

Report of the trial on an indictment for libel in "The American lancet" : containing the whole evidence, speeches of counsel, recorder's charge, &c.; : accusers in behalf of the state, J.B. Beck, E.G. Ludlow, and divers others against J.G. Vought, Wm. Anderson & Samuel Osborn.

Contributors

Vought, John G. 1791-1832.

Beck, John B. 1794-1851.

Ludlow, Edward G. 1793-1877.

New York (State). Court of General Sessions (New York County)

National Library of Medicine (U.S.)

Publication/Creation

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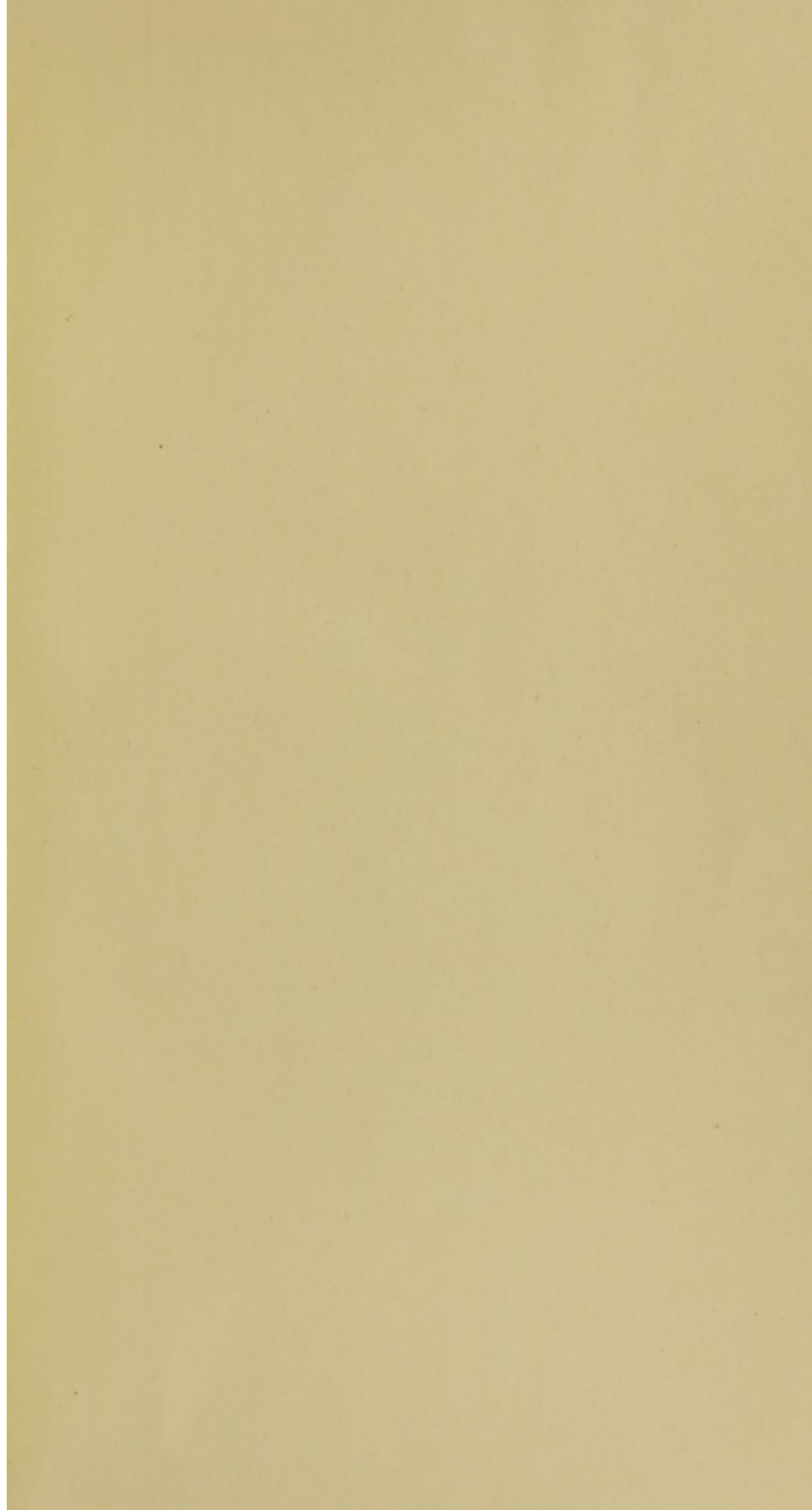
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"TO CUT THE GORDIAN KNOT."



REPORT OF THE TRIAL
ON AN INDICTMENT FOR
LIBEL IN "THE AMERICAN LANCET,"
CONTAINING
THE WHOLE EVIDENCE,
SPEECHES OF COUNSEL, RECORDER'S CHARGE,
&c. &c.

ACCUSERS IN BEHALF OF THE STATE,
DRS. J. B. BECK, A. G. LUDLOW, AND DIVERS OTHERS,
AGAINST

DR. J. G. VOUGHT,
Editor and Proprietor of the American Lancet;
DR. WM. ANDERSON, & DR. SAMUEL OSBORN,
Assistant Editor. One of the Contributors.

NEW-YORK, JANUARY 28, 1831.

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Vought, John G

"TO CUT THE GORDIAN KNOT."

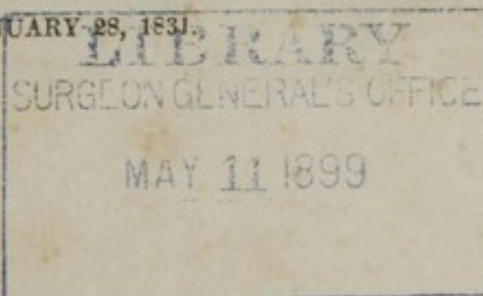


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J. C. Title

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NEW-YORK, JANUARY 28, 1831.



[The following Letters appeared in the Courier and Enquirer of January 25th, 1831. Many do not understand the meaning of these letters—the mystery may possibly be unfolded by the gentlemen who wrote them.]

NEW-YORK, Jan. 19, 1831.

Dr. JOHN STEARNS :

Sir—The statements contained under the signature of Medicus, published in the American Lancet, and ascribed to you, representing the existence of an association of medical men in this city formed for purposes dishonourable to themselves and injurious to the profession, are totally without foundation. Our names having been connected without that communication, we call upon you to retract the injurious