison? What else was meant by Phelps' remark to his wife at Lacock's house, that "if Wescott would do as he agreed, he would come a good drive over Fitch?" What could it mean but that Wescott and his associates should frame and fabricate the evidence of a conspiracy to connect the trespasses at Leoni with the alleged arson of the depot at Detroit? The task

of forging this conspiracy was assigned to Wescott, while it devolved on Van Arman to polish it. The alleged admissions are all in the language and idiom of the witnesses who proved them. Wescott is facetious, and so Fitch, who was a grave man, is made to ridicule the clergymen of his town. Wescott is grandiloquent, and so, not only Fitch and Filley, but even Corwin and Williams utter rant and bombast. Phelps is classical as Lucifer, and so, both Fitch, (who was not a literary man,) and Filley, (who was a fisherman,) speak in heroics. We have vowed, says Fitch, that "no cars shall pass without doing homage to Michigan Centre," and Filley says, "if you will burn the depot at Niles, Fitch will give you his wife or his oxen." When Henry Brown, the negro, reports an admission, it is in the idiom of his own degraded cast and race. He said "he didn't and couldn't have no sympathy with the rail road." When Caswell and Woliver testify to like admissions, they come out in the shape of abrupt and profane oaths; but when Mark English and Charles Rogers are reporters, the language is chaste and subdued. Gentlemen, from the days of the Grecian oracles down to those of the Rochester rappings, there have been those who have reported communications with departed spirits. I have always observed that the ghosts addressed were learned in the languages of the conjurors. So that if those who were gathered together on the day of Pentecost, should be summoned, all of that shadowy host, whether Jews or Greeks, or Romans, or men of Crete or of Cyrene, would respond in the vernacular tongue of him who addressed them. These alleged declarations and admissions by the defendants, betray the same accommodation to the witnesses who report them.

One remark more. These pretended admissions of plans and plots and conspiracies are manifestly false, because no such plan, plot, or conspiracy has ever been developed. We are asked to believe there was a plot to burn four depots. No depot was ever burned—a conspiracy to destroy a hundred and fifty lives; no life was ever destroyed. The question of the existence of the conspiracy then stands thus: 1st. The evidence consists of overt acts committed by persons unknown and without explanation; 2d, of overt acts with explanations of the attendant circumstances, which altogether exclude the idea of conspiracy; 3d, of alleged meetings, in which nothing was agreed and nothing conspired, and which meetings were never held; 4th, of individual expressions of resentment, passion or revenge rebutting even a presumption of mutual understanding or concert. The pretence of a conspiracy fails, because what was done, was done by those who did not conspire, and who had no knowledge of any conspiracy. What is alleged to have been contrived in conspiracy never was executed, neither by the conspirators nor by others, and never came to the knowledge of the actors in what was done. Only four defendants are proved to have committed criminal acts, and there is no evidence that they ever conspired to do those acts, much less that they ever conspired for any ulterior object or purpose. This allegation of a conspiracy then is foreign from the case. The proofs in support of it were admitted on grounds which have failed. It is a false issue. The issue is not whether felonious crimes have been committed in Jackson county, attended by atrocious threats. Crimes have been committed, but those crimes, whether with or without such threats, belong to the jurisdiction of Jackson county, and not to yours. An attempt to try the defendants for them is an act of usurpation. It is an usurpation which can only lead to retaliatory aggressions of the same character by the people of Jackson county. The conspiracy again is a false issue, because even if it existed, it would not prove that the defendants were guilty of the crime of burning the depot at Detroit. If the crime was committed, the defendants must be equally convicted whether there was a conspiracy or not. There lies the secret of all the difficulties that have attended this trial and of all the delays that have occurred. You have been trying forty different men for scarcely less than forty different crimes. The issues were multifarious, the proof confused, and the subject of the guilt or innocence of the defendants is involved in innumerable perplexities. In the history of English and American jurisprudence, there was never such a trial by jury. I sincerely hope there may never be another.

Gentlemen, there are two classes of defendants, viz: First, those who are charged with the crime of burning the depot at Detroit only through an alleged

connection with a pretended conspiracy ; secondly, those, who besides that connection are also directly charged with the crime by pretended admissions of complicity or knowledge. The latter class must abide your examination of the whole case. I am ready to show you now that the first class are entitled to be acquitted. There is no evidence at all against Ira Beebe, nor against Russel Stone, nor against John W. Welch, nor against Welcome Hill, nor against William Long, nor against John Ladue. You will acquit them of course.

Henry Showers, stand up. What, not here ! The prosecution have anticipated me by excusing this defendant from further attendance. Nevertheless you must pass upon his case. Phelps says that "about the middle of March last I found Showers, Filley, Lake, Champlin and others at Michigan Centre. We talked about my journey to Niles, and about the difficulty in burning." Did Showers hear this conversation ? If he heard it, yet he said nothing. The Detroit depot was burned in November, 1850 ; the conversation was in March, 1851. You will of course acquit Henry Showers.

Dr. Arba N. Moulton. He also does not appear. Jacob Woliver says "Dr. Moulton and others told me to look out for spies, for they were watching us." Wells says, "Lacock told me he borrowed from Moulton the pistol which Caswell received from Fitch." S. A. Williams says, "that at Rome, Dr. Moulton told him that he understood there was a plan to blow up the railroad." Let the Doctor pass.

Jacob Terrill. Young Dexter says that "Terrill advised him and his father to settle up and clear out, as they were suspected of being spies." You remember that Smith made a show of proof that Terrill once laid a piece of strap iron on the rail, which, however, would have done no harm. Your verdict, gentlemen, must be for Terrill.

William S. Warner. Phelps says that last March, three months after the Detroit depot was burned, Warner asked him how railroad stock was and whether it was above par. Another witness says that on being arrested Warner asked who Phelps was, and said he did not know him. Be pleased to acquit the defendant Warner.

Benjamin F. Burnet. You see him there ; he went across the railroad for a midwife on the day the Goliath ran off the track, but he has shown that the services of a midwife were wanted. When his cow was killed by the engine he said he could recover her full value, but it would cost him more than it would come to. Acting on a committee to negotiate with the railroad company, he expressed the opinion that their policy was unwise and unjust. I am sure you will discharge Burnet.

Napoleon B. Lemm. He conducted Barrett's case against the railroad company. Phelps thinks that Lemm heard part of the conversation with Filley in the ball-alley, on Christmas. What part ? There's the rub. Whatever he may have heard, he said nothing. If to hear was criminal did it relate backwards and make him responsible for the burning of a depot in November ? Lemm was Corwin's lawyer, also, and he said he should pity the railroad company if Corwin was to be convicted of burning the wood pile ; that Corwin had friends ; that the cars would be run off out of sight if Corwin was convicted ; and the witness added that Lemm said "this was right, the people would have their revenge." If, indeed, Lemm said all this I grant that it was bad law, and bad morality, but it was not arson. Dixon, the wheat buyer, relates that Fitch told him that when Lemm went up to the place where the Dexter had been run off, he slipped a knife into his sleeve. This is hearsay. A verdict, gentlemen, for Napoleon B. Lemm.

Hiram Hay. Why, he has gone, too. I am losing all my clients. Hay was at Filley's on the night of April 11th—that mysterious night. But he did nothing—he said nothing, and according to Phelps, Lake and Faulkner, he was allowed to hear nothing. When John Faulkner, "the woodman," arrived at Jackson at sunrise on the morning of the 12th, he looked around and saw a man mounted on a high white horse, and he thought the man was Hay. But certainly it was not Hay, and probably the horse itself was only a grotesque and fleecy passing cloud. A verdict, then, for Hiram Hay.

Grandison Filley. Phelps and some of the defendants attended a ball at the

house of Grandison Filley, in March last. But Filley is charged with doing nothing, and saying nothing there. Dr. Hahn says that in the cars when the prisoners were coming down under arrest, G. Filley, Freeland and another were sitting behind him, and that one of them said "If I could get hold of that damned Hank Phelps, I would make mince meat of him. He has been about all winter, pretending to be visiting, and now he has come out and exposed the whole matter." Which of these three persons, gentlemen, shall we send to the state prison for this admission. Grandison Filley must be acquitted.

Benjamin F. Gleason. This defendant called at Fitch's house twice, and Wescott says that Filley, speaking of those visits, said that "he." (Wescott,) "was a damn'd spy, and he ought to have his throat cut." Woliver says that he has heard Gleason, among others, say that the persons who committed depredations on the railroad could not be convicted, for the reason that they could get witnesses enough to swear them clear. I think, gentlemen, although there may be treason, yet there is no arson in all this, and therefore I ask the acquittal of Gleason.

John Palmer. Phelps alleges that Palmer remonstrated with Minor T. Lacock against becoming a witness and a spy for the railroad company; but inasmuch as this testimony is contradicted by Christie Blackmar, who was present on that occasion, and is harmless if true, you will at once discharge John Palmer from the indictment.

Lester Penfield. He was present at the dinner at John Palmer's. Wells says that he asked Penfield if he was not afraid, inasmuch as his sled was shod with old railroad iron? He replied, "no! they never could prove any thing, they had tried several times and failed." Penfield, according to Mr. John Dowdle, when speaking of trespasses upon the railroad in Leoni, said "the people were contending for their rights." Undoubtedly they were, gentlemen, but they were contending in a wrong way. Nevertheless, I think you will restore Mr. Penfield to his mill. He is wanted there.

Abner Grant. He has neither done nor said any thing worthy of bonds.

Ephraim A. Barrett has only prosecuted the railroad company for his cow that was destroyed. It was a greivous fault, but he has already greivously answered it.

Willard W. Champlin. He did not write the "Price Boys Warning." Phelps relates that Champlin said at Filley's, that he would like to have seen the depot at Detroit burn, with Brooks in it, but Hart Holmes proves that Champlin was not at Filley's on that occasion.

Minor T. Lacock did not fire at an engineer, even if he received loaded pistols for that purpose. Phelps says, that Fitch told him, that Lacock knew that \$150 was paid for burning the depot, but did not know to whom it was paid. This is mere hearsay, and Lacock must be acquitted.

E. J., and R. Price. Phelps informed us that Price, without distinguishing which of these two defendants, admitted that he had contributed to the fund to burn the depot. We cannot ascertain which one ought to be punished, and therefore I think you are bound to acquit both.

I come now, gentlemen, to the other and most important part of the case, which involves two inquiries. First, did George W. Gay burn the depot at Detroit, on the 15th of November last? Secondly, did the defendants hire and procure him to burn it? The case on the part of the people is that George W. Gay burned the depot with a match which he lighted at his own house near the Grand Circus, in the borders of the city, at seven o'clock in the evening, carried in a box through the streets into the depot; and there, in the presence of the laborers, but unobserved by them, deposited in the cupola at eight o'clock; that it burned with a slow flame until between the hours of two and three in the morning when it communicated fire to the building and the depot was consumed; and that the defendants now on trial furnished the match to Gay and paid him \$150 for committing the monstrous crime. The burning of the depot by an incendiary is what is called the *corpus delicti*. That must be proved first and beyond a reasonable doubt, before you are at liberty to enter upon the question whether the defendants were accessories. In regard to the crime, then, you will mark that no human eye saw G. W. Gay set fire to the depot. The assumption that he commit-

ted the crime rests on the conceded truth that the depot was consumed somehow; and on evidence of admissions and statements supposed to have been made by him and by the defendants. Such evidence is at once the most uncertain and unsatisfactory of all testimony. I dwell upon this because there is a common notion that admissions are conclusive, whereas no notion is so erroneous. "With respect to all verbal admissions," says Greenleaf, (vol. I, p. 200,) "it may be observed that they ought to be received with great caution. The evidence, consisting as it does in the mere repetition of *oral* statements, is subject to much imperfection or mistake, the party himself either being misinformed, or not having clearly expressed his own meaning, or the witness having misunderstood him. It frequently happens, also, that the witness, by unintentionally altering a few of the expressions really used gives a completely different statement of what the party did say. The zeal, too, which so generally prevails to detect offenders, especially in cases of aggravated guilt, and the strong disposition in the persons engaged in pursuit of evidence to rely on slight grounds of suspicion which are exaggerated into sufficient proof, together with the character of persons necessarily called as witnesses in cases of secret and atrocious crimes, all tend to impair the value of this kind of evidence, and sometimes to lead to its rejection, when in civil actions it would have been received." "The weighty observation of Mr. Justice Foster is also to be kept in mind, that this evidence is not to be refuted in the ordinary course of things, in the way by which the proof of plain facts may be obviated." (1 Greenleaf 213.) "Hasty confessions made to persons having no authority to examine, are the weakest and most suspicious of all evidence." (Foster's Discourses, 243.)

These principles apply with infinitely greater force when the alleged admissions are procured for hire and reward. I ask you now to assume a further principle, which the court must charge you to be true and no one will gainsay, which is that no admission concludes against *the fact*. An admission does not bind, if the fact is not true. Thus an admission cannot bind if the fact be impossible, because if it is impossible it is not true. The law is so tenacious of this principle, that if Gay should have declared that he burned the depot, and if all the defendants should have confessed that he did so and that they had employed him to burn it, and if it should appear in fact that the depot was not burned at all, or that although it was burned, yet that Gay was in Buffalo or in bed at the time of the burning, the evidence of the confessions must be rejected.

Without reviewing now the admissions alleged in this case I shall show you, in the *first* place, that they must be rejected and that the defendants must be acquitted, *because the manner in which the crime is confessed to have been committed was impossible*. This is a distinct and independent defence, for if it was impossible to burn the depot in the manner described, then the defendants must be acquitted, nevertheless although all other positions assumed in their behalf should fail.

I proceed to show that it was impossible. This instrument is of the same kind with that with which the depot is alleged to have been burned. It is not the same instrument, for, of course that one is assumed to have been destroyed by the fire it kindled. But the description of that instrument is given us by the witness Phelps, as he obtained it from Gay, the supposed incendiary, and from Fitch and Filley, who, it is alleged in the confessions proved by Phelps, delivered that instrument to Gay. This match is made and furnished not only on the same plan and principle, but exactly in conformity to the description given by Phelps. All question in regard to the identity of the instrument in principle and in furniture is excluded, because this match now produced was found in the possession of Gay, and is presented to us as one of two which he alleged to Phelps, he received from Fitch, and which Fitch confessed to Phelps he had delivered to Gay in February last, to be used in the burning of the new depot as soon as it should be constructed. You see here a second instrument made and furnished on the same plan and principle. Phelps says, this last one was delivered to him by Fitch and Corwin on the night of the 11th of April, to be used by him in burning the depot at Niles, and that it was actually employed two days afterwards in setting fire to that depot. The admissions of Gay that he burned the depot were admissions that he

burned it *with a match of this description*. The admissions of the defendants that Gay did burn the depot, and was hired by them to do so, were admissions that he burned it with a *match made according to the description which they gave and the duplicate matches, which they delivered*, one to Gay at Detroit, and the other to Phelps at Michigan Centre, which duplicate matches I now hold in my right and left hands. I call your attention now to this one, which was used by Phelps in firing the Niles depot, and is therefore called the "*Niles*" match. You see it is a cylinder of whitewood, a foot long, that has a hollow tube bored with an auger in the centre lengthwise from one end to within an inch or more of the other end. According to the descriptions, that central tube is coated with varnish, and being thus coated is filled with camphene. When that tube is filled the orifice is covered with a seal of shoemaker's wax. Remember now that the tube is coated, not with glue, but with varnish and with no other substance, and that the orifice is sealed not with any other substance than shoemaker's wax.* Here then in the same end of the instrument you see it is pierced with four small central tubes near the circumference. These extend backward to within an inch of the other end of the cylinder. In the centre of each of these is inserted an open funnel or chimney, made of brown wrapping paper, reaching the bottom of the tube, and kept in shape by a thread twined around it. This funnel you see is smaller than the tube in which it is placed. The vacant space in the tube around the funnel is filled with cotton pressed down so as to fill the whole of that part of the tube which surrounds the funnel. This funnel with the cotton surrounding it, constitutes the alleged slow train. Turning now to the other end of the instrument, you find that each of these tubes running parallel to the exterior surface and near to it is connected with a fuse or touch-hole bored into it perpendicularly from the surface. A match thus constructed and thus furnished, according to the case of the prosecution, and no otherwise constructed or furnished, was laid horizontally in an oblong box some two or three inches longer than the instrument, with the solid end of the instrument against one end of the box. In that box, the vacant space of two or three inches in front of the pierced end of the instrument was filled with shavings, saturated with camphene or turpentine. The case shows that Gay, at his house near the Grand Circus, at seven o'clock, set fire to one or more of the trains contained in the smaller tubes, and then carried the box, covered with a lid, nearly a mile through the streets from his house into the depot, passing some thirty or forty men employed there, proceeded up two flights of stairs and deposited it burning in the cupola; that after removing the lid he left it there at eight o'clock; that at half past two in the morning the burning train or trains had conveyed fire through the instrument, that then, coming in contact with the saturated shavings, it caused them to burn; that the combustion melted the seal of the central orifice, and the camphine, thus released, flowed out, and taking fire produced the conflagration of the depot. We of course were not allowed to practice experiments upon the duplicate matches which were produced in evidence, but here are two instruments, constructed by a mechanic of this city on the same plan, and furnished in precisely the same way—that is to say, constructed and furnished according to the duplicates before you. The flues or chimneys are made of brown paper. The space around one of them, was filled with cotton, closely packed, so as to produce a slow train. It could not be fired at the fuse at all. A second train was prepared with oakum, a substance named as an alternative in the description, but not found in either of the duplicates, and which we supposed to be better adapted to transmit fire. All efforts to communicate fire to that train through the flue failed. A third train was prepared with cotton, less closely packed, upon the supposition that the fire would pass through it, although more rapidly than the principle of the machine required, but the fire kindled at the fuse went immediately out. A liberal construction was put upon the description, and it was supposed that the train might require to be saturated with camphene or turpentine, both of which were named in the description but for a differ-

* Mr. Van Dyke—The description includes glue. The Court read "the hole is glazed," &c. Mr. Seward—*Glazed is not glued*, Mr. Van Dyke—It includes glue. Mr. Seward—No sir. Varnish is named as the thing with which the glazing was effected. You *glaze* with varnish, but never with glue. Look at this table. It is varnished, that is, "glazed" with varnish.

ent use. A train was therefore prepared, composed of a mixture of dry cotton, and of cotton saturated with camphene. After much difficulty, and after igniting the block itself at the fuse-hole, this train was set on fire, and smoke and sparks at length passed through the funnel. The instrument was then laid in a horizontal position, and after ten or fifteen minutes the train ceased to burn. The instrument was left lying, in a horizontal position, on a stove, during the night, and not a spark of fire was found in it in the morning, while the train remained unconsumed. This experiment demonstrated that a match, constructed according to this description, and to the models produced in evidence, could not be made effective. The reason of the failure is obvious. The tubes are formed on the principle of the gun barrel, that is, of a barrel of uniform bore, pierced at the bottom with a fuse-hole. It would be impossible to fire a gun charged with cotton pressed down from the muzzle to the fuse of the barrel, even with the aid of an open paper tube in the centre of the cotton. Here is a pistol with a large bore. Here you see it charged with a train consisting of a paper tube surrounded by cotton, according to the description and models. I apply a match, the train will not take fire at either end. You say that the fuse-hole is too small. Well, take a drill and open the fuse-hole as largely as you please. You see at once that the result will be the same. Guns are made to shoot with, not to carry slow trains. But, you say, that there is only one barrel in the pistol, while the machine has five. Yes, but if you cannot fire one, you cannot fire five. The draught in so close a chamber would be inadequate to sustain combustion of these materials; and if there were enough, the draught would be from the muzzle to the fuse, and not from the fuse to the muzzle. The counsel for the people have added absolute confirmation to the result thus ascertained by the testimony of Dr. Desnoyer, a skillful, and I believe, eminent chemist, who testified that he had made repeated experiments with instruments thus made and charged by himself, and found it to be impossible to fire them at all.

Another experiment was made by us, which resulted in proving that, if a fire of camphene, or of cotton saturated with camphene, was kindled at the fuse, it would be immediately extinguished by *placing the lid upon the box*.

The first experiments also showed that if such a train, (made of cotton and paper and saturated with camphene,) could have been ignited and kept burning, it would have emitted a smoke and an odor of cotton, paper and turpentine, that would have immediately betrayed the presence of the fire.

A further experiment showed that camphene, or turpentine, was a good solvent of varnish, that the varnish almost immediately disappeared, and that within ten minutes from the time the central tube was filled with camphene the resistance of the varnish had ceased, the camphene was absorbed into the pores of the block, and the pressure of the external atmosphere, (which I believe is sixteen pounds avoirdupois on each square inch of surface,) caused the shoemaker's wax to bend or cave inwards into the tube, whether the instrument was in an erect or in a horizontal position. After two hours, the camphene was found to have passed through the solid block of wood at the further end, and the wax, unable to resist the atmospheric pressure, fell in, and the camphene was discharged.

These experiments, then, showed—First, that if Gay had lighted the match at his house, it must have been extinguished by being covered in its passage through the streets.

Secondly. That if it had continued to burn, the presence of the flame would have betrayed him to all whom he passed, whether in the streets or in the depot.

Thirdly. That the fire, if burning when he left it in the depot, must have died out immediately.

Fourthly. That if the train, in opposition to the resistance of natural laws, had continued to burn seven hours, or until half past two o'clock, the camphene in the central tube would, five hours before that time, have flowed out, and that camphene, as well as that with which the shavings were saturated, would have been absorbed through the box into the floor on which it was placed.

But, you will ask, may not the instruments with which you experimented, have differed from the original, alleged to have been used by Gay. We have therefore tested that question. Here is the Niles instrument, with which it is alleged that

Phelps did actually set fire to the depot at Niles. You need not be reminded that this was done by Phelps under the supervision of the officers of the railroad company, for the purpose of more effectually charging the defendants. The match furniture remains within, just as when the instrument was brought into Court. You see for yourselves that the trains, made in the same way, are all here, and every one of them remains unconsumed. You see here the paper tube, the thread, the cotton and the wax on the end of the instrument. You see moreover that no particle of smoke or flame ever passed through any of the trains; you yourselves sawed the block around at the intersection of the tubes and holes, and there you see that the cotton was never ignited, not even that which was in contact with the fuse. Nevertheless you see, with equal distinctness, that the fuse holes have been made large and the block itself set on fire around the fuse holes, in the fruitless attempt to produce combustion of the trains. Turn now to the testimony of Darius Clark, and you find, that he says that the fire which was communicated by this match to the building at Niles was communicated, (not by the camphine, nor by shavings, nor even by the trains,) but by the fire kindled at the fuse hole. That is to say, the match set fire to the depot by being first set on fire itself, like any other billet of wood. I take now this match found in possession of Gay, and which we call the Detroit match. You will recollect, that it was produced as one of two, which, according to the testimony of Phelps and Lake, were admitted by Fitch to have been given by him to Gay in February last, to burn the new depot. There is no difference between that and the Niles match, and no difference between either of them and the matches upon which these experiments were made. Now, to render the demonstration complete, you see that I apply this burning lucifer-match to the cotton in this tube, and that the cotton being so closely confined, actually refuses to be burned. Here are the trains in the Niles match, all the paper tubes and all the cotton necessarily surrounding them, just as they were when the instrument was found. Now you see me apply a lighted lucifer-match to the cotton, and it remains unburned. Thus you see that neither the Niles match, nor the Detroit match, can be made to burn at all.

If then the alleged admissions were made, the verdict must nevertheless be for the defendants, because the fact admitted was impossible. The admissions are of no more worth than would be admissions made by the same parties, under the same circumstances and with the same solemnity, that they burned the depot at Detroit by setting it on fire with a fragment of an iceberg. Thus it has been proved, that the match, with which the depot is alleged to have been burned, is a humbug, and that the duplicate matches, produced to give effect to the tale of the witnesses, are duplicates of the same humbug! It is immaterial whether the defendants made the admissions, for the purpose of imposing upon the credulity of the witnesses, or whether the admissions themselves were fabricated by the witnesses. The conclusion is irresistible that the defendants are not guilty under this indictment.

The answer of the prosecution to this distinct defence is given by Dr. Desnoyer. After faithfully trying to make an effective instrument, with the materials of wood, paper, twine, cotton, varnish, camphine and shoemaker's wax, according to the descriptions and to the duplicate models, he pronounces that it is impossible. Thus he corroborates and establishes the demonstration we have made. But, after arriving at this result, he was instructed to use other materials at pleasure, and at all events to produce an instrument in the same *form* which would be effective. After a fortnight of laborious experiments, the Dr. produced an instrument which was partially successful. Instead of *varnish*, for coating the central tube, he employed *glue*, which, all know, is soluble in water and yet not soluble in *camphine* or in *turpentine*. Having coated the central tube with glue, he made it retain the camphine for a longer period than when coated with varnish. Next, he saturated cotton with a solution of *saltpetre*, and thus, of course, produced gun cotton, of a low quality, and used it in making the trains. Unprepared cotton will not convey fire through a tube. Gun cotton will, and thus, by the use of that material, the Doctor has made an instrument, in *form* resembling the machines exhibited here, which will convey a flame from the fusehole through the instruments.

Our reply to this evidence is—First—That, even if the Doctor's instrument was identical with the supposed match of the defendants, still the experiment would be a failure, because the utmost length of time to which he could protract the burning of the train, in the instrument, was one hour and ten minutes; whereas, it is required that the match should retain the fire not less than seven hours and a half. This is skill beyond the Doctor's art. What has been done once can be done again. What was done by the clowns of Leoni can be done by the science of Detroit. But Dr. Desnoyer cannot do it. Counsel say, he said that he thought that his new match could be perfected so as to burn several hours. I was not here when he testified, but I am instructed to deny this. You will decide. But whatever he may have said, the result of his experiments is a *fact*, is evidence. What he speculated, beyond that, is not a fact, is not evidence. Secondly. His match is not identical with that of the defendants and differs from it in the use of the materials, *glue* and *gun cotton* or *saltpetre*. It differs altogether from it in principle, because glue is *insoluble* in camphene, while varnish is *soluble* therein, and because saltpetre, like powder, of which it forms an essential element, is explosive, and conveys fire by *percussion*, while *cotton*, whether *saturated* with *camphene* or not, is not explosive, and transmits fire only by passive contact of the particles. Saltpetre is moreover highly charged with *oxygen*, the element of *combustion*. The unprepared cotton, or cotton unsaturated with camphene, is less highly charged with *oxygen*. It was varnish and not glue that was demanded by the description given. It is simple *unprepared cotton* that is demanded by the description. Varnish and unprepared cotton only were found in *this match*, which is claimed to have *fired the Niles Depot*, and in *this one*, which was to *have fired the new Detroit Depot*.

Again, the Doctor's experiment was not tried with the same conditions. The supposed match of the defendants burned when *lying horizontally*; the Doctor's match lay in an *angular position* with the funnel upwards. If a defendant was alleged to have admitted that he killed another, with a certain gun which he exhibited, and if that admission should be proved to be false, because the gun was not loaded, the case could not be restored by producing a whole magazine of guns, and showing that they *could* be loaded and made destructive. The answer of the prosecution, then, to this defence, is an *afterthought*, a *new invention*, a subterfuge. It is a studied, deliberate fraud. The prosecution endeavor to escape, by saying, that the cotton in the Niles match might have been saturated with saltpetre; but if so, then it would have differed from the description given, which did not require saltpetre. Again, if the cotton in that match was saturated with saltpetre, the saltpetre is in it still. They give up, that there is no saltpetre in it, as they must, because it would burn now, if it contained saltpetre now. But they say that the witness Clark, testified that it was laid in the river at Niles, after having fired the depot. Unfortunately, however, it is too plainly to be seen, on examination; 1st. That it never was fired in the trains at all; 2d. That Clark's testimony, about its having been put into the river, is expressed in vague terms, and probably rests on mere hearsay; 3d. That the paper tubes in the Niles match are solid and firm, whereas they would have collapsed by reason of the expansion of the cotton when put in the water; 4th. That the whole instrument is composed of such light materials, that it would have floated away, like a bottle or a cork, if it had been thrown into the river.

Again, it is quite certain that the match prepared for burning the new depot at Detroit was never immersed in the river. I applied flame to it, with precisely the same result, in attempting to burn it, as the other. Neither contains saltpetre—neither will burn. But still, it will be insisted that saltpetre might have been included in the description. This cannot be, because Phelps, who alone gives us a description, has been upon the stand and has not amended it. The reason was, that, in inventing the description, he had made camphene the essential ingredient. He took care to insist upon camphene as an ingredient to be used whenever he spoke of the match, thus, "That he lent Gay two dollars to buy camphine with," implying that it was to be used in charging this very match now here, which he was to use in burning the new depot at Detroit. With equal care, he makes Fitch say, when he delivers the Niles match, "You will get camphene out there, (at

Niles,) because it will be inconvenient to carry." When Phelps arrived at Niles, and proceeded to set the depot on fire, he actually procured camphene at the railroad office, and charged the instrument with it, by pouring it into the trains, not into the central tube. The thought of saltpetre never occurred to him, nor to any other person, until it was suggested by Dr. Desnoyer, after the humbug had been exposed here in Court. Besides how should Ammi Filley and Fitch and these illiterate men at Leoni learn a secret in chemistry that Dr. Desnoyer has taken a fortnight to find out in his laboratory?

Gentlemen, you are now at liberty to trace out the results of this exposure. They are—that the pretended burning of the depot at Niles is a fraudulent fact; that the concealment of the fraudulent character of this fact until it is discovered here, is also fraudulent; that the pretence that the Niles match was immersed in the river all night is a fraud; that the pretended employment of Gay to burn the new depot at Detroit is a fraud; that the pretended confessions of the defendants, and even of Gay, that he burned the depot at Detroit are fraudulent; that the pretended admissions of the defendant Smith, that he was a party to that crime are fraudulent; that the pretended admission of the deceased defendant Gunn, that he was going to burn the depot at Marshall, is fraudulent; that the pretended conspiracy of the defendants to burn these depots, is false and fraudulent. If you are surprised, as I am, that the prosecution, after the exposure of all these frauds, still endeavor to convict these defendants, by imposing upon your belief that the Detroit depot was burned with a match, furnished by the defendants, differing from that which the prosecution first proved, I can only say, that it is a new illustration of an old maxim, that 'he that stands on slippery places makes nice of no vile hold to stay him up.' This, gentlemen, concludes the first defence raised against this prosecution. If there were not mountains of prejudice to overcome, I should leave the case here.

But there is a second defence no less clearly established and no less conclusive. This defence is also an independent one; and stands or falls by itself. *The matches produced here by the prosecution, and which I have called duplicates, were fraudulently fabricated by Phelps and Lake, the people's witnesses.*

Before I prove this point, you will permit me to explain its effect upon the case, if established. If these matches were fraudulently fabricated by the witnesses for the prosecution, then their testimony, showing that Gay and the defendants admitted the burning of the depot by a similar match made by them and given to him, must be false, because the case stands upon those admissions. It is essential now to recall only this part of the testimony, to wit: that Phelps, Lake, Van Arman and Clark, say that on the eighth or ninth of April they saw this Detroit match in the possession of Gay, in his house in this city, and that Titus and Phelps say they found this same Detroit match, now in my right hand, under the sidewalk, near Gay's house, two days after his arrest, and that the prosecution produced it as the match before seen in Gay's house by the other witnesses; secondly, that Phelps and Lake testify that they received the match, which I hold in my left hand, that is the Niles match, from Fitch and Corwin at Filley's house in Michigan Centre, on the night of the 11th of April. These are the same matches which I have called the duplicates.

It is *certain* that somebody made these matches. It is morally certain that they were made or procured to be made by *either Phelps and Lake, who produced them, or by the defendants.* The presumption of law, I need not tell you, is that they were manufactured by Phelps and Lake, in whose possession they were found. But Phelps and Lake say that they derived their possession from the defendants. Take notice now that no one but Phelps and Lake ever saw a match in the possession of the defendants before the 8th of April. When actual evidence of the manufacture of a thing cannot be procured, we resort of course to circumstantial testimony. Evidence of the possession of materials and instruments used in making the matches must be received. The materials of which these matches are made, are seasoned white wood lumber, in the form used by the railroad company for *cattle guards*, varnish, camphine, shoemakers' wax, cotton batting, brown wrapping paper and thread. These forty and more defendants were arrested unsuspectingly in the night time and hurried away to prison, where they have remained ever since. The police, armed with search

warrants, and conveyed in unlimited numbers by steam engines, have searched the dwellings, out-houses, farms, and even bed-rooms, cellars, closets and garrets of the defendants—their chests, bureaus, drawers and every possible place of concealment; yet not a splinter of whitewood has been found in their possession, nor does that timber grow in the region where they live. Not a thread, nor a filament of cotton, nor a drop of camphine, nor a leaf of paper is to be found. The instruments employed in the manufacture were a saw, a plane and augers. No instrument of either kind has ever been found in the defendants' possession. If the defendants had made or procured these matches to be made, some merchant in town or country would have come and have told us that he sold some of the materials; some mechanic, that he furnished the instruments; some spy or casual listener, to prove that he saw some part of the operation, or overheard consultations about it. Not a whitewood scantling, nor a plank, nor a cattle guard, is found in that neighborhood. No man appears to testify that he ever saw a piece of such lumber bought, or drawn by the defendants, or delivered to them. If the matches were made by the defendants, that secret must have been in the possession of forty men, and must have come to the knowledge, directly or indirectly, of their wives, children, and laboring men, and of strangers sojourning within their gates. The prosecution have held and exercised a power equal to that of torture. They have not extorted, either by threats or rewards, a confession that any defendant ever saw or used any such materials or instruments. The defendants have lain perishing in jail, subject to the continual visitation and surveillance of the police, from the district attorney downwards. No one of the defendants purchases his liberty by confessing knowledge of the manufacture of these matches.

Again, it is beyond all doubt that if the defendants made these matches, then they made them to *destroy*. They never would have delivered them to Gay and Phelps to burn depots, unless it was certain that when applied, they would have effected their work of destruction. But these matches were made—not to burn—not to destroy—but to *humbug, deceive, and defraud*. They have deceived and defrauded; they have not destroyed, and cannot destroy.

So much in regard to the defendants; let us now turn to the other party. The idea of a match or instrument of such a kind arose in the mind of *somebody* in the state prison, at Jackson, at the time when Phelps and Lake were there. In form, the instrument is like the wooden model of the revolving cannon, produced there by one of the prisoners. Phelps admits that he knew of that invention. He does not admit that he saw it, but Phelps was inquisitive and impudent, and the invention was notorious. That invention never came to the knowledge of the defendants. Look, now, at this humbug—this “cunning instrument cased up”—a contrivance, not to burn houses with, but to circumvent credulous and timid jurors, and punish obnoxious enemies. See if it does not wear an appearance of fraud—if it does not give out an odor of vulgar felony. It is state prison, all over, and through and through.

Remember, now, that Phelps and Gay, in the first interview of their renewed acquaintance, in December, contrived a plot to effect a release of the culprit, Van Sickles, which was to be predicated *upon the burning of a depot*. The plot was this: that a depot was to be burned, or, as Phelps preferred that the scheme should be predicated upon the accidental fire which had already taken place at Detroit; that the fictitious crime was to be falsely charged upon “Joe Boyce,” who had dishonored his profession by stealing from thieves, and that it was to be carried out by subpoenaing a first rate man and his wife, who would swear that Boyce told them, before the depot was burned, that he was going to burn it, and that after the fire he told them that he had burned it. A *token, a visible token*, a sign was necessary to give plausibility to this plot. Why, a token? On the principle that the Jews demanded of the Savior “a sign.” On the principle laid down by Horace, in his instructions upon invention,

Segnius irritant animos demissa per aures,
Quam quæ sunt oculis subjecta fidelibus.*

A match like that with which a depot might have been destroyed, upon the theory adopted, was just the *token* wanted. The more curious, the more vulgar, the

* What we hear moves us less than what we see.

more terrible the contrivance, the better. Mark, now, that Phelps and Lake spoke of matches long before they were ever seen by themselves or by anybody else.—Phelps says that Gay told him “of a match in his first interview, in December, while the ashes of the depot were yet smoking, and said he fired the depot by placing the match in the cupola, at eight o’clock.” As yet, Phelps *shows* no match. Again, Phelps says that Filley on Christmas, at the ball-alley in Michigan Centre, said they “had made a match, and had sent it to a man in Detroit, with instructions to place it in the cupola, and that it was placed there, and went off first rate.” Phelps relates further that Filley described the match on that occasion, with great particularity. But remember that Phelps, as yet, neither produces a match, nor claims to have *seen one*. Phelps again says that about the sixteenth of January, when he went with William B. Lacock to the ball-alley, Fitch described the manner in which the match was made, and said that it was sent to a man in Detroit, and that then Fitch took him into the store-room of Filley’s bar-room, and *showed him a match*, saying he would give him such an one to go to Niles. Phelps says that, afterwards, Filley showed him the same match, at the same place, but fixes no day. Nevertheless, as yet, Phelps produces no match. Again, Phelps says, that on the 13th of February, Fitch, at Detroit, told him that “he had given two matches to Gay, similar to the one with which he burned the old depot, and that Gay, on the same day, told Phelps that he had received from the man then in town, who delivered the first match, two matches like it to burn the new depot with. Still Phelps shows us no matches. Remember, now, that on the 24th of February, Phelps had employed Lake to assist him in his alleged service of the railroad company, and that on that day he, with Lake, visited Gay, and that Gay then, in an upper bedroom, showed him a match; but, as yet, Phelps and Lake exhibit no match to any one. Mark, now, that after Lake has been employed, and not before, Phelps, by the hands of Lake, borrows from Moses Metcalf, a near neighbor, augers exactly adapted to the bores or tubes of both the matches produced in evidence.—Here they are; this five quarter auger, you see, just fits this, the large tube, and this half inch auger, just fits the smaller one. [Mr. Seward inserted the augers in the tubes.] Phelps withdraws his wife from their home, leaving Lake sole tenant of his house. Moses Metcalf calls at Phelps’ house; finds the door closed and the thumb-piece of the latch removed; knocks, and Lake, partially opening the door and looking out, like a fox from his hole, receives and answers his inquiries, and closes it again. About the same time, Heber Cowden, during the absence of Phelps and his wife, knocks at the door, the thumb-piece being again out. He is admitted, and finds a stranger, answering to the description of Lake, using augers, saws, planes, blocks of wood and a basket of shavings. Remember that all these mysterious things occurred about the last of March or in the first week of April, and that although Phelps pretends to have seen matches during three months before, and to have had a description of them, yet he had never been able to exhibit a match to his employers, nor to any other person.

You will next take notice that cattle guards made of such lumber are found all along the railroad, near to and passing immediately by Phelps’ house—that he had the freedom of obtaining and of using the refuse lumber of the railroad, for fuel or other purposes, with free access and facilities to the lumber yards of the railroad company, by whom he was employed, and to all its shops and manufactories. Remember next, that Phelps left the premises he had before occupied, on the first of April—that on the first of July, on a search made in the stable on these premises, then in the possession of Alfred Metcalf, there was found concealed under the decaying hay, in the manger, a broken piece of cattle guard, which Alfred Metcalf, the new tenant, proved had not been placed there by himself. Judging from the appearance it then presented to a dozen neighboring farmers, as they now testify, and from the appearance that it wears, when produced in court, stained and saturated with the solutions of hay and earth in rain water, it must have lain concealed there not less than three months. You see the stain, how it has penetrated an inch, by looking at this end of the block. Next, take Mr. Stow’s testimony, that on the tenth of April, after Phelps had left the premises, and after they had come into the possession of Alfred Metcalf, Phelps, when passing the place with Stow, left him,

entered the premises and the stable, and was seen through the window, leaning over in the act of doing something with the decaying hay, which we now know was then lying in that manger.

We have thus found Lake, as early as February, in the employment and in the house of Phelps, and have found Phelps and Lake in the month of March, in the possession of augers, planes, saws and lumber, and Lake in the absence of Phelps and his family, engaged secretly in the use of these instruments in Phelps' house. We have, moreover, found the material for the matches, concealed on the premises they occupied in March. All these things occurred before the eighth of April; but no match had ever yet been seen by any one but Phelps and Lake. You will take notice now, that on the ninth of April, at Detroit, Phelps and Lake show a match to Clark and Van Arman, in Gay's house, with the connivance of Gay; and on the eleventh of April, at midnight, Phelps shows to Clark, at Grass Lake, another match, which he says he had that night received from the defendants at Michigan Centre, and that on the twenty-first of April, the police, with Titus at their head, having for two days made unsuccessful search of Gay's premises, are joined by Phelps, who advises a search under the sidewalk, a little remote from the house, and thereupon, in his presence, there is brought to light a match, which is produced here as the one shown at Gay's house on the ninth, to Phelps and Van Arman. Here is circumstantial evidence of stringent consistency and damning effect against Phelps and Lake, while there is an utter absence of *all* circumstantial evidence, whatever, against the defendants.

I shall be brief in disposing of the falsehoods and sophisms opposed to this circumstantial evidence.

1. Fitch was hostile to the railroad. Look at these two matches. Neither of them could fire a hay stack. Was Fitch a fool? No! Then he did not give such a match to an incendiary to burn a depot with. Was he a villain? Then he would have given to incendiaries, not these matches, but instruments that would have been effectual.

2. Mrs. Phelps, (with Phelps and Lake,) says that the augers were borrowed to mend the wagon springs, and they were mended with a bed cord. But two augers, one of five quarters, and one of two quarters, were not wanted to bore a hole sufficient to receive a bed cord. We have had *views* taken by the jurors of all memorable places and things. Why has not that wagon been submitted to the inspection of the jury, or at least of witnesses, that it might be seen whether it was ever mended with an auger at all? This mending of the wagon, is clearly an afterthought, a subterfuge.

3. Mrs. Phelps and Phelps and Lake say that the augers were re-delivered to Moses Metcalf on the day they were borrowed. I reply that Mr. Metcalf's evidence outweighs the testimony of them all; and he says that he has no knowledge that the augers were ever returned except from the fact that at some time afterwards, when he had occasion to use them, he found them in their place.

4. Cowden testifies that before being admitted to Phelps' house by Lake he looked through a window by the side of the door and saw Lake writing at a bureau, and being informed by Mr. Metcalf that there was no window by the side of the door, he came upon the stand, and, reiterating the impression left upon his mind that there was a window, corrected the error. You have seen the house, and have seen that it has a window on the east side, as easily approached from the gate as the north front, which contains the door. The mistake was a natural one, and in regard to a matter of no importance whatever. I venture to say, that there is not one of you who can tell me how many windows there are in the side of this room, behind you, and describe their location.

5. That the only bureau in the house stood in the bedroom and was covered with dishes. But you know that the earthen-ware might easily have been removed, and that Lake might have been seen writing in that room, or that, in the absence of the master and mistress of the house, the bureau might have been removed into the other apartment.

6. That the piece of whitewood timber found does not exactly correspond in age and in fibre to the matches produced. I answer. Here is a blister on the wood exactly corresponding to this blister on the Niles match. But that question has been submitted to your examination without proof. I am told by mechanics that

these matches might have been taken from that identical stick, though perhaps not immediately adjoining the part now left. You will determine; but in doing so remember that it is not necessary to our case that the matches should have been made with these identical augers nor from that identical billet of wood. The possession of an instrument and of any such wood implies that the same party could procure other instruments and similar lumber.

7. That Stow could not have seen Phelps at the manger through the window. Your own experiments have satisfied you that Phelps could have been seen there before the corn in the intervening field grew up.

8. That Stow erred in stating that he saw a broken piece of cattle guard lying at Reynold's crossing near Phelps' house, during the last summer. Answer. Timber for cattle guards was laid at several crossings in that vicinity during the summer, and there is entire confusion among the witnesses in regard to the places where it lay and the times it remained there. That is an unimportant matter.

9. That Fenn may have placed the piece of timber under the hay, and that you are justified in assuming that he did, because the defendant Burnet advised the search of Phelps' premises. Reply. Burnet's remarks were the natural suggestions of a mind conscious of innocence, and knowing the innocence of the defendants. Search of the defendants premises had been repeatedly made and nothing had been found to accuse them. Why not search the premises of their accusers?

Again it is urged that the search was made too late, but it was made as soon as Phelps and Lake had made their pretended disclosures on the trial; and until that time the defendants were ignorant what they would have to answer. Burnet's remarks were openly made, on Sunday, to his friends at the church door, when he was allowed by the railroad company to go home, and they indicated a reasonable suspicion of the fraud. But how could Fenn or any other person procure such a piece of lumber, and convey it unobserved by night or by day, from any place where it could be found, and deposit it in the manger? By what chemical process could it have been so effectually saturated and stained, in the short space it must have lain there, so as to have deceived and misled the intelligent farmers who agreed that it must have been subjected to the operations of the decomposition of the hay and earth for a period of three months?

Once more. It is said, that these farmers found it too early. I reply; they say that they found it without an indication of place or order of search. If it had been found later there would have been equal suspicion of fraudulent delay.

I recapitulate. We find no matches in the possession of the defendants, no materials, no implements, no traces of the manufacture. No one of them has ever spoken of matches. We find Phelps speaking of matches three months before any are seen. We find Lake employed by him. Lake is an engineer and skillful in working in wood. We find him, with tools and materials, at work mysteriously. No match has ever been seen by any person where Phelps was not himself present, and did not personally produce it, or indicate where it could be found. Phelps and Lake, after procuring tools and materials and being seen at work, produced the matches required. Those matches serve the purposes of the plot by Phelps and Lake. They are utterly ineffectual to serve any purpose which the defendants could ever have conceived. The conclusion then is that the matches were made by Phelps and Lake, and thus is the engineer "hoist with his own petard." We have thus established a second complete, conclusive and independent defence.

III. Here is another, a third defence established with equal certainty which is alike independent and conclusive, viz: *Phelps and Lake fraudulently placed in the depositories where they were found the matches which have been produced in the trial of this cause.* If their testimony is false in regard to the circumstances under which the match was found at either place, then the whole fabric of their evidence, and of this great cause, falls to the ground. I recall your attention, briefly, to the narrative given by Phelps and Lake concerning the manner in which they obtained the match at Michigan Centre on the 11th day of April. You will remember that on the 8th and 9th days of April, Phelps and Lake exhibited a match at Gay's house to Clark and Van Arman. Lake says that it was determined then, at Detroit, on consultation with Clark to go to Michigan Centre and get a match there; that on the 10th they arrived at Phelps' house; that on the 11th they went early in the morning together to Grass Lake; that they proceeded thence by way of Ga-

ger Cady's house; that they went a short distance westward, and then northward by the straight middle road, which they struck far East of Beman's corners, and they pursued this road directly to Michigan Centre; that they stopped nowhere on the way but at Gager Cady's house; that they did not separate; that they did not go through the village of Leoni; and that they did not carry with them this match nor any box, bundle, or baggage of any kind whatever; that they had nothing in their wagon but some loose straw; that they found Filley at home, told him that they had come prepared to go to Niles that night; that Filley replied, he was glad of it, that they would be ready for them; that Phelps asked if the boys were there, and on Filley's answering they were not, Phelps replied, that he would go to Leoni and give them notice, and they might come down if they pleased; that Phelps returned on the north road to Leoni and proceeded thence to Grass Lake; that Lake, being ill, after taking some refreshments, laid down, slept an hour, arose and found Filley in the bar-room; that Filley and himself fixed a pen-stock; that Filley went to the barn and brought thence this Niles match under his coat, with a box in the other hand and sent the children out of the bar-room; that Lake examined the match; that Filley then put the match into the box, nailed it up, deposited it in the store-room and put the key in his own pocket; that two young sportsmen came in from Jackson; that Filley sold one of them a fish; that, at sunset, Filley said he must take some persons, who were hanging about there, a fishing; that Lake attended him to the pond and left him there, *without receiving the key from him*, returned to the house, and there found Phelps, with Myers, Corwin, Fitch, Hudson and Faulkner; and that, after free drinking and many consultations, Fitch called Corwin to fix them off, and Corwin took the key from his pocket, opened the door of the store-room, took out that same box, carried it out of the house, put it into Phelps and Lake's wagon, and told them it was right side up with care, and that Phelps and Lake departed in one wagon, and Myres and Corwin returned to Leoni in another.

Gentlemen, Phelps had never seen Gager Cady nor his horse. He made no serious effort to buy a horse. He had no use for another horse. Could his visit to Gager Cady, on that occasion, so far out of the way, have had any other purpose but to mislead observers, concerning the route of his journey to Michigan Centre? It turns out, I dare not say, providentially, to have been the means of disclosing his depraved designs. On that morning, James Peeler and Clarence H. Kellogg were drawing timber up the road leading from Gager Cady's to Grass lake. They met Phelps and Lake, knowing only Phelps. Peeler accosted Phelps, who courteously returned the salutation. Both Peeler and Kellogg saw an oblong bundle a foot long, six inches deep and six inches wide, tied up in a red handkerchief, lying on the bottom of the wagon. Peeler asked Kellogg what he thought was in that bundle. Kellogg replied that, if the stranger was a musician, it might be a box of instruments; but he believed it contained bogus money, or a contrivance to make it with—a remark most natural, when you consider that Phelps notoriously pursued the profession of either a villain or what is called a stool-pigeon.

Israel R. Brown, sexton of the church at Grass Lake saw Peeler and Kellogg arrive at that village between 10 and 11 o'clock, with a load of timber, and he identifies the day by religious services in the church. Gager Cady was sitting in his wagon when Phelps drove up at his door. They stopped and conversed on a proposition for the purchase of a horse. Cady saw something in Phelps' wagon about a foot long, six inches wide, six inches deep, and tied up in a red handkerchief. James S. Seacord, who lives at Leoni, had been that morning sent by his employer, Dimmick, down the Napoleon road to search for a beetle and wedges, which had been left in the woods, a mile and a quarter from Leoni, on a road which Phelps and Lake deny that they traveled, and at a point a quarter of a mile south of the place where they allege they crossed that road. On coming out of the woods, Seacord saw two men pass in a one-horse wagon at a distance of three rods, between the lands of Beman on the east and Mills on the west. There, nearly under a sassafras tree, one of the men alighted, took from the wagon a bundle of oblong shape, about a foot long, &c. and tied up in a red handkerchief, put it under his arm, got over the fence into Mills' lot and went off northwesterly across the fields. The other proceeded on his way in the wagon. Seacord walked up to the distillery and thence to Leoni, and there saw the same wagon, with the same iron-grey horse fastened at Cuyken-

dall's tavern. He identifies the day by a lawsuit between Freeland and Taylor. Benjamin Dimmick corroborates Seacord, by saying he sent him on some day in the same week after town meeting to search for the beetle and wedges at the place indicated.

David Beman testifies that on Friday after town meeting, that is to say, on the 11th of April, in the morning, he was at work splitting rails in the rear of his farm out of sight of the road. He sent his son to a knoll towards the road to see whether cattle were not in the wheatfield. His son having stayed, as he thought, unreasonably long, Beman came over to the knoll, and arriving there, he saw, at a distance of some forty rods, two men, who were unknown to him, come up in a one-horse wagon. They stopped near a sassafras tree. One got out, took a bundle, or something else that was red out of the wagon, got over the fence, and went across Esq. Mills' field so as to approach diagonally the middle road leading to Michigan Centre, passing Penfield's Sawmill. The other man drove on in the buggy across the middle road towards Leoni. Beman saw Jesse Cozier come down the middle road with a load of rails and pass the man in the wagon on the way towards Leoni. He identifies the day by the payment of a dollar which he owed to a neighbor and paid on that day, charging his son to remember it as he was an illiterate man and kept no accounts.

Emmet Beman, the son, explains the cause of his delay in going to the wheatfield, and says that he arrived on the hill overlooking the road and there saw two strangers come up in a one-horse wagon; that one of them alighted, took a bundle in a red handkerchief, placed it under his arm, climbed over the fence into Mills' field and went westward; that the other man with the wagon and the iron-grey horse proceeded north towards Leoni across the middle road, and the witness saw Cozier with his load of rails, and saw the one-horse wagon pass him on its way to Leoni; that he, the witness, soon afterward took a load of rails to Leoni, sold them to Toll, procured a dollar, and paid it to his father's creditor, and he identified the day as the same when he saw the court and parties in the lawsuit between Freeland and Taylor. Jesse Cozier swears that on the same day Phelps passed him at the point indicated on the Napoleon road and was alone, and this was north of the place where the middle road crossed the Leoni road.

Thus we have these two witnesses, Phelps and Lake, separate and apart, Phelps in the wagon going northward towards Leoni, and Lake going westward through the fields on foot with a red bundle. We now follow Phelps on his winding way.

Mrs. I. D. Toll, the wife of Isaac D. Toll, lives in Leoni in the house on the southwest corner made by the intersection of the north road from Grass Lake to Michigan Centre with the Napoleon road. She saw a man in a one-horse wagon with an iron-grey horse come up the Napoleon road. His horse took fright and ran with him as he drove in. He reined him up and fastened him at the post at Cuykendall's, *facing eastward*. Isaac D. Toll, the merchant, describes the same occurrence in the same way. A. S. Luce, a Justice of the Peace, says that Phelps' horse took fright in crossing a sewer, ran around the sign post, was reined up and fastened looking eastward. John Cuykendall, the tavern keeper, was standing on the step when Phelps arrived, and describes the same occurrence in the same way. Luce and Toll identify the occasion as the day of the lawsuit before mentioned which was tried before Luce. On that same 11th day of April, Mrs. Toll left Leoni before dinner and went down to visit Mrs. Fitch at Michigan Centre. She arrived there about 12 o'clock and then saw the same wagon with the iron-grey horse fastened to a post at Filley's tavern. About three-quarters of an hour afterwards she saw the same person now identified as Phelps mount the wagon and drive off south across the Railroad; and this would have been his route to meet Lake coming up the road passing by Penfield's mill.

You will next observe that Filley was not at home when Phelps arrived at Michigan Centre, nor when he left, nor had Lake then arrived there. The two young men, Allen and Kane, who came down from Jackson to Filley's for shooting, that day, arrived near 12 o'clock—dined in the yard while Filley dined in the house; they say that they saw Filley, spoke with him and went with him to the pond to shoot ducks, soon after one o'clock. They saw neither Phelps nor Lake at Filley's. It is manifest that Phelps arrived at Filley's after he had gone, with Kane and Allen, to the pond, and so that Phelps did not see Filley.

Let us now look for the whereabouts of Lake. Ebenezer Taylor says that he was a witness in the suit of Freeland and Taylor; that he was returning, on foot, from a neighbor's who lived near Penfield's mill, and that on the middle road, near the mill, he passed a person corresponding in stature and age to Lake, walking westward with a red bundle which seemed to him like a small trunk tied up in a handkerchief. He thought so because he had such a trunk himself. Whether Lake encountered Phelps and received information from him that Filley's house was clear of strangers or not, it is quite certain that Lake entered the house while Filley was absent with Kane and Allen at the pond.

Van Renselaer Arnold testifies that he worked with Filley in the woods until eleven o'clock that day. Filley, at parting, said that he would go home to dinner, and after dinner go to the pond and look at his nets; and told Arnold to come down at 3 or 4 o'clock and that he should have a fish if Filley found any. Kane and Allen testify that between 3 and 4 o'clock Filley left them at the pond and returned home. Arnold says he overtook Filley a few rods from his house with fish, near 4 o'clock P. M. That Filley went in at the south door, that is, the door of the kitchen, and he, Arnold, proceeded to the north door, which opened into the bar room; that while standing there a stranger came in from the back door, which opens into the garden, and towards the ball-alley, and said "how do you do Mr. Filley?" and Filley replied "how do you do, Mr. Lake?" That the stranger then stooped and seemed to take up, or at least to be raising something, and said "I have a bundle here, I want you to take care of it while I go up south;" that Filley went into another room, came back, unlocked the door and told Lake he might put the bundle on or in a barrel, and Lake put a red bundle into the room and himself locked the door and threw the key upon the counter before Filley. Arnold says that he received a fish from Filley and went home. Arnold identifies the day by an entry in his day book, of the labor performed. He has been here with his book under a subpoena, duces tecum, from the prosecution, and they have not called for the production of the book. He admits that he was once in a State prison in New York but it was thirty-eight years ago. He was pardoned by Gov. Clinton, soon after his conviction, on the discovery that his conviction was unjust. He has since led, for aught that appears to the contrary, a blameless life, and he stands unimpeached. Astute counsel perplexed his memory about the date when he made a visit afterwards to Brooklyn, but he was abundantly corroborated as to the facts of the visit, its purpose and the occurrences connected with it. Mrs. Fitch, the widow, corroborates him conclusively by the statement that she saw him and Filley come together to the house in the afternoon; that Filley had fish, and she remarked to Mrs. Toll, who was then visiting her, that it was a pity those fish did not come before, as they would have had a nice pickerel for dinner. She identifies the day as the one on which Mrs. Toll, Mrs. Dimmick and Mr. Cross were at her house.

Kane and Allen came up from the pond at 5 o'clock and then found Filley at home. They went into the ball-alley and were followed by a stranger named LAKE, whom they had not seen, neither on that day nor ever before.

Harley Woodward, who worked upon a farm of Filley, says that on the 11th of April, in pursuance of an appointment made by Filley, he met him, not at his house, but at his barn, about sunset, with his son and Lake, and went with them to the pond to fish. After preparing wood for lights and kindling a fire, and when about to push off, Lake said he would return and he might perhaps want to go away before Filley should get back; and Filley said "Here is the key that unlocks that room."

Phelps, Lake and Faulkner all agree that Corwin had the key in the evening, and unlocked the door and gave Phelps and Lake the box. It is certain that Filley and Corwin did not meet that afternoon; for Corwin came from Leoni to Michigan Centre that night, while Filley spent the afternoon and evening at the pond except the interval between 5 o'clock and sunset, and during that interval, he was there at his house. Lake must have therefore received the key from Filley at the pond, and must have delivered it to Corwin when he came there at night.

You will spare me a few moments to comment upon the exceptions taken to this important testimony. Like the answers, given by the prosecution, to our exposure of the humbug of the matches, it consists of the *after thoughts or subterfuges* of this brace of "miscreants."

1. After a fierce struggle between the counsel and the witnesses, Peeler and Kellogg, that left their testimony undisturbed, and after the counsel had found that they could not shake Gager Cady from the position that he was now, as he always had been, under the impression that he saw such a bundle as he described lying on the bottom of Phelps' wagon, they asked him whether it might not have been something else as well as a box? He answered, yes. "May it not have been a great-coat?" "Yes, it might;" and then, after the lapse of a month, Lake appeared upon the stand and a great coat, with pale red flannel lining, was laid before him. He then remembered that on the 11th day of April he took that great coat with him, that he laid it upon the seat because, first, the weather was too warm to wear it; secondly, the coat was *inconveniently small*; and he supposed that it might have slipped from the seat into the box unnoticed; but he still resolutely denied that he separated from Phelps, or that they took a different route from that they had before described; and he stated, also, that at no time that day or that night did he wear the great coat, although he was sick and was riding in an open wagon from 10 P. M. until midnight. When asked what became of the coat when he arrived at Filley's, he answered that if he took it from the wagon he hanged it up in Filley's bar room; that, if he did not take it from the wagon, it remained therein; and so it must have been carried by Phelps to Grass Lake and back again. Yet Phelps had no other recollection about the coat than the fact that Lake took it with him in the morning which he stated for the first time on his examination at the close of the case. Gentlemen, that coat with the red lining, if it had really been Lake's great coat and worn on that occasion, would not have needed an apology for its being too small! Peeler and Kellogg would have suspected no bogus money in the plaid lining of a traveler's old great coat, in the month of April. Gager Cady could have no impression of a bundle tied up in a red handkerchief, if what he had seen was only a great coat lying on the bottom of the wagon. Badly as the great coat fulfils its office thus far, it fails altogether to explain how Phelps and Lake happened to be coming up the Napoleon road, which they swear they did not travel at all. Lake not only denies that he took the great coat from the wagon and carried it across the fields, but he denies also that he left the wagon at all. Seacord was within a rod or two of the travelers, and could not have mistaken the coat for a bundle. Mr. Taylor could not have mistaken a coat with red lining for a trunk tied up in a handkerchief, when it passed within three feet of him, and was changed from side to side; and certainly Lake could have had no such care for an old coat with red plaid lining as to have carried it across the fields on foot, when it could have been carried by Phelps in the wagon, and it was too warm to wear the coat when riding, nor could he have thought it necessary to lock it up away from the children, in Filley's store room. If he had been so careful of it then, he would have remembered at first his taking the coat with him and placing it in its depository.

2. The prosecution allege that persons who stood in the places described by Beman and his son, could not have seen the arrival of Lake and Phelps under the sassafras tree, nor could they have seen Lake, alighting from the wagon and climbing over the fence and carrying such a bundle across the field. So confident were the prosecution of this that they challenged us to give them a view, obliging us to do so by declaring in the presence of the court that, no matter how many witnesses they might produce to prove these physical impossibilities, yet that the defence would swear down the hills and swear up the vallies to contradict them. The view was granted, with what result you know. I think you are satisfied that, standing where those witnesses stood, not only they could see all that they have described, but, I had almost said, that nothing else could be seen there. You remember how, on repeated trials, under that pale, clear shining sky, we recognized the bundle which looked provokingly red, and that we distinguished always the person who carried it, and his dress, gait and walk, however he attempted to baffle us.

But, gentlemen, grant that Beman and his son were effectually discredited, there would still remain undisturbed the testimony of Peeler, Kellogg, Cady, Seacord, Taylor, Arnold, Toll, Luce, Cozier, Cuykendall and Mrs. Toll. The testimony of either one is sufficient to overthrow utterly the evidence given by Lake and Phelps. The agreement of all these witnesses corroborates and establishes that of Beman and his son, and the mass together is insurmountable.

3. It was necessary for the prosecution to rebut the evidence that Phelps was

seen at Leoni that morning alone. This was done by *after thought* the fourth. Lake and Phelps were recalled to the stand and testified that at some time previous to the 11th of April (Lake says a fortnight, Phelps says a month) they, Lake and Phelps, were passing from Michigan Centre by that middle road which led past Penfield's mill, that they arrived at Beman's Corners, turned to the left and took the road to Leoni; that Lake left the wagon opposite a field, and entered it to speak to Corwin, whom Lake supposed he saw there; that Phelps passed on; that his wagon struck a hoop at the Corners, and that the horse took fright, ran away, was reined in by Phelps and fastened at Cuykendall's tavern. This device, gentlemen, is quite too artificial. It could scarcely be supposed that Phelps' horse ran away at precisely the same hour, and at the very same place and under the same circumstances, on two days. And is it easy to believe that Phelps and Lake are accurate, and so many other witnesses in error about the day when the occurrence took place? It is hard to believe that Lake would have left the wagon on so flimsy an excuse, for it was at 11 o'clock in the morning, and yet he mistook the person in the field for Corwin, whom he knew as well as you know me. Lake says, however, that he followed the wagon on foot, and joined Phelps at the tavern after the horse had been fastened. Phelps and Lake have not attended closely to the details of our evidence, and therefore they allege that the horse was frightened by a hoop instead of the jar produced by passing over an open sewer, and both of them describe him as being fastened, after the accident, with his head *westward* instead of *eastward*! Again, the journey was utterly without object or end. They say they went to Michigan Centre to see the defendants. They knew that Fitch was not there, but at Lansing. They say that Mrs. Filley said Filley was absent, but they do not say she told them where he was. Corwin, Myers, Barrett, Hay, Penfield and numerous others of the defendants then lived at Michigan Centre and in its vicinity. Phelps and Lake neither looked nor inquired for them. They went out of their road half a mile to Leoni, to see the defendants who resided there. They neither found nor searched for any of them, although Williams boarded in Cuykendall's house where they say they stopped. Besides, they saw Charles Cuykendall, the son, instead of John Cuykendall, the father, who says that he was standing upon the stoop, and received Phelps on the occasion when his horse ran away. Charles Cuykendall is not brought to sustain their subterfuge. But Phelps and Lake swear that they did not on that occasion, see either Mr. Faulkner, Mr. Toll, Mr. Luce, Mr. John Cuykendall, or Mr. Kellogg; that is to say, they allege that they saw a person who was not there, and deny that they saw five persons who swear they saw Phelps there on the only occasion when his horse ran away. Lake says, that for aught he can remember they went home without dinner, but Phelps, on urgent necessity, remembers that they obtained refreshments, not at Cuykendall's where dinner was on the table, but at Haddan's grocery below. Their journey was, therefore, without an object and without results. They kept a diary of their journeys and labors in the service of the company. They gave its contents fully on the direct examination. This journey, when, according to their account, the horse ran away, was not put down in the diary, and was forgotten altogether, and it is only remembered now, because it becomes necessary to explain and rebut the testimony for the defendants. Unfortunately, moreover, for the credit of the invention, Phelps had denied, on his previous cross-examination, that his horse had ever run away with him *at all in Leoni*. And what is still more unfortunate, William H. Hudson testified, before this question arose and when it could not be expected to be material, that on the night of the 11th of April, at Filley's tavern, Phelps told Fitch, *that his horse had run away, and spake of it as an occurrence that had happened that very day and never before.*

Permit me to recall now, gentlemen, what has thus far been demonstrated.

1. That no such conspiracy as is alleged ever existed.
2. That the question of such a conspiracy is an immaterial and false issue.
3. That the cause rests upon the evidence of admissions proved by Phelps and Lake only.
4. That this evidence of admissions must be false—*first, because the pretended match was a humbug and could not have been used to fire the depot at Detroit;—secondly, because the matches produced here were not made by the defendants, but were fabricated by Phelps and Lake;—thirdly, because the matches were not*

received from the defendants, as alleged by Phelps and Lake, but were fraudulently placed by Phelps and Lake in the depositories where it is pretended they were found.

These points establish three conclusive defences against the prosecution. Nevertheless, to remove all doubt, and to enable you to satisfy the public that the verdict of acquittal which you are to render will be right and just, I shall first proceed to show that the admissions proved *derive no support from collateral circumstances*;—and secondly, that they are rendered unworthy of credit; *First*, by the *depravity* of the witnesses; *Secondly*, by internal evidences of *falsity in the narratives*; and *Thirdly*, by *conflict with facts incontestably established*.

First, there is a total want of corroborating circumstances. You will necessarily inquire whether the depot at Detroit was burned by an incendiary at all. This is a circumstance indispensable to be proved. The prosecution have undertaken to prove it and have failed. The balance of proof is that the fire was the result of casualty. All parts of the building except its outer walls were of combustible materials. It was eight hundred feet long by one hundred feet wide, with wooden roof and floors which were pierced with innumerable hatch-ways, and the roof was surmounted by three cupolas with open windows and more than a hundred hatchments or scuttles. If you say that the mineral paint upon the roof and the mortar between the floors were a security against accidental fire, I answer that the building *was* actually consumed by that element. It was rendered extra-hazardous by machinery which, although it may have been properly constructed, is not proved to have been examined or oiled on the day before the fire. Workmen had been employed with lights that night from seven until eleven o'clock in the wheat bins, and it is proved that those bins were lighted with tallow candles placed in narrow, shallow tin sconces, suspended against unsmoothed posts. It is proved moreover, that candles had been known to be taken from the sconces, and to be secured only by being placed in a bed of tallow, melted for that purpose, upon the top of the bin. It is proved that combustible merchandize, such as trunks opened and bags of cotton, was deposited in the building under the cupola, and there may well have been, in the great variety of commodities stored there, matter that would have taken fire by spontaneous combustion. At least, there was abundant food for fire, when it was once admitted. That is proved by the rapidity of the flames. The building stood upon the wharf, and was liable to take fire from the sparks of steamers, arriving and departing by day and by night. It was exposed to fire also from within, to be communicated by engines which arrived and departed at all hours of the day and night. The cupola, hatchments and dormer windows served to create currents of air by which burning cinders would be drawn inwards and upwards, and be deposited, when extinguished, in heaps in the cupola and below. If you say that the steamboats and locomotives were furnished with spark-catchers, I answer that spark-catchers are not sure preventives. If perfect, they at least wear out. Three several cases have appeared in proof during this trial, of buildings, wood and forests burned by passing engines, although they were provided with the same means of prevention. You have heard Mr. Smith declare that his mills in Clinton were burned by machinery just like what was in the depot. A fire occurred scarcely ten days ago, at Chicago, in a storehouse having a steam engine guarded just as the stationary engine here was secured. Ten acres of the site of this city, including the ground on which we stand, were burned over by a vagrant spark from a passing steam boat, which was provided with a spark-catcher for all that we know.

In regard to the place where the fire originated, half a dozen witnesses declare, with confidence, that they arrived early at the conflagration, and that the fire broke out, not through the scuttles in the roof, but in the cupola. These witnesses are Capt. Turner, Patrick Rowland, B. F. Bush, W. H. Green and C. Savinac. But these witnesses are opposed by as many, to wit: Czar Jones, Mr. Johnson, William Harsha, C. W. Sims, Mr. Tuttle and John Campbell, each of whom declares that from some commanding position he discovered the fire immediately after it appeared, and that it broke out through the scuttles in the roof on the north side, half way between the eaves and the cupola, before it was seen in the cupola. One of the plaintiff's witnesses says he ascended the stairs and found the fire burning the interior below, before it burst through the cupola, and that then it had reached only half way to the dome or roof of the cupola. Criticisms may be made on the testi-

mony of each of these witnesses, but the result would be that all were equally truthful, and, owing to the peculiar circumstances of the occasion, all equally liable to mistake concerning the subject upon which they have testified. As it is not proved how the fire originated, so it is now and will forever remain uncertain in what part of the building it was first discovered. But the prosecution must make out on their side that the fire originated in the cupola. What is not proved beyond a reasonable doubt in a criminal case is not proved at all, and therefore you will assume that not only is it not proved otherwise than by the admissions that the depot was burned by an incendiary, but that it is not proved that the fire broke out in the cupola.

But, gentlemen, if the fire did occur in the cupola, what then? It does not aid the people's case. The fire would have originated there more likely than elsewhere, if it had arisen from burning cinders discharged by an engine or by a steamboat, or even from heated elevators; and it would have been seen there as likely as elsewhere if it had arisen from self-consuming merchandize which was under the stairs leading to the cupola.

You have already noticed the impossibility of firing the building with such a match as is described, and the impossibility of carrying it through the streets and the bands of workmen in the depot. Gay was the last man in the city or in the state who could have performed such an act unobserved. He was equally profligate and notorious. He could not have passed in and out of the depot even in the day time, with or without such a box as is described, and not have excited the most intense suspicion. But the counsel for the prosecution say that Gay confessed the burning, and that he would not have confessed if not guilty. I reply, that the testimony shows that Gay confessed he burned the depot for \$150, and that he had engaged to burn the new one for \$200, with the objects of screening one associate in crime and punishing another. The man who would burn a depot for \$150, would also on a promise of impunity and with an inducement of \$150, or even less, confess such a crime that had never been committed, and charge others with being accessories to crimes of which they had never heard. But I shall consider Gay's claim to credit hereafter. Thus it results:

- (1.) That it is not proved the depot was burned by the incendiary named, and
- (2.) That it is not proved that the depot was burned by an incendiary at all, nor, what is equivalent, that the depot was not fired by casualty.

The prosecution seized upon an alleged change of Gay's pecuniary condition as a circumstance to corroborate the evidence which charged him with having burned the depot. Certainly, they proved that he was very poor before the depot was burned, and they proved that after the fire he was found in possession of money and property equal in value to \$150. It devolves upon us, therefore, to show that Gay at that time obtained that sum from another source. We have proved by Samuel Mead, that in the month of October, previous to the fire, he paid Gay \$52,50, and that he had two notes of \$50 each, and we have proved by Erastus Gay and by the people's witness, Cicott, that G. W. Gay received for these two notes \$96,80, making in the whole \$149,30. This circumstance of Gay's improved fortunes thus disappears, and the prosecution is left without even a shadow of a circumstance to support the allegation that the depot was burned by the alleged incendiary.

It will be my duty in the next place to show that the witnesses by whom the admissions thus uncorroborated are proved, are unworthy of credit by reason of their depravity. Who are those witnesses? GEORGE W. GAY, HENRY PHELPS, and HEMAN LAKE. I call Gay a witness for although in name he was once a defendant, yet he was dead before this trial began, and, being dead he is no longer a defendant. Before the *corpus delicti* was proved, before a plot or a conspiracy between him and the defendants was proved, if any has been proved at all, his unsworn declarations, made when living, were received in evidence in this trial, on the miserable pretence of a promise, given by the counsel for the people, that they would afterwards bring those declarations home to the defendants. I call the attention of courts and lawyers, whoever and wherever they may be, to whom these proceedings shall in anywise become known, to this extraordinary decision. I beg leave to remark concerning it—First, that the admissions should have been postponed until after the fulfilment of the promise: Second, that if the declarations of Gay had been brought home to the defendants and confirmed by them as promised, then the declarations of

the defendants so confirming would have constituted the evidence which ought to have been submitted, and those confirmations would have rendered the admission of the hearsay declarations of Gay unnecessary and superfluous.

But the declarations are nevertheless here, and so practically Gay, the principal, although he was never sworn, and although he is dead, stands before the court a witness to prove the *corpus delicti*, as well as to charge the defendants with being accessories to *his* own crime. The question now is upon his credibility.

A few preliminary explanations of *principles* before I discuss the witnesses Gay, Phelps and Lake. Conviction of an infamous crime is, by the common law, a disqualification. No person, so convicted, can testify at all. A pardon restores competency, but leaves the credit of the witness to the discretion of the jury, under the circumstances of the case. The laws of Michigan allow a convict felon to be a witness, but refer the question of credibility to the jury in the same way. The principle of this rule is thus explained by authority: "Under the general head of exclusion, because of insensibility to the obligations of an oath, may be ranked the case of *persons infamous*—that is to say, persons who, whatever may be their professed religious belief, have been guilty of those *heinous crimes* which men are not generally found to commit unless when *so depraved as to be not worthy of credit*. The basis of the rule seems to be that such person is morally too corrupt to testify, that he is so reckless of the distinction between truth and falsehood, and so insensible to the restraining force of an oath as to render it extremely improbable that he will speak the truth at all. Of such a person Mr. Baron Gilbert remarked that '*the credit of his oath is overbalanced by the stain of his iniquity.*'" You see then that it is not bad character nor conviction of crime that constitutes the cause of discredit, but it is the depravity of mind of which bad character or conviction is the evidence.

Who was George W. Gay? A man of fifty years or upwards, who had been convicted of more than twenty crimes, ranging from petit larceny to murder, who had been more than once a tenant of state prisons in several states, a man who lived in daily association with culprits, and who at the time kept a house of ill-fame, and thus subsisted by the debasement of one sex, while he harbored the most depraved of the other. He eagerly accepted Phelps' proposition to burn the new depot in Detroit, and to charge the commission of the crime upon his recreant associate Boyce, and to suborn witnesses to fasten it upon him, and thereby procure the discharge of Van Sickle, while he would at the same time secure, as he alleged, a double reward of \$200 from supposed enemies of the rail road company for burning the depot, and \$1000 from the railroad company, for false information concerning the incendiary. Need I say more to show that Gay's character was so infamous as to deprive his unsworn, *uncorroborated* testimony, of all claims to credit?

Henry Phelps was convicted and underwent nearly in its whole extent the penalty of the crime of stealing horses. He says he was unjustly convicted. That was his plea on trial, but it was proved to be false.

Heman Lake was convicted of aiding a thief in his escape from prison, and suffered the full penalty of the law. Counsel deny that the crime of which he was thus convicted has rendered him infamous. The distinction is a technical one, not worthy of an argument. Larceny is an infamous crime. He who assists a thief to escape from punishment was probably himself an accomplice in the crime of the thief, at least he must be moved by sympathies as immoral and criminal as the act of larceny itself. Thus these two witnesses stand before you as men convicted of infamous crimes, men "the credit of whose oaths, although it should be without any contradiction or impeachment, is overbalanced by the stain of their iniquity."

It is certainly a work of supererogation to prove that a person convicted of an infamous crime is esteemed in the community in which he lives unworthy of credit, for that is only to prove, in an individual case, the soundness of the legal maxim, "that infamous crimes indicate a mind insensible to the obligations of an oath." I think this is the first case in which the prejudiced state of the public mind has required, that a witness who had been thus convicted, should be impeached by his general bad reputation in regard to truth and veracity. That proceeding has been adopted in this case in regard to Phelps. But who is Henry Phelps? He is the prosecutor on whose naked oath fifty citizens were arrested, and upon whose oath, chiefly if not altogether, the indictment in this case was found. Upon his oath, sustained by his confederate Lake, this prosecution is suspended. He was born in

Bloomfield, Ontario County, N. Y., in 1841, a son of respectable parents, who lived in easy circumstances. He removed with them to Wheatland, Monroe County, during his childhood. He received an education, which, although not a liberal one, surpassed what was ordinarily obtained in country schools and academies, and which qualified a vigorous and shrewd mind sufficiently for any kind of business, in any department of private or of public life. He came to Michigan with his parents, and settled in Highland, Oakland County, in 1835. He pursued no regular occupation there, but was forward and active. He conducted litigation in justices courts, and was at that time called, (according to the testimony of one of his friends,) "a fine fellow." He was elected town clerk, and commissioned as captain in the dragoons of the militia. But nothing that he began was ever finished, nothing that he planted ever ripened. Political preferment ceased, when rumors of falsehoods and frauds gained circulation. The dragoons who enlisted under his command never equipped, and they were ultimately disbanded. After five years thus spent, he went to Michigan Centre, where Abel F. Fitch resided, and there Phelps bought a distillery and its stock, with drafts on a person in New York, who could never be found. After six months the distillery reverted, with losses, (never yet reimbursed,) to its former owner, and Phelps immediately thereafter became a merchant at Milford, near Highland, his former residence. A month or six weeks passed away, and the stock of goods was suddenly and mysteriously surrendered to the merchants at Buffalo, from whom it had been purchased, and Phelps resumed his business as an advocate in justices courts. He married about this time, and the counsel who defend him here say he has children. His affidavits were questioned, his arts in conducting trials suspected, his reputation waned, and after three or four years he was convicted of the infamous crime which has been mentioned. He was subject to occasional epileptic convulsions. He feigned them during his trial, and affected sickness to avoid judgment, but without success. He feigned illness to excuse himself from labor in the prison. Suspected and closely watched there, he failed to propitiate the police until the sixth month in the fifth year of his term had elapsed, and then he was pardoned. On coming out of prison he gathered his family in his ancient home; but habits of regular industry and domestic occupation disgusted him. He invited his associate Lake, who had just been discharged from prison, to join him, but at first without success. After the lapse of about a year he hired himself to the district attorney of the United States, in the occupation of what is called a *stool pigeon*, that is, one who for hire joins and leads villains in crime to betray them to justice; or, as it was described by the counsel for the prosecution, the business of a "rogue set to catch rogues." While in that capacity, he renewed the acquaintance which before his imprisonment he had maintained with Gay, and in the very first interview opened to him the plot, if he is to be believed, to screen a culprit from punishment, by a false charge of the crime of burning a depot, upon an unoffending person. Having drawn Gay into that scheme, he offered himself to the rail road company to be enrolled, and was accepted, at a regular salary of forty dollars a month, as a member of their band of spies and informers. His engagement was to furnish sufficient evidence to bring Abel F. Fitch and his supposed associates to trial, for some felony against the railroad, out of Jackson County. He is cunning, plausible, bold and persevering. There he sits. Men imagine that they see his history written in his form and features. They say that he

"Will look hollow as a ghost,

"As dim and meagre as an ague's fits."

They say, (superstitiously perhaps,) that

"So he'll die,

"And rising so again,

"His mother, when she shall meet him in the court of Heaven,

"She shall not know him."

He is impeached by one hundred and twenty-one witnesses, all of whom say his reputation for truth and veracity is bad, many say very bad, all say it is so bad they would not give him credit on oath. He has lived in Sylvan, since he came out of prison. Sylvan, Grass Lake and Sharon are contiguous. These three towns send one hundred and eleven of the witnesses. Twenty-five omitted to state the distances of their homes from Phelps' residence. The average distance of the remaining eighty-six is two miles and a third. One of these, an honest and sensible German, persisted in declaring that his reason for discrediting Phelps was, that his heart told him not to believe a man who had been in state prison. All the others testified

from a knowledge of Phelps' reputation, before he went to prison, or before or after this prosecution began; twenty-seven of reputation since he came from the prison, and before as well as after the prosecution commenced; eight spoke of his character before he went to prison, and not afterwards; six of his character while in the state prison, and seventy-seven of his fame, all the way through from 1840 until now.

These witnesses, when cross-examined by the counsel for the people, and required to describe the rumors which have ripened into this withering, blasting impeachment, say that he is charged with perjury, larceny, employing labor without paying its hire, travelling under mysterious and suspicious circumstances, swearing through the courts causes in which he is employed as an advocate, false pretences of having recovered large sums of money from the state for unjust imprisonment, feeding his horses with his neighbor's wheat and oats, offering to lend fictitious sums of money on mortgages, pretending to imaginary contracts for grading the railroad and building depots, false pretences about the title and quality of lands, baseless pretences about an agency of a factory that has no existence, hypocritical pretences to piety, malicious swearing against his best friends for money, a universal suspicion of dealing in counterfeit money, and associating with and harboring depraved and abandoned men. Among the witnesses are laborers, mechanics, farmers, a lawyer, doctors, constables, magistrates, judges, members of the house of representatives, senators, and many lay members and officers of various religious societies. One of the witnesses is a brother-in-law of Phelps, and a large number of them quote his father-in-law for the reputation which they assign. That father-in-law refused to appear under our subpoena, and was not produced to repel the impeachment. When this singular exposure was made, the learned District Attorney remarked that it was said in the Scripture that "a man's enemies should be they of his own household." How guilty a life must that be that forfeits the enjoyment of all the natural affections! When you consider the number of these witnesses, their occupation and character, their advantages of acquaintance with the subject of their testimony and their relations to the party, and when you consider that eighty-six of them are drawn from a circle of less than three miles containing his residence, in a purely rural district in the interior of the peninsula, I think you will admit that an impeachment so effective, so conclusive, was never before presented in a court of justice.

Gentlemen, you will be on your guard against the false issues raised to weaken the force of this impeachment. Efforts were made in some instances to discredit the witnesses themselves. Allow all that was done in that way, and I think it amounts to the facts, that one of them was indicted and convicted of an assault and battery on a woman eleven years ago; an offence that I do not claim ought to be forgiven without deep penitence; that another was convicted of an assault and fined \$10 within a shorter period; and that a third one suppressed a fact which he feared would expose him to the hatred of Phelps.

You have been told, in the second place, that many witnesses, did not recollect nor give the names of those from whom they had derived the character which they assigned. Gentlemen, when a character is bad, notoriously bad, universally bad, it is the exception of favorable speech only that can be remembered. If you declare that a season was wet, you may be able to specify the days of sunshine, but not the days of storm. But I think that before the impeachment closed, the prosecution found the authorities given quite sufficient. It is certain that when the whole population of the neighborhood came as one man, and united in confirming the testimony of those who had come before, the correctness of all was established.

It was insisted that the period within which the character of the witness was to be proved should be limited to two years succeeding Phelps' discharge from prison, and anterior to the commencement of this prosecution. But, gentlemen, you judge of the soundness of a tree by inspecting, not the bark, nor the exterior circles, but the entire trunk. If it be unsound throughout, you will find it hollow at the heart. The argument that you shall not enquire as to Phelps' character before he went to prison, assumes that punishment restored the character, forfeited by conviction. But this position is manifestly unsound. Again, the Counsel insists that you shall exclude testimony of the character of the witness arising from discussions which have occurred during this trial. But that is just the period in which his character has been a subject of discussion. It is true that you must allow for the effect of

sympathy with the defendants in considering such testimony. But these witnesses have no such sympathy. With one or two exceptions, no one of them is related to any of the defendants. They live at distances of ten or twelve miles or more from them all. For the most part, they never had, nor have they now, an acquaintance with the defendants. The excitement out of which this controversy arose never disturbed the people of Sylvan, nor the people of Washtenaw county. Those who testify are neighbors of Phelps. The influence of this excitement tended to awaken the sympathies of Phelps' neighbors in his own behalf, and to rouse them to anger against the defendants.

Again, the prosecution argue reformation of the witness, from the fact that during the two years, since he came from the state prison, he is not proved to have committed new crimes. But you will remember that the form of inquiry prescribed by the court forbade the defence to ask what was the *general* character of the witness and limited us to enquire for his reputation for truth and veracity only. Nevertheless the recapitulation of reports as to *his general* character which transpired on the cross-examination is, I trust, sufficient to satisfy them and you on that point.

And now, gentlemen, how has this impeachment been answered? One hundred and eighteen persons have been sworn to sustain the general reputation of the witness for truth and veracity. Of these *one* says on cross-examination that his reputation is *mixed*, and three that they do not know where *Phelps lives*. *One* that his reputation is *divided*. *One* that he does not know even *one neighbor of Phelps*. *One* that the majority of neighbors say his character is *very bad*. *One*, Samuel Chadwick, says that he himself took his neighbor's watch clandestinely, carried it to Detroit, and wore it until its loss was advertised, and that then he delivered it up and demanded \$10, upon the false pretence that he had paid that money to reclaim it from the thief. Sixteen witnesses say that they know nothing of Phelps' reputation since 1842, and that then it was dubious; one that he does not know his reputation where he lives; one that his reputation is bad where he lives, but good elsewhere; one that he does not know Phelps; thirty say either that they do not know his neighbors or do not know his reputation among his neighbors; one that he is not competent to judge; one that some say his character is good and some bad; one, who lives thirty miles from Phelps, that he obtained his character by inquiries on a commission for that purpose from the railroad company, and three that they do not know his character at all. All the witnesses, without exception, declare as the grounds of their testimony when favorable to Phelps' character, not that they have heard it discussed, and then pronounced good, but simply that they have never heard it discussed at all, and all of them who testify to a knowledge of his character in the neighborhood in which he lives, rely upon the fact that they have not heard his neighbors discuss it, and yet they refer in that connection to the very neighbors who have already come here and pronounced his character bad.

Of these, so called, sustaining witnesses, fifteen came from Sylvan; eleven from Sharon, an adjoining town; two from Manchester, distant five miles; twenty from Lima, near where Phelps resided before going to the state prison; five from Freedom, which, I believe, adjoins Sylvan; sixteen from Oakland county, where he resided before going to the state prison; two from Chelsea, six miles from where Phelps resides; thirteen from Dexter, fifteen miles from his residence; and eight from Ann Arbor, twenty-five miles from his residence. You will judge at once of the extent and accuracy of their knowledge of the subject on which they testified, when I state, that eighty described the distances at which they resided from Henry Phelps, and that the average of those distances was eleven and a half miles. The law, gentlemen, requires that the reputation whether good or bad which is given in evidence, shall be that which the witness sustains in the very neighborhood in which he lives, or among those persons with whom he ordinarily transacts business affairs, and that it shall be proved by those only who live in that neighborhood, or who have other good opportunity to learn the character they describe. Thus while a more successful impeachment was never made, it is quite certain that no impeachment was ever more unsuccessfully resisted. Such is the general character of Henry Phelps the prosecutor, and such his reputation for truth and veracity in the neighborhood in which he lives.

I ask you now to consider the circumstances under which he appears. He testifies under the impulse of an overpowering necessity. A stipend of \$40 a month as an informer is his only resource for support. He is under arrest for conspiracy in instituting this prosecution. His fortune involves two alternatives; one, that he carry the prosecution through and cause these defendants to be sent to the state prison, and thus establish a claim to be restored to that social confidence which he so early lost; the other, that he shall be convicted of wilful and malicious conspiracy against these defendants with perjury, and subornation of perjury, and return, after a guilty respite of two years and six months, to the state prison from whence he came.

"He that steeps his safety in true blood,
Shall find but bloody safety, and untrue."

Phelps testifies, moreover, under the impulse of a studiously concealed but malevolent and persevering revenge against Abel F. Fitch, who was originally the chief mark of this fearful prosecution. I lay aside the testimony of William Dyer on that subject, which was struck out for want of certainty as to the person to whom the words, which he had proved, referred. I cheerfully lay aside the testimony of John Hawley, which he has confessed to be false. The profession which Phelps has followed has exposed him to enemies among the associates and confederates whom he has denounced and betrayed. Many such persons have attempted to obtain retaliation through this suit. Some of them imposed John Hawley, (who of course was unknown,) upon the counsel for the defence. Others who offered themselves were discovered and rejected. Hawley's confession implicated no one of the defendants. He communicated his pretended knowledge to no defendant before he testified, nor did any reason exist for disbelieving the facts he related or doubting his truthfulness. These supposed facts were in harmony with similar facts abundantly established. He was neither supported nor justified, nor attempted to be screened, after the falsehood was made known. We at once moved to strike out his testimony from the case and resigned him cheerfully to the punishment which he deserved. The counsel for the people felt, or seemed to feel great surprise at his wicked temerity, but let me tell them and you that in recoiling with so much horror from that silly fool, John Hawley, and in accepting the testimony of Gay, Phelps, and Lake, and in pressing conviction upon it after the exposures which have been made here, they have "strained" at a gnat, while they have "swallowed" some very large camels.

I am to prove to you the malice of Phelps against Abel F. Fitch. Ulysses T. Foster testifies that in the state prison in 1849, Phelps, (pointing to Fitch, who was passing by,) said, "he is the means of my being here. I will have revenge or satisfaction." Calvin Beebe says that in April, 1849, when he announced to Phelps that a pardon had been granted him, he replied, "I am in the prison through the influence of Abel F. Fitch and others. If I live to get out I'll make them smart for it, and give them the same feed they have given me." William B. Lacock says that on the night in January last, when Phelps and his wife were sleeping in his house, he heard her ask him whether he was going to see Fitch the next day, and whether he thought he could do as he had talked of doing. Phelps replied he should go and see Fitch, and if *Wescott would do as he agreed and stick by him*, he thought he would come a good drive. The same witness further testifies, that Phelps, in returning from Michigan Centre the next day, after having pretended a desire to purchase Fitch's oxen, said he "would have Fitch in the limbo," and when asked why, assigned the poor reason that Fitch had refused to sell him his twin cattle. Mrs. Phelps contradicts Lacock as to the first of these statements; but what is the value of her testimony? Is her stake in this prosecution less than her husband's? What is her independence? I will not trespass upon the charities due to a woman and a wife, by raising a question whether she knew the dangerous ways to which he had addicted himself. She had a sick infant in her arms, and may well have forgotten a remark, the full effect of which she did not comprehend. I can excuse her for error if she commits it on the ground of fidelity to her unfortunate husband. She is not the first woman who has said,

"I ask not, I care not if guilt's in that heart,
I know that I love thee, whatever thou art."

But if you must give full effect to the evidence of Mrs. Phelps, still it leaves the testimony of three witnesses who give proof of Phelps' profound malice and are uncontradicted.

Gentlemen, you will next recall the deportment of the witness Phelps, during the trial. There is a living and beautiful harmony in all truth. He that is truthful to-day was truthful yesterday, and will be truthful always. Candor, modesty, meekness and gentleness, are inseparable from truthfulness. Recall the eagerness of the witness to volunteer testimony injurious to the defendants, by interpolating his answers with matter foreign to the question propounded. I give you only one instance of this. On cross examination he was asked if he had seen Gay have counterfeit money, he replied, "yes, \$50, and he said he got it of Fitch." Recall the scene when he impudently confronted William Dyer, who was a respectable citizen of Indiana, and roused all the vulgar sympathies around him, here in open court, falsely charging that person with being a horse-thief in disguise. Recall the fact of Phelps' appearing in the court room, with his coat defaced by a pretended mark of a ball which he alleged had been fired at him on Woodward avenue, in the midst of Detroit, in the night time. What could he have been doing in that part of the town at such an hour? Do you believe that these defendants assailed him at that distance from the windows of their prison? Do you believe that sympathising friends who had followed them here attempted his assassination? If so, what has secured him against assassination since that time, now nearly three months? Recall his bar-room denunciations of Amanda Fitch for perjury, and his rude affray with J. B. Toll, her defender. Recall his charge on the stand that Mr. Frink had disguised himself to procure or instigate his assassination. Recall his impudent intrusion upon you in your journies to Michigan Centre, when you went to survey the scenes described in the evidence, and to test his own veracity. Recall his still more impudent intrusion upon the presence of one of the panel in his visit without his associates, and without the presence of the defendants' counsel to the same places. Recall him as he has sat here among the ten distinguished and highly respectable counsellors for the people, nay, at their very head, advising if not directing the course of the prosecution at every stage since his own examination was closed. Enough then for Henry Phelps.

"Room for the Leper! Room!"

Few words will suffice for HEMAN LAKE. His part is subordinate. He is only a shadow of Phelps. His testimony an echo. His history, therefore, need not be recited at length. On arriving at manhood, he learned something of engineering, and did nobody knows what till his depraved proclivities bore him into the state prison. There he was a friend and an enemy of Phelps by turns. In the summer of 1849, Lake declined Phelps' invitation to join him, but in the winter following, he accepted his proposition, to work, at he knew not what, for the railroad company, under his direction. He is a "gay Lothario," and having been introduced into Gay's house as a spy for the railroad company, he atones for the unkindness of betraying Gay, by taking the vacant place in the bed of his wife immediately after the husband's arrest, a place which he retains with touching fidelity, when by Gay's death in prison, that wife becomes a widow. Provided with free tickets for himself and paramour, Lake openly traverses the State with her in the railroad cars—while your wives and daughters, and all good citizens with their wives and daughters pay full charges on the great public thoroughfare. He is well looking, and his fingers and bosom are adorned with rings and golden charms, tokens of manifold and meretricious favor. But he is a man of feeble mind and executes only indifferently well the plots of Phelps. He testifies from a diary, in which even the facts observed by himself are recorded by his master. In short he is an illustration of the truth that "a pretty fellow is but half a man."

These are the three chief witnesses of the prosecution—*Gay, Phelps and Lake*. It is easily seen, that the plot before us is the work of Phelps alone, conceived and contrived for his own gain, and to gratify his own revenge; that the agents of the railroad company misled and deceived, have furnished him redundant means and subordinates of his own choice. Gay, while living, if not an instrument, was a dupe. Lake is manifestly an instrument in Phelps' hands.

But, gentlemen, the malice of Phelps, cannot be understood without knowing the character and circumstances of him who was the object of his revenge. Abel F. Fitch was a native of Connecticut, aged when he appeared before you forty-three years. He had a strong mind and considerable education. He came to Michigan in 1837, and, with a fortune belonging to himself and wife, which was small in

Connecticut, he was a rich man in the oak openings of Michigan. No man, not even one among all that cloud of accusers which gathered around him here, ever charged him with insincerity or falsehood. He whom you saw brought here as a felon on the 19th of April, was on the 7th of that month, elected and without a dissenting ballot, as I have been told, justice of the peace and supervisor of his town. He was gentle, just, and humane, the friend and patron of the poor, and their gratitude crowned him with unequalled popularity. You have seen the house of Henry Phelps in Sylvan. You remember how dark and desolate it was—its low, naked walls, its windows glazed with clapboards, its scanty furniture, its doors closed and suspiciously fastened, its master and mistress abroad all over the State, looking up long lost relations, while a malefactor was pursuing his dangerous vocation there, unseen. You remember the half thatched barn, that was empty of everything but refuse hay to conceal unlawful things in the manger. You remember the fuel gathered from the waste timber of the railroad, although the dwelling was almost in the midst of the forest. How truly all this illustrates the darkness of the spirit that inhabited there. You have seen, also, the dwelling of Abel F. Fitch, at Michigan Centre, shaded with trees planted by his own hands. It is neat, spacious and elegant. You remember the prairie rose clustering over its piazzas and verandahs. Though the owner of the mansion was childless, yet its chambers were wont to ring with the merry voices of children. Books, pictures and musical instruments meet you on every side. The garden exhibits the flowers of every month from early spring till the returning frosts. Ample orchards yield the choicest fruits; a park filled with deer, and a lake in which the wild birds forget their native home, increase the attractions of the domain. That domain extends over five hundred acres, and when you saw it, was covered with wheat ready for the harvest, and cattle, which proved not only the care but the enlightened taste and public spirit of a country gentleman. Was this the home of an incendiary, a conspirator, a felon? Were not these felicities of fortune enough to excite the malice of an enemy to the exaltation of revenge?

Of the other defendants it is enough to say that one, Smith, resides in Detroit, and was unknown to the defendants living in the country, and entirely unconnected with them. The defendant Gunn, who recently died, was equally unknown to them. The others consist of Mr. Burnett of Grass Lake, a gentleman of respectable position as a surveyor and scrivener; Mr. Lemm, of Jackson, who occupies himself, I believe without reproach, in justices courts, preparing himself for the profession of the law; Dr. Farnham, a dentist of the same place; Mr. Gleason, who held a humble office in the state prison; Mr. Warner, of Jackson, who, I believe, has been a runner for hotels there, and some who are obscure farmers, mechanics and laboring men, living in the town of Leoni. Among this large number, two or three only are said to be habitually addicted to intemperance, and all the others are sober, industrious citizens. Some few of them have no moral standing, many others have lived blameless lives, and not a few hold a fair connection with the various religious societies, established in the central part of your State. Their only crime against Henry Phelps was, that they were the friends of Abel F. Fitch. How could they have been otherwise?

Having shown you that the evidence given you by the informers is not corroborated by external circumstances, and is rendered unworthy of credit by the character of the witnesses, and by the malice which they bear against the defendants, I proceed to show that it is rendered still more unworthy of that credit, by internal evidences of falsehood.

1. We are required to believe, that Abel F. Fitch and the other defendants who resided in Jackson county, seventy miles from Detroit, employed a notorious and profligate keeper of a brothel in this city, to burn the depot here for a compensation of one hundred and fifty dollars, and furnished him with an instrument for that purpose, made by themselves. Yet, excluding the testimony, consisting of admissions, reported by these informers, there is no evidence that any one of these defendants ever saw or heard of George W. Gay, and even the informers do not presume to bring home to more than two of the defendants a knowledge of that person, and they give no evidence of that acquaintance, except admissions easily fabricated. Phelps reports Fitch as saying to him in Detroit in February, that he had seen and conversed with Gay during his visit here, and Lake reports Mount as saying that

he had known Gay from his childhood. Such an acquaintance could in either case have been proved by witnesses as a distinct fact, if it had existed. The want of such proof stamps the statements with falsehood.

Fitch was at least a man of worldly prudence. He had fortune to save, fame to maintain, and personal liberty to preserve. If he had meditated and contrived so great a crime, would he have employed as an agent a person, whose house was not only a place of public resort, but under the constant surveillance of the city police? If he had meditated such a crime would he have chattered about among poor and obscure farmers and laboring men, and have demanded contributions from them, and have made payment by turning out cattle for his share of the fund? The informers require us to believe that at least the following sums were provided by subscriptions, to wit:

For the burning of the depot in November		\$150
do. do. new depot at Detroit, in April		\$200
do. do. depot at Niles		\$200
do. do. depot at Marshall		\$200
do. do. depot at Jackson		\$200
	Total,	\$950

a sum greatly exceeding the ability of the alleged contributors. Such a sum could not have been raised by Fitch and his supposed associates, without the use of bonds, with mortgages on personal and real estate, notes with endorsements and the operation of discount, which would have left traces that would have betrayed the transaction in Leoni, and in other towns and cities, where the loan or discount should have been effected. Sir! (to Mr. White, a juror,) you are said to be rich. I am glad of it. You could not, to-day, pay me five hundred dollars, without the use of a check, or note, or bill that would draw in two, three or more witnesses of the transaction.

Again, we are required to believe that Abel F. Fitch, having a pair of fancy cattle that had been, or were notoriously preparing to be, exhibited at the state fair, and were even known throughout the state, authorized two incendiaries to drive them away immediately on returning from Niles, after having burned the railroad depot there; and this too when the felons were to proceed to Niles, and return from that place *openly* in the cars of the railroad company, whose depot was to be destroyed, and when every agent and servant of the company was known to be acting as a spy upon his conduct by Fitch himself. The statements of Gay, which are reported, are contradictory. In December he knew the man who employed him to burn the depot, *only by sight*. In February, he still knew the man *only by sight*. In April, although notoriously he had not seen Fitch, nor any others of the defendants, yet he named not only Fitch, but also Mount and Williams, with others of his friends at Leoni, who had hired him to burn the depot in December. Who does not see that George Washington Gay would never have burned a depot or made a contract, without knowing his employer? Who does not see that Abel F. Fitch, could no more have remained unknown in making such a contract, than you or I? Again, Gay when appealed to by Phelps in April, to tell Van Arman who it was that had in fact burned the depot, replied "Do you think I am such a d——d fool as to put myself in the power of any man?" Nevertheless, Mr. Van Arman, who testified to this in May, reappears in court in June, and remembers the fact that Gay not only mentioned in April, that he burned the depot, but referred to Mount and Fitch as his employers.

Again, gentlemen, if Gay was employed by Fitch to burn the depot in November, and received the match from him before the fire, and the money, one hundred and fifty dollars, immediately afterwards, these transactions must have occurred *somewhere*. There must have been a meeting between him and Fitch at some time, and in some place, either in Detroit, in Jackson county, or somewhere else. Such a meeting could have been proved, if it had ever taken place. When Gay and Fitch gave Phelps their unreserved confidence and stated these transactions freely, why did not one or both of them state where and when that meeting occurred? Fitch was widely known, and if we are to believe the evidence, was vehemently suspected. Gay was equally notorious and infamous. The absence of Fitch from home, to attend such a meeting, if not his presence in Detroit, could have been proved. There

must have been travel by either Fitch and Gay, or by one of them, on the railroad. Spies were all summer long waylaying every step of Fitch. The police were always on the heels of Gay. Or there must have been travel by one or both of them on foot, or in some carriage upon a common road. Such a mode of travel would have increased the time spent, and would, in itself, have been suspicious, and, of course, would thus have directly increased the chances of exposure. So it appears, that Fitch never came to Detroit; nor was Gay at Michigan Centre; nor did one ever leave his home, to meet the other elsewhere. Was the negotiation conducted by correspondence? Then it must have been by post, or by private messengers. The post keeps records of letters, although not of their contents. Messengers could not pass unobserved. The homes of Fitch and Gay have rendered up all their secrets to the police, three times over. No such correspondence has been found. We were moreover warned against crediting the narrative, in the very outset of the case.—Phelps says, that in his first interview with Gay, he applied to him to know how he could clear Van Sickle; and Gay replied, we can do it by a *plot*, and predicate it on *the burning of a depot*. Phelps himself suggested that, instead of burning a depot in fact, the plot should be predicated upon the conflagration which had *already happened*. That suggestion proceeded on the ground, that, although the conflagration had happened by casualty, yet it could be proved by subornation, that it had been made by an incendiary, and the suborned witnesses were to prove that fact by fabricated admissions. What are all the pretended admissions of Gay and Fitch now produced here, but the fabrications, thus early foreshadowed?

Nevertheless, gentlemen, Gay's declarations are not evidence. He is not a defendant. He is not on trial. If living, he would be a competent witness to prove the facts if he could be a witness at all. But he could not be a witness if living, because, being the principal, he would not be competent before conviction to charge the crime against accessories. Since he is dead, his declarations while living can no more be received than could his oath if living. If you proceed upon the ground of a conspiracy, his recitals of what was past and ended are not competent testimony; "It is only declarations, promises and threats, constituting a part of the felonious transactions themselves and uttered in furtherance of them, that can be received as evidence." [Roscoe, 323.] I challenge the counsel for the prosecution to show now where in all this voluminous mass of testimony is found one word of proof that any one of the allegations of Gay was ever brought to the knowledge of any one of the defendants and confirmed by him, or was ever brought to his knowledge at all. Take the names of the defendants. Have these allegations been brought home to Benjamin F. Gleason? No! To Daniel Myers? No! To John Palmer? No! To Lester Penfield? No! To Farnham or to Barrett? No! To Grant or to Lacock? No! To Willard Champlin? No! To Erastus Champlin? No! To E. Price? No! To Abel F. Fitch? No! To Aaron Mount? No! To William Champlin? No! To Richard Price? No! To Ammi Filley? No! To Andrew J. Freeland? No! To William Gunn, or any other defendant? No! The testimony of Gay's allegations came in then unadvisedly. It has done its work. It has poisoned the public mind against the defendants. You are more than human if you have not been affected by it. But it is time to discharge this testimony from the case. I suppose the promise on which it was admitted was made in good faith. To retain the evidence since that promise has been broken, would be a fraud. I demand of the court, therefore, that the testimony be struck out from the record, and conjure you that it be disregarded altogether.

I pass to the supposed admissions of the defendant Smith as reported by Phelps and Lake. These, like those imputed to Gay, are discredited by internal evidence of falsehood. Phelps says, "Erastus Smith was present when Gay said he received \$150 for burning the depot, and that he knew the man by sight who paid it; that it was raised by a company of men; and Smith afterwards intimated that he received a part of the money." Again, "Smith said that the depot was burned under an *arrangement* with Gay," of which he was *cognizant*, and also that Gay told him who paid him the \$150." Not only is there no evidence that Fitch ever saw or heard of such a person as Smith, but the admissions themselves show that he who procured them knew that there was no acquaintance between them. These admissions, moreover, have all the vagueness and generality of a technical pleading. An "*arrangement*," "*cognizance*"—such are the words, not of a man giving an ac-

count of a past transaction from actual knowledge, but of a lawyer framing general interrogatories, or preparing evasive and deceptive answers. Again, Phelps reports Smith as saying in February at the Pantheon, that Fitch "had left matters for disposing of certain witnesses, (Lacock and Wells,) with him, and had agreed with Gay to burn the new depot; that he, Smith, had agreed to assist Gay, that Gay had given him part of the money," and that Smith had told him that "Fitch had applied to him to burn the new depot." Phelps and Lake both testify that "Smith was at the Pantheon in February, talked with Phelps about burning the depot at Niles, and wanted to know if the trial of Corwin and Price for burning the wood was to be put over beyond the March term because that would give them more time."

I separate these alleged confessions of Smith from other evidence of the same class, and leaving Smith's counsel to answer for him, so far as they relate to himself, I remark upon them only in relation to the defendants. If Phelps enjoyed the unlimited confidence of Fitch during his visit here in February, and if Fitch had one or more interviews with Smith, then why could not those interviews be proved. Fitch was at Johnson's hotel, and Smith at the Pantheon near by. No private interviews could be held in places so public. Phelps having the confidence of both, and desiring to circumvent both, could have brought them together without being suspected by either.

Again, gentlemen, the allegations of Smith, like those of Gay, are to be rejected because they are of the past, and not a part of the transactions which they described.

The learned district attorney, however, has relieved me from the necessity of discussing further the alleged confessions of Smith. That gentleman advises and solicits you to acquit Smith. The evidence against Smith consists of the admissions which I have cited, and those admissions are proved by the same Phelps and Lake who prove admissions against the other defendants; nay, Smith's admissions are a part of the evidence against the other defendants. On what ground, then, does the district attorney advise the acquittal of Smith? Certainly, not on the ground that Smith's admitted agency in the crime of burning the depot was trivial or harmless. On the contrary, he was in the city and admits that he aided and abetted Gay in the very act. He alone, then, of all the defendants, ought to be convicted under the first count in the indictment as a principal in the crime; nor does the district attorney ask the acquittal of Smith on the ground that the evidence given against him by Phelps and Lake is false.

On the contrary, if the evidence of those witnesses against Smith is false, then their evidence against the other defendants is false. But the district attorney declares that he advises the acquittal of Smith on the ground that Smith's admissions as proved by Phelps and Lake are false. The district attorney pleads for him, that under the seduction of Phelps he confessed participation in a crime of which he had no knowledge. Were then his allegations against Fitch true, whilst his admissions against himself were false? No; the whole, of course, were false. When I heard the district attorney submit this extraordinary proposition, I thanked God and took courage. It revealed the secret of this entire prosecution. It showed that Smith had been fraudulently made a defendant that he might utter, without oath, false allegations to convict the defendants at Michigan Centre, under an assurance that he should be acquitted himself. And now, gentlemen, since Smith's allegations are admitted to be false, are Gay's averments, made under the same circumstances, true? Smith was, indeed, degraded and debased. If Smith was seduced so easily by Phelps, Gay had even less virtue to resist his seduction. I declare, gentlemen, my profound conviction that the whole prosecution was conceived in fraud; that George W. Gay never burned the depot; that he and Smith falsely accused themselves of that crime under a promise by Phelps to share in the reward of a conviction of the defendants in Leoni; and that Gay, if he had lived to go through a trial and conviction, would have been recommended for a pardon, and would have shared that reward. No, no, Mr. district attorney! No, no, most learned council of ten, that game cannot be played out. I do not say, nor believe, that the defendant Smith is guilty under this indictment, but I do say that if any are guilty he is the guiltiest of all. If any one here shall be convicted, he must be convicted first and surest of all. More than this I say, that if there is honesty in Michigan, he will be the last of all the offenders to be pardoned.

Phelps and Lake, either jointly or severally, charged the following defendants

with admissions of some agency in procuring Gay to burn the depot, viz: Abel F. Fitch, Ammi Filley, William Corwin, Daniel Myers, Ebenezer Farnham, Minor T. Lacock, William Champlin, Eben J. Price, Aaron Mount, Andrew J. Freeland, O. D. Williams, and John Ackerson. Only two are alleged to have admitted any personal acquaintance with Gay. All were seventy miles from Detroit when the depot was burned, and could have had no actual knowledge of the manner in which it was burned. Even if they had contributed to hire Gay to commit that crime there must have been some doubt in their minds whether the fire was not a casual one. Nevertheless, they are all charged with admissions made with as much certainty and confidence as if they had been eye-witnesses and had actually participated in the transaction.

But, gentlemen, what motive had Abel F. Fitch to engage in such a crime? It is to the credit of his generous nature that all of these foul and infamous accusers suggest a motive, not of avarice, nor of revenge, nor even of retaliation, but of sympathy. Thus Phelps states that "Fitch said, at his barn, in January last, that I was as well aware as he that the railroad was a curse to the community, that a number had leagued to right the wrongs of the people, and that he wished to carry the plan further, and would continue until they brought the company to terms." Sympathy, then, with neighbors, who had lost a few cattle, was the motive of a man worth ten thousand dollars and more, for making a proposition to burn the depots at a cost of one thousand dollars, at the hazard of his own safety and fortune, and the safety and fortunes of the neighbors whose cause he had espoused. Sympathy with a few obscure men, a motive for illuminating the State with a baleful conflagration of all the most useful structures upon its greatest highway!

And, what was the inducement of Ammi Filley? If all the testimony in the case be not false, he was indeed hostile to the railroad company, and was a mischievous man. But he was a man of feeble mind and puerile conduct, a mere procurer for other mens pleasures. He kept his boat on the lake, and his nets in the fields to supply your tables with fishes and birds. He kept balls in his nine-pin alleys, and liquors in his bar, for the recreation and refreshment of visitors. He was never in Detroit nor Niles, so far as we know, and his enterprise in mischief reached no farther nor higher than committing annoyances in his own neighborhood. When or where did he ever learn that such a wretch as Gay existed in this capital or elsewhere? As soon would you see a constable leading a revolution, as this bird catcher of Leoni, organizing such a conspiracy as this. Corwin's migrations were from Cuykendall's tavern, in Leoni, to Morrison's grocery, in Jackson, a distance of about eight miles. When, where, or how came he to a knowledge of the haunts of crime in this metropolis? Daniel Myers stand up. There, gentlemen, you see a humble tailor, who follows his shears in an annual orbit of two miles in diameter, encircling the village of Leoni—as ignorant of Detroit, its corruptions, and its crimes, as you are of the painful frugality by which he lives. Beyond him you see Ebenezer Farnham, a country dentist, an early settler in the Genesee country, who has brought the early settler's habits of occasional intemperance into Michigan. He is crazed when in his cups, and his drunken vagaries are brought here by an informer, who seduced him into intoxication. Harmless when in that condition, he is gentle and benevolent when in possession of his senses.

There, gentlemen, is Minor T. Lacock, a country lad of scarce twenty-one, whose simple good nature leads him into the sympathies and griefs of his neighbors, and whose principles of fidelity and truthfulness, quite too rare even among us, restrain him from saving himself by becoming a mercenary accuser. Eben J. Price, and, if you will, Richard, his brother, are two boys led by occasional intemperance to join in the disorders of a country bar-room. Andrew J. Freeland is an industrious, hard working farmer, loquacious and perhaps zealous, in the controversies around him, but harmless in action as he is free in speech. Orlando D. Williams is a stone mason, civil and quiet, of good behavior when sober, but, like Farnham, falls sometimes into intoxication, and then is a braggart and a fool, whose very extravagance assures that he is harmless. John Ackerson and Aaron Mount are two very poor farmers, neither of whom has committed an act or spoken a word in the midst of all the excitement by which they have been surrounded. But they were witnesses against Phelps, on his trial for horse stealing, and so they must be made to "feed on the fare" which they presented to him.

Behold here then the conspirators, who, it is alleged, "made up a purse and furnished a machine to the keeper of a city brothel, to burn a depot in the commercial capital, at the hazard of the conflagration of the whole city." Among them all, are only two of whom it is pretended that they had ever suffered an injury from the railroad company. Accept the testimony of Phelps and Lake and you have evidence, not that both of them said that they had seen George W. Gay, but that they confessed they had! Reject their testimony and no one of these defendants is proved to have ever seen the city in which he is supposed to have kindled that baleful conflagration. Only one of them was ever convicted of a crime. Gentlemen, if you would secure your dwellings, your store-houses and your public edifices, if you would live in safety and in peace, extirpate the crime that arises within your own walls. Raze to the ground the haunts in which it is born, and schooled and trained; at least watch them well and closely. My word for it, your town and every dwelling and every edifice in it will stand and endure forever, if they wait till the torch is applied to them by the farmers and mechanics or even by the felons of the rural population, by whom you are surrounded, supported and maintained.

Mark now, gentlemen, the candor of the accusers and the simplicity of these alleged conspirators. Phelps, speaking of his pretended interview with Fitch at his barn says: "I think," (yes, I *think* are the words,) "there was allusion made to the burning of the depot at Detroit. He said it had been burnt and could be again." How frank and generous was it in Fitch to repose such confidence in a man whom he had caused, five years before, to be consigned to the state prison! How probable it is, too, that a country gentleman, having five railroad depots to burn, would organize a joint stock company of forty share-holders with a capital of \$950, to execute the enterprise! How very probable that such a person would appoint a meeting of the incendiary with the stockholders, on the occasion of a public shooting match at a ball alley on Christmas! How natural it was in that same country gentleman to show his machine for burning depots to the incendiary, who had not yet accepted his proposition, and was cheapening the twin oxen which were to be received by him in payment. When that same country gentleman met the incendiary, by appointment, in Detroit, to consult upon the enterprise of burning the new depot in that city, how admirably he selected the place for consultation—the trunk table in the car house, among the newly arrived passengers, the conductors baggage men, laborers and spies of the corporation whose depot was to be destroyed. How kind it was on the part of Fitch instead of sending Phelps to Gay's house, on a rainy day in February, to consult about the crime, to appoint the interview between them, just around the corner at Savinac's saloon on the most public wharf in the city. It never occurred to Fitch that although he might hire five depots to be burned for a thousand dollars, that he would thereby pledge his whole estate and all future acquisitions as security against betrayal by his accomplices. But it is replied that Fitch supposed he had control of the police authorities of Jackson county, and a sure reliance on the affections of its whole people. What security could all these afford against indictments which must be presented, not in Jackson county alone, but in Wayne, Calhoun and Berrien counties. The learned counsel reply that Fitch was prepared to make away with the witnesses against him. Is there any man so simple as not to know that assassination of many witnesses is not the surest way of securing the verdict of a jury? But Phelps replies that Fitch promised him to procure a change of venue. Ah! there I detect the lawyer in his fraud. Phelps was familiar with those terms; Fitch, ignorant of courts, probably never heard of a change of venue in all his life. Again, how nicely the tone and spirit of Fitch's reported conversations are in keeping with his known character and disposition. "We are preparing to give Detroit another touch." "They are building another depot and I design to burn it as soon as it is up; I don't care a damn who it kills if it be the governor of the state." "It will give the state a luminous appearance to light it up at both ends." "If detected you had better dig your grave before you go."

Consider now how happily Fitch chose the place for the final departure of the incendiaries to Niles! Not his own barn, not one of his many private chambers in his own house, but the open, public bar-room in a tavern! Consider, too, the occasion and the circumstances; a drunken revel, in the presence of two well known neighbors, not accomplices, and a traveler, who, like himself, refrained from the cup

and read newspapers. Mark, too, the caution and economy manifested in the direction for the use of the match—"You will have to get camphine out there." Yes, to get the camphine to burn the depot at Niles, in the *town* of Niles!

I ask you next, gentlemen, to examine the alleged admissions in detail. They are all coin of the same die, whether given to us by Phelps or by Lake.

Phelps—"Fitch said it cost him a cow and \$25 to burn the old depot."

Lake—"Fitch said he had paid \$50 to a man to burn the new depot, and was to pay \$50 more when it was burned."

Phelps—"Corwin told me his contribution towards burning the old depot was \$12."

Lake—"Filley said he had paid \$30 of the \$150 for burning the old depot."

Phelps—"Erastus Champlin said a purse had been raised to pay for the burning of the depot last fall."

Lake—"Fitch said Lacock knew that a purse of \$150 had been raised for burning the depot last fall, but did not know to whom it was paid."

Phelps—"Fitch said if I succeeded in burning the depot at Niles, I might take the oxen and the balance of the money when I came back."

Lake—"O. D. Williams said his share of the fund was \$17, and afterwards said it was \$20."

Phelps—"Freeland said he had paid \$14 to Fitch, his share for burning the depot last fall."

Lake—"Aaron Mount said he had known Gay from a child; we raised a purse and sent it down to him to burn the depot at Detroit, and he burned it so quick we hardly knew it."

Lake—"Freeland said he had paid his share to Fitch towards burning the depot, and Fitch had paid it over to a man in Detroit."

Phelps—"E. Champlain said, a purse has been raised to burn the depot at Detroit again."

Lake—"Williams said at Leoni that the best thing they did was the burning of the depot at Detroit; but they got no credit for it."

Phelps—"Myers said on the way to Michigan Centre that the burning of the depot at Detroit was done so nicely that they did not suspect any thing, and therefore we got no credit for it."

Lake—"Farnham said it was done so slick that they got no credit for it, and were never suspected."

Phelps—"Fitch said the railroad company was not able to discover the cause of the fire; they were not smart enough; and if they would pay enough, he would show them before their eyes how to do it."

Phelps—"Willard Champlain said he would like to have been where he could have seen the depot burn, and seen Brooks in it."

Phelps—"Dr. Farnham said we got an old fellow to burn the depot at Detroit, last fall, but it did not seem to make much impression."

Lake—"Corwin said, we burned the depot at Detroit very slick, and that was the only one they had paid for burning."

Phelps—"Fitch said a witness might go before the Grand Jury, but he would not live to go before the petit jury." "Corwin said a witness might go before the Grand Jury, but he would not live to go before a petit jury." Filley said ditto to Mr. Corwin, Price said ditto to Mr. Filley.

Phelps—"Smith, (in speaking of the old depot,) said Gay received \$150, and intimated that he received a part of the money in advance."

Phelps—"Smith, (in speaking of the new depot,) said, at the Palo Alto saloon, that \$150 had been paid to Gay and that he received part in advance." "Williams told me if he was detected he would kill the witnesses or swear them to hell." "I have heard Corwin, Filley, the Prices and Fitch threaten Lake to kill him or swear him to hell." Phelps says, "I received sixty dollars in advance for burning the depot at Niles, but don't remember from whom I received it." "O. D. Williams told me that a man at Detroit burned the depot, and that he was paid sixty dollars in advance." "Corwin, at Bascom's, said if they could burn the depots, both at Detroit and Niles, at the same time, the Railroad Company would *pay up*." "William Gunn said, at Marshall, that if the Detroit depot should be burned up again, and Phelps should burn the Niles depot, and he, (Gunn,) should burn the Marshall de-

pot, he thought the company would begin to *pay up*." "Fitch said if we could get a fire into the depots at Niles and Detroit at the same time, they would begin to think *Miller's doctrine true*." "Dr. Farnham said if we could blow up the track a few times, the company would be willing to *buy us off and pay any sum asked*." "O. D. Williams said he should write to the company and tell them if they would *give a thousand dollars a year for five years* they should have no more trouble."

Lake—"Corwin said they meant to propose to the company to *pay one thousand dollars a year for five years*."

Phelps—"Myers said if I was successful in burning the depot at Niles, we would be able to draw a *large sum of money from the company*."

Lake—"Dr. Farnham said if they could make a *clean sweep* of the depot at Detroit, he guessed they would wake up." "Fitch said they would make a *clean sweep at Detroit and Niles*." "Corwin said they would make a *clean sweep* at Detroit and Niles." "Williams said they would make a *clean sweep at Detroit and Niles*. Mount said—(*the same*.) Filley said (*the same*.)

Enough of this. There is an identity in the admissions as harmonious as in the ritual of a Free Mason's lodge, or in the liturgy of the Episcopal church.

Gentlemen, dramatists, and novelists, in the early period of our modern literature, relieved the wearisomeness of their pictures by interludes and subordinate tales, which had a pleasing similarity, in spirit at least, to the principal plot of the work.

The narrative here is relieved in the same way, with humbler plots and conspiracies, as follows:

(1.) Phelps says "he proposed a conspiracy with Gay, which was to *burn the depot at Detroit and lay it to Boyce*, because he stole from thieves.

(2.) Phelps says "he suggested two plans to get rid of Shearman, Lacock and Wells; *one was to burn the depot at Detroit, and lay it to them*."

(3.) Phelps says "William Gunn told him he should get *Shearman* into the *black hole*; and if he could not get Shearman laid out, he should burn *one of the depots*."

(4.) Gay told Phelps "he knew a first rate man and his wife whom he could get to swear that Boyce said before the depot was burned, "he was going to burn it," and to swear that after it was burned Boyce said he had burned it."

(5.) Williams said "you know I was the cause of having the cars thrown off at Leoni, although I was in bed. We can swear Lacock *did it*." Corwin said "he would testify that Lacock came to him and wanted *him to help do it*." Williams said "he would swear that Corwin afterwards *confessed that he did it*." And Freeland said "he would swear both that Corwin said before the offence that he was going to do it, and that he confessed it afterwards." Phelps says that "Fitch, at Detroit, suggested" a second plan to get rid of "the boys," which was by *placing counterfeit money upon their persons*." Phelps says that "Corwin, about the same time, at Michigan Centre, suggested" the same *ingenious device*.

How delicately these pictures are worked in upon the tapestry; and how delightfully they harmonize with the grand design, of fabricating matches in the log cabin at Sylvan, and carrying one in a red handkerchief and depositing it in Filley's tavern, and carrying the other in some other way and depositing it under the side-walk in front of Gay's house, in Detroit, and then swearing that the defendants delivered to them the one left at Filley's, and that Fitch and Gay admitted that the other was manufactured and delivered for a similar purpose. But I weary you. There are many more such admissions.

"The trail of the serpent is over them all."

Let us now see whether the narrative of the witnesses harmonizes in all its parts. Phelps says "that Fitch's object in visiting Detroit, on the 11th of February last, was to get Wells, Lacock and Caswell out of the way; that Fitch proposed two alternatives for that purpose, and Phelps offered to execute either.—One was to burn the new depot and lay it to "the boys," and the other was to put counterfeit money on their persons and thus cause them to be sent to prison." Phelps, when asked why he left Detroit without having executed *either* alternative, answered that Fitch told him that Gay had agreed with him to burn the new depot. Thus, then, Gay was to burn the new depot, and *lay the crime to "the boys"*. But Phelps had before told us that Fitch remained in Detroit to get

rid of "the boys," by *enticing them away*, or getting them secure in some way; from which it must be inferred that the burning of the new depot was not to be laid to "the boys." Indeed, Phelps says that Fitch told him he had a woman staying at Gay's, to put money in "the boys" pockets; and that Joe Dows was to place pencil cases filled with counterfeit money upon their persons and decoy them to Canada. Thus, the crimes contemplated in both alternatives, were to be executed to *get rid of "the boys,"* who, after all, were not to be gotten rid of by means of those crimes, but were to be enticed away and persuaded to silence.

Again, gentlemen, Phelps says that "when a match was shown to him at Michigan Centre, in January, he told Fitch and Filley he had seen such a one at Gay's." Nevertheless Gay never showed Phelps a match until after the 24th of February. Again, if Fitch delivered to Gay two matches, while in Detroit in February, why did not Fitch show them to Phelps before delivery, and why did not Gay show them to Phelps after receiving them? Phelps claims that he then enjoyed the unreserved confidence of both, and he says that Fitch had arranged an interview between himself and Gay.

Again, Phelps says, that "not until the 13th of February, did he ever hear Fitch mention the name of Gay." How did it happen then that Fitch expressed no surprise in January, when Phelps told him he had seen such a match at Gay's house. Again, Phelps says that Fitch, at Detroit, said he wanted Phelps to go to Niles, and light up there at the same time Gay should light up here, and the time appointed was the 4th of March, when Corwin and Price were to be tried at Jackson for burning the railroad wood-pile. Phelps says that it was afterwards arranged that the trial of Corwin and Price was to be put over to a future term of the court, and that the burning of the depot was to be postponed accordingly. Nevertheless, Phelps says, that on the 4th of March, Corwin complained of Phelps' delay in burning the depot at Niles, and Phelps innocently explains to us that he had been delaying it for Clark, the railroad agent, to come home from Lansing. In the sequel the "boys," Lacock, Wells, and Caswell, are quite forgotten; Corwin and Price, altogether forgotten; Gay altogether forgotten; the new depot at Detroit is altogether forgotten; and on the 13th of April, the depot at Niles is fired without an object or purpose.

Look, now, gentlemen, at the boldness with which disingenuousness and falsehood are confessed, avowed, and justified by Phelps. He says, "I don't know what I told Filley at the ball alley I would do with the oxen; probably I invented something for the occasion." "What I told Corwin about passing counterfeit money was false; Lake and I concerted it together." "At Detroit I offered to take the proposition, either to burn the depot, or to put money in the pockets of the boys, and betray them in Canada. This was to make Fitch believe I was helping him." "I told Price at the ball alley, I could get witnesses from the neighborhood to impeach Shearman. I told him this on purpose to deceive him." "I may have told defendants, Lemm was a d——d mean man;" "I pretended to Fitch that I went to Lansing to get relief from unjust imprisonment—the first time I was in Lansing I got a northern member to introduce a bill; my real object there was to see Darius Clark. I got several copies of the report containing the application, and sent them to Michigan Centre." "On my return from Lansing I saw Corwin, and Farnham, and told them I was going to collect money in Detroit for a man in Massachusetts." "In the interview with William B. Lacock, in January, I told him I wanted to buy Fitch's oxen, and that I could sell them for \$140. I said this to deceive Lacock." "Fitch asked me on the night of April 11th, about my claim on the State. I told him I could get about \$3200." Hudson says Phelps said on the 11th of April that he had a friend in Minesota, who had graduated with him, and he was going there next week. Phelps says, "I remember telling Fitch that the Governor of Minesota had written to me about coming out there. My object was to get my money when I got back from Niles."

Gentlemen, I will present no more of these shameless and boastful confessions of falsehood. Permit me, however, to ask,

I. Do you doubt now the correctness of the one hundred and twenty-one witnesses who impeach Phelps' reputation for truth and veracity.

2. Can you tell me by what rule you can distinguish what part of Phelps' statements you are to receive as true, and what part to reject as false?

We can well enough dispense with William Dyers' testimony, that Phelps told him "it would be right to put down the company in Jackson and Washtenaw counties, by false swearing, if it could not be done without." Phelps virtually admitted that he had said so, for he stated that under some circumstances he might have made that remark, although he denied any recollection of the person to whom the remark was made.

It is my duty in the next place to show you that the narrative of Phelps is in many essential points, absolutely contradicted.

Phelps says he saw Fitch in Jackson the day before Christmas, and he thinks that it was Monday; that he then agreed to go next day, and did go next day, to Michigan Centre, to see the boys, and it was Christmas. It is shown by A. H. Delamater, John Delamater, Amanda Fitch, and Harry Holcomb, that Fitch was not at Jackson on the day thus designated.

Phelps says that Fitch's visit at Detroit, on the 13th of February, was concerted by appointment between him and Phelps. He requires us also to believe that he was expected by Fitch at Detroit. The facts are that Fitch went to Detroit under an engagement with Victory Collier, and was waiting there for Israel R. Brown. Phelps' statement that Fitch conversed with him half an hour on the trunk table in the depot, is contradicted by Delos J. Holden, who, having arrived on that occasion with Phelps, went to Johnson's hotel immediately, and found Fitch, and staid with him at that place. Mr. Shealy, who was called to support Phelps' account of his interview with Fitch in the street, on the occasion when Fitch directed him where to find Gay, deprives that circumstance of all sinister effect. You remember that Phelps says that Fitch asked him if he had got his fish, and he answered "no;" that Fitch replied he would find some round the corner, pointing towards Savinac's grocery; and Phelps says that on going there he found Gay. But, according to Shealy, the dialogue was thus: (Fitch,) "Have you not gone home yet?" (Phelps,) "No, I have not got my fish yet." (Fitch,) "You will find some round the corner." G. W. Brown testifies that he put the same question to Fitch, received the same answer, and obtained fish at the place designated. Phelps admits that he did inform Fitch, in Detroit, that he wanted to procure fish and other provisions for supplies on a job of grading the railroad. The remnant of a barrel of fish was found on Phelps' premises, on his departure from Sylvan. Thus much for a trivial circumstance, light as air, which suspicion and fraud have magnified into "confirmation, strong as proof of holy writ." You have already the fact that Willard Champlin was absent from Grandison Filley's when Phelps charges him with an admission implying guilty knowledge of the burning of the depot. I have recited Phelps' narrative of a plot contrived by Williams, E. J. Price, Freeland and Corwin. Phelps fixes the scene and the time at Cuykendall's, on the day when Freeland and Corwin changed horses; and says that the wicked consultation was broken up by Nathan High, who came up and asked what the privacy was. Nathan High says that he broke up such a conversation neither then nor at any other time. Benjamin Stid proves that Phelps was not at Cuykendall's on that occasion. Phelps relates a conversation that occurred on the first Tuesday in March, between himself, Fitch and Lake, concerning a proposed branch road from Jackson to Adrian, and alleges that Fitch said that "the Michigan Central railroad would be worth nothing;" that they "would keep tearing up the track, and so keep the travel off from it." Lake recites the conversation, omitting altogether the essential part about the Michigan Central railroad. Phelps' numerous statements of admissions by Fitch, of having or making counterfeit money, are manifestly false. It may well be doubted whether any man in easy circumstances ever engaged in that despicable manufacture or traffic. The police have searched every part of Fitch's house and premises in vain, although his arrest was sudden and unforeseen.

Phelps says that, in January last, on the occasion when he went to Michigan Centre with William B. Lacock, he found Fitch with Filley and Ackerson in the ball alley, and that there Fitch discussed with him the plan to prosecute Lacock, and said it was a good plan if stuck to, and said the rule among them was, if a man turned traitor, to shoot him on the stand, but that Miner was a weak kind of a boy, and the State prison would do for him; that they then spoke of burning the

depot at Niles. Fitch said he "should charge \$160 for the twin oxen and would pay the balance, \$40, in money; that it cost him a cow and \$25 for burning the old depot; that the match to be furnished had never failed and it never would; there was no danger of failure." It was in that conversation also that Phelps represents Fitch as saying that they had prepared the match there, and sent it to a man in the city, and paid him \$150 for burning the depot; that it was constructed so as to burn a given time, and he gave instructions about it; that it had been used at Detroit as directed, and that, when the fire burst out, it spread so rapidly that all the water of the river could never extinguish it. He represents Fitch as saying on that occasion, still further, "that they had injured the company half a million of dollars during the first year, and would double that sum in the ensuing year; that they were going to burn the new depot as soon as it was finished; that they had warned the people not to ride over the road, and, as they knew better, he didn't care a damn who was killed if it was the governor of the State; that in case Phelps should get into difficulty in burning the Niles depot he, Fitch, would bail him out, and change the venue to Jackson where he could get witnesses to swear him out; that he could get a host of witnesses to put down a traitor or to screen a friend and named them; that he could impeach the best man in Jackson county, and get the best man in Jackson county to assist him in guilt." Now mark, that he says he first saw Fitch in the ball alley, and that all this conversation was held there.—William B. Lacock, who, according to Phelps' own account attended him, says he was never with Phelps at Michigan Centre but that one time, and that on this occasion he was with Phelps from the time they departed from his house until they returned to Lacock's house; that he was all the time within sight of Phelps and by his side, or at least within hearing; that he went into the ball alley with Phelps after Fitch went into the bar-room; that instead of Ackerson and Filley rolling balls, *he* Lacock rolled two balls with Phelps; that Fitch then came into the ball alley and that Phelps and Lacock rolled only four more and then they returned to the bar-room; that in the ball alley Phelps offered Fitch \$150 for his twin cattle, and Fitch said he wouldn't let them go for that sum—that it was not as much as he paid for them; that this is all that passed between Phelps and Fitch in the ball alley; that Phelps and Lacock returned to the bar-room, and Fitch followed them there and sat down by the fire; that Phelps standing near the bar-room window offered \$120 for the cattle and Fitch replied he should not let them go for that, nor let them go at all. Lacock says he is sure he heard every word spoken in the ball alley, and every word spoken in the bar-room, and that he has repeated every word said in either place or any place on that occasion; that nothing was said about Miner T. Lacock, nothing about burning the new depot at Detroit, nothing about burning the old one, nothing about a match, nothing about killing passengers, nothing about killing even the governor of the state, nothing about influence, nor about hosts of witnesses, nor about putting down traitors, nor about screening friends; in short, that not even one word related was said there, while it appears that Phelps repeats not one word of what actually was spoken. The witness Lacock shuts out all possibility of mistake by showing that the parties did not enter the ball alley a second time, but that after remaining fifteen minutes in the bar-room he and Phelps left the Centre and returned to the place from whence they had departed in the morning.

Phelps states that on the 19th of December he went to Fitch's, and rode with the young Messrs. Lacock; that he called at Fitch's house at noon, was invited to dinner, declined, didn't see the cattle in the forenoon, but did in the afternoon; that in a long conversation of two hours with Fitch, he proposed to Phelps to take an interest in some counterfeit money speculations; that he there made his proposition to Phelps to burn one of the depots—at Ann Arbor, Marshall, Kalamazoo or Niles, and offered him \$200 for that service. Be pleased now to remember that Fitch's barn was nearly half a mile distant from his house, and that, Phelps says, the scene at the barn took place, not in the forenoon on the occasion when he called at Fitch's house, but in the afternoon of the same day, and that it occupied two hours. Then collate the testimony of Martin S. Lacock, Henry T. Lacock, Christy Blackmar and Elizabeth Palmer, and you will find that Phelps went to Filley's that morning, attended by three of those persons; that while at Michigan Centre, he called at Fitch's house at eleven o'clock in the morning; that the whole dura-

tion of his stay at the Centre that morning was half an hour; that he returned with the same party and spent the entire afternoon, evening and night in the families of those witnesses, without having returned at all to Michigan Centre that day. Bear in mind also, that, while Mrs. Phelps could have contradicted those witnesses, if their testimony had been false, yet she has since been upon the stand and has failed to do so. Mrs. Fitch has appeared here offering to prove the interview between her husband and Phelps in the morning, and the falsehood of the alleged interview at the barn in the afternoon. I have already shown you that the account given by Phelps of a conversation at the house of John Palmer in January, concerning Minor T. Lacock and implicating Palmer, Penfield and Lacock, although corroborated by Mrs. Phelps, is disproved by Christy Blackmar.

Following now Phelps' narrative until the date of the 11th of April, I ask you to take notice that he alleges that, on his return from Grass Lake to Leoni, on the afternoon of that day, Corwin and Myers went with him to Michigan Centre uninvited, Corwin having paid for the spirits with which the vessel taken from Cuykendall's was filled, and that Williams excused himself from going, on the ground that he would have no conveyance in which to return. A. S. Luce, Esq., John Cuykendall, John W. Kellogg and B. F. Smith testify, that Phelps invited Corwin and Myers to go to Michigan Centre to roll ninepins, and paid lavishly for the spirits which were drank, as well as for those taken away, and that Williams was not present on that occasion. I have already exposed the falsehoods of Phelps and Lake, in relation to their mysterious journey from Grass Lake to Michigan Centre, on that memorable day. Let us look now into their account of the transactions of the night. Phelps and Lake represent Fitch as having been present at Filley's house, while two distinct private conversations were held in the bar-room, and two conversations of considerable length out of doors. All the witnesses agree that the time occupied, during the conversations and transactions of that night, was about two hours. Fitch's presence during a period so long is completely disproved.—James O. Cross, a reputable farmer who was staying at Fitch's house, states that Fitch was absent from home only ten or twelve minutes. Amanda Fitch limits his absence to five or ten minutes, and they agree that he was out of his house only once that evening. William H. Hudson, who was at Filley's bar-room throughout all these transactions, testifies that Fitch came in, held a public conversation of ten or fifteen minutes with Phelps, withdrew, and did not return again that night.

The important points in the transactions of that evening as related by Phelps, are, that Fitch took Phelps aside and said "Filley had told him that he Phelps was going to Niles that evening, that a lot of fellows had been hanging around there and that he, Fitch, had sent Filley off with them a fishing; that while Fitch refused to pay any money in advance, he said that Phelps and Lake if successful, might come back and take the oxen and they would pay over the balance of \$60; that although this talk was private, Corwin, Myers and Faulkner heard a part of it; that Fitch, Corwin and Lake, went out of doors together, and Fitch said to Phelps and Lake that rather than make any exposures if they should fail they had better dig their graves before they should go; that he would give them a match all ready; that if they should once get inside of the depot there would be no difficulty; that they, (Phelps and Lake,) would have to get camphene at Niles to put into the box, because they could not conveniently carry it; that Fitch advised them to return to Grass Lake, and separating there, take the cars at different points the next morning and proceed to Niles; and Fitch then told Corwin to fix them out; that Fitch left the house, and that then Corwin opened the door of the store room, took out the box, placed it in the wagon of Phelps and Lake, and they departed while Corwin and Myers went away in another wagon.

William H. Hudson, who was at Filley's house before Fitch, and staid there until all had departed, relates that Fitch came in, and was invited to drink; that he declined; that then Phelps came from behind the counter, and Fitch said to Phelps "you did not remain long at Lansing." Phelps replied no! he had done his business up quick and had got state bonds for \$3200 and the thought that small amount better than nothing. Phelps said that his horse had run away that day for the first time; before that, the horse had been very steady. He said also he had a friend in Minesota who had graduated with him, and who thought he could do well up there, and he was going to move there the next week. Hudson says that after

Fitch went out there was a good deal of moving about and some drinking by the persons there. Hudson remained there a period of from one to two hours.

The statement, by Phelps, that Fitch told him that he had learned from Filley that Phelps was going to Niles that night, is manifestly false, because Phelps did not see Filley when there that day. Filley could have learned that purpose only from Lake in the afternoon, and during all that afternoon Fitch was absent from home until Filley had gone down the last time to the lake. The statement that "Fitch said there had been a lot of fellows hanging around there and he had sent Filley off with them fishing," is equally false, because no such lot of "fellows" had been hanging around there, and Filley had gone off fishing on his own motion without any communication with Fitch. The other statements are equally false, because Hudson neither saw any such private conversations, nor any such withdrawing from the room, and, because the time Fitch remained there was insufficient for their occurrence. Phelps admits the statements, as given by Hudson, concerning the recovery of his claim at Lansing, and his acquaintance with the graduate at Minesota. The statement that Fitch told Phelps that the match would not fail, for it had been tried several times, is manifestly false and fabricated, because the match produced and identified, has been tried, first at Niles, and then here, and has failed; and it has been demonstrated, philosophically and conclusively, that it must fail to the end of the chapter. Again, the statement that 'Fitch told Corwin to fix them off,' must be false, because it has been proved that Lake was in possession of the key of the store-room; and, according to his own statement, he must have obtained the key from Filley. And yet Lake does not say that he had either given the key to Corwin, or had told Fitch that it was in Corwin's possession. These mis-statements being exposed, the principle, "falsus in uno falsus in omnibus," applies again. The counsel for the people claim, that Phelps' statement is corroborated by Faulkner. That corroboration consists in this, that, in a suppressed conversation, Faulkner overheard Corwin saying, "yes, after we get through," and "I think we can come it;" that, at another time, Phelps said loudly, "Boys, when I get back from Niles, we will have a time," and Corwin said, "Yes, we will tear down Cuykendall's bar and this too." Corwin said, "I am willing to pay something in advance," and handed Phelps some money; that Phelps said, "This will help pay expenses over the road; all paid in advance, helps like hell;" that Fitch came in afterwards, and three times asked, "Boys, how do you do?" and "What is the news?" that they all went out doors for five minutes and came in again, and Fitch said to Phelps, "I shall be ready for you, I shall be flush then;" that Corwin said before Fitch came, that "all would be right and money would be flush when Phelps should get back from Niles." No reliance can be placed on Faulkner's statement of these details, although it may have been conscientiously made. He was a stranger there, and all the persons assembled were unknown to him. Desirous as he may have been to understand and report truly, he was liable to misapprehend the dialogue, and confound the persons engaged in it. It is certain that he mistook some other person for Fitch when they left the room that night. He says he saw Fitch standing beyond the wagon when the box was put in. Fitch is proved to have left the party before that time and to have returned home, and neither Hudson, nor even Phelps nor Lake now pretends that Fitch was at the place assigned him by Faulkner on that occasion. We are asked to explain the remarks imputed to Fitch and Corwin in the recital given of the drunken revel, viz: a promise "to be flush" on Phelps' return from Niles and "that Corwin said he was willing to make payment in advance. We reply that, as to Fitch, it is manifest no such remarks were made by him, because if heard by Faulkner they would equally have been by Hudson, and yet Hudson did not hear them. Phelps' part of the dialogue was purposely spoken in a low voice, except a cue or catchword uttered loudly for the ear of Faulkner. The meaning of Corwin and Myers' replies depends altogether upon the unknown nature of the remarks which called them forth. I see nothing extraordinary in Corwin's contribution to Phelps' expenses, and his expectations of a revel when Phelps should return, enriched by the receipt of the \$3200 to be obtained from the state of Michigan, or by payment from his pretended debtor in Massachusetts, or by a fortune to be secured through the partial favor and assistance of his distinguished friend, the governor of Minesota.

Gentlemen, it is scarcely necessary to remark that if Phelps' narrative is false, the relation given by Lake cannot be true. His concurrence lends no confirmation. There are, however, cross-readings by these witnesses, which require a moment's notice. Phelps testifies that Williams said he should write to the railroad company, through an attorney, and offer to take a thousand dollars a year, for five years, for letting them off. Lake, on the contrary, attributes this generous proposition to Corwin. When, however, the counsel for the prosecution indicate the variance, Lake reconciles the conflict by saying he has heard Williams say the same thing. It is extraordinary that Phelps should have forgotten that Corwin made the remark, and equally so that Lake had not, in the first instance, placed the remark to the account of Williams, where it belonged. Lake informs us that Fitch said, on the piazza, at Bascomb's tavern, in Jackson, that it cost him a cow and twenty-five dollars to burn the old depot, that he had paid fifty dollars to the same man for burning the new one, and that he was to pay fifty dollars more after it should be burned; "that if we would burn the Niles depot, we could have two hundred dollars in money, or the twin oxen at a hundred and forty dollars and the balance in money." Phelps, who was present, gives us no such details of that conversation, but presents the same nefarious statements as having been made by Fitch, at the ball-alley, on the occasion of his visit there with William B. Lacock, which occurred before Lake's engagement began. It is manifest, therefore, that Lake has blunderingly taken from the common diary what was heard by Phelps alone, and produced it as a confession of Fitch, heard by himself.

Although Phelps had stated that he was to be paid his expenses in case of a failure to burn the Niles depot, yet he was leaving the stand without showing that he had received or even demanded his expenses. A juror pointed out the incongruity. He immediately replied, "they paid me before and after I went about sixty dollars, on account of expenses. Of this sum, Fitch paid me eight half dollars; two gold dollars and one quarter eagle, making eight dollars and fifty cents, besides seven dollars paid Lake by Williams, on the same account." Lake, on the contrary, says that neither Williams nor any other person ever paid anything to him on account of expenses, nor to his knowledge was anything ever paid to Phelps on that account. He says further, that he was present, when the eight dollars and a half was delivered and received as spurious, and that it was in fact counterfeit coin. It will not surprise you, gentlemen, to find that Phelps and Lake harmonize in their account of Farnham's infernal machine, which they saw at his gate, where there was no other witness present, in the night time, when none but they and such as they, could see anything. Nevertheless, it is strange that the engineer, who fabricated the matches, produced here, with such profound philosophical knowledge and exquisite skill, cannot describe the mode of operation of Farnham's infernal machine for blowing up the railroad, although it consisted of only two common tin horns, bound together at the narrowest part of the tubes with a clasp. Dr. Farnham was taken from his house in the night time, without notice, and his dwelling was then exposed to the most scrutinizing search of the police; but neither the machine, nor any of its superfluous materials, nor the instruments employed in the construction of it, have been produced.

I pass on to Lake's account of the transactions of the 11th of April. He says that Phelps and himself arrived at Filley's together about noon, and inquired of him if "the boys" were there. You know, gentlemen, that "the boys" lived at Leoni, four miles east of Michigan Centre, and, according to Lake, he and Phelps had just past Leoni, where they could have been found, and had come down to Michigan Centre to inquire for them, where they were sure not to be found. Lake says they told Filley, "We have come to go to Niles." Filley replied, "I am glad; we are ready for you." Lake says, "I was unwell and laid down; after lying an hour, I rose again, came down stairs, and found Filley; we then had a talk about preparation for Niles. Filley went to the barn and brought the match. I examined it. Filley put it into the box, nailed it up, put it into the store-room, and saying 'it is ready for Niles,' put the key in his pocket." This ingenious narrative was, unhappily, in conflict with the testimony of Kane and Allen, who took Filley to the pond about half past twelve, before Lake arrived at his house, and detained him until between three and four o'clock. Lake removes the difficulty thus raised, while he gives a conclusive answer to Seacord, the Beemans and Tay-

lor, who have testified to his travels on foot with a match, in a box, tied up in a red handkerchief. He was sick before, and now, like Don Juan in the shipwreck, he "falls sicker," and enlarges the period of his repose in the upper chamber, from one to three hours. How could a man, who was obliged to sleep three hours a day, walk four miles, oppressed with the weight tied up in that red bundle?

Gentlemen, I have now shown you that the testimony of Phelps and Lake is unworthy of credit, by reason of their depravity—of internal evidence of falsehood—of conflict between themselves—of flagrant avowals of deceit—and of collision with facts incontrovertibly established. I advert briefly to some pretended corroborations. These are furnished, principally, by Messrs. Van Arman and Clark. Revert, if you please, to their account of the disclosures made at Gay's house. Van Arman says Clark was standing too far off to hear. Phelps was talking with Gay. Phelps gave the signal to approach. They were talking about burning the depots at Niles and Detroit. Phelps said he would go out to see the friends at the Centre, and let Gay know what time they would be ready at Niles. Gay said they would be ready to make a strike here at the same time. Who does not see that this conversation was contrived between Phelps and Gay for the purpose of corroboration? Again, Mr. Van Arman, describing the transactions at the same place, on the following night, says, (Clark being present though not within hearing,) "Gay talked with Phelps about burning the new depot, and with equal care, avoided confessing anything about burning the old one." At the same time, Phelps, having had a private conversation with Gay, told Van Arman that Gay had given leave, and thereupon Phelps went up stairs and exhibited the match to Clark and Van Arman. What was there in all this, but a juggle between Phelps and Gay to impose upon Clark and Van Arman? You have a third corroboration in the statement that Phelps lent Gay two dollars, in February, to purchase camphene; but it is deprived of all its value by the fact that Clark had been apprised that the money was lent, and was sent into Parker's to request him to make a memorandum of the sale. A fourth corroboration is, that after setting fire to the depot at Niles, with the fuse end of the match, Phelps, Lake, Clark and Van Arman returned together in the cars towards Detroit. When they arrived at Jackson, Filley was seen there, and he *looked as if he was anxiously expecting somebody*. Phelps concerted with Clark and Van Arman, that he should draw Filley into conversation, while they should listen. When a person is in a depot, on the arrival of a train of cars, he is very apt to look as if he was expecting somebody. A conversation, of course, occurred, of which three versions are given.

First, Phelps' version: Filley—How did you get along? Phelps—I set the depot on fire, but made a failure. They put it out. I have not made more than nine times. I have borne my expenses there and back. Filley—Go up to the Centre, and see the boys; they will make it all right.

Van Arman's version: Phelps—I did not make more than nine times. Filley—You had better go immediately to the Centre; the boys are waiting for you.

Clark's version: Filley— * * * Phelps— * * * Filley— * * *
Of what value is a concerted corroboration like this, in which all that is necessary to explain the admissions or declarations brought in evidence is suppressed.

Gentlemen, you must have observed that unusual and unknown rigor and severity have been practiced in this prosecution, by combining, in one person, the two offices of counsel and witness. Such a combination is disapproved, with as much earnestness, by legal authority, as it is feared by those upon whom its power is brought to bear.

"I will never be voluntarily called as a witness in any cause in which I am counsel. Should my testimony, however, be so material, that without it my client's cause may be greatly prejudiced, he may at once use his option, to cancel the tie between us in the cause, and dispense with my further services, or with my evidence. Such a dilemma would be anxiously avoided by every delicate mind—the union of counsel and witness being only resorted to as a forlorn hope, in the agonies of a cause, and becomes particularly offensive when its object be to prove an admission made to such counsel by the opposite litigant. Nor will I ever recognize any distinction, in this respect, between any knowledge of facts acquired before and since the institution of the suit; for in no case will I consent to sus-

tain, by testimony, any of the matters which my interest and professional duty render me anxious to support."—*Hoffman's Legal Study*, Vol. 2, p. 766.

A word is claimed in this connection, by the witness, Dr. Hahn. He relates that in the cars, on the morning of the arrest, Fitch looked at the warrant, and said that it appeared that he was implicated with a certain George Washington Gay, in burning the depot at Detroit. "I do not know such a person. I have never heard of George Washington Gay." No witness, except Phelps, proves an acquaintance between Fitch and Gay, and Phelps proves it only by alleged admissions. This denial of Fitch, therefore, instead of being a corroboration of Phelps' testimony, is a contradiction of it. But Dr. Hahn says, further, that Fitch, after fixing his attention upon the warrant, said, "I believe that old Gay has turned State's evidence." The warrant suggested that opinion. The counsel for the prosecution criticise the use of the word "old," which, they say, is inconsistent with Fitch's denial; but it is manifest that Fitch spoke of his knowledge of affairs before the arrest. After the arrest, "old Gay's" name must soon have become "familiar as household words."

Gentlemen, I trust that I have proved that the conspiracy alleged in this case, presents an immaterial issue, and is false in fact; that the case rests on evidence of admissions only, proved by three witnesses, Gay, Phelps and Lake; that the evidences of those admissions are false, because the facts supposed to be confessed are impossible, while the admissions are unworthy of credit, because they are unsupported by circumstantial evidence, and the witnesses who present them are unworthy of belief, and their testimony is contradictory, and is in conflict with facts incontestably established. If these positions are true, it follows that this prosecution is the result of a conspiracy against the defendants. You have evidence of that conspiracy in the malicious threats of Wescott and Phelps; in an allusion by Phelps, showing an understanding with Wescott; in a negotiation between Phelps and Gay to predicate a plot on the casual burning of the depot in Detroit, on the 19th of November last, a plot for the ruin of innocent men; in the fraudulent manufacture of those harmless but fearful tokens, contrived to obtain credit for the narrative of Phelps; in the fraudulent transfer of those tokens, by those who fabricated them, to the possession of Gay and of Filley; and in the cunningly devised narrative of Phelps and Lake. But I will not follow that subject further. It belongs to another prosecution—a different tribunal—perhaps, to a distant jurisdiction. It is enough for our present purpose that the defendants are not guilty.

Gentlemen, in the middle of the fourth month, we draw near to the end of what has seemed to be an endless labor. While we have been here events have transpired, which have roused national ambition—kindled national resentment—drawn forth national sympathies, and threatened to disturb the tranquility of empires. He who, although He worketh unseen, yet worketh irresistibly and unceasingly, hath suspended neither His guardian care nor His paternal discipline over ourselves. Some of you have sickened and convalesced. Others have parted with cherished ones, who, removed before they had time to contract the stain of earth, were already prepared for the Kingdom of Heaven. There have been changes, too, among the unfortunate men whom I have defended. The sound of the hammer has died away in the workshops of some; the harvests have ripened and wasted in the fields of others. Want, and fear, and sorrow, have entered into all their dwellings. Their own rugged forms have drooped; their sunburnt brows have blanched; and their hands have become as soft to the pressure of friendship as yours or mine. One of them—a vagrant boy—whom I found imprisoned here for a few extravagant words, that, perhaps, he never uttered, has pined away and died. Another, he who was feared, hated and loved most of all, has fallen in the vigor of life,

"hacked down,
His thick summer leaves all faded."

When such an one falls, amid the din and smoke of the battle-field, our emotions are overpowered—suppressed—lost in the excitement of public passion. But when he perishes a victim of domestic or social strife—when we see the iron enter his soul, and see it, day by day, sink deeper and deeper, until nature gives away and he lies lifeless at our feet—then there is nothing to check the flow of forgive-

ness, compassion and sympathy. If, in the moment when he is closing his eyes on earth, he declares: "I have committed no crime against my country; I die a martyr for the liberty of speech, and perish of a broken heart"—then, indeed, do we feel that the tongues of dying men enforce attention, like deep harmony. Who would willingly consent to decide on the guilt or innocence of one who has thus been withdrawn from our erring judgment, to the tribunal of eternal justice? Yet it cannot be avoided. If Abel F. Fitch was guilty of the crime charged in this indictment, every man here may nevertheless be innocent; but if he was innocent, then then there is not one of these, his associates in life, who can be guilty. Try him, then, since you must—condemn him, if you must—and with him condemn them. But remember that you are mortal, and he is now immortal; and that before the tribunal where he stands, you must stand and confront him, and vindicate your judgment. Remember, too, that he is now free. He has not only left behind him the dungeon, the cell and the chain; but he exults in a freedom, compared with which, the liberty we enjoy is slavery and bondage. You stand, then, between the dead and the living. There is no need to bespeak the exercise of your caution—of your candor—and of your impartiality. You will, I am sure, be just to the living, and true to your country; because, under circumstances so solemn—so full of awe—you cannot be unjust to the dead, nor false to your country, nor your God.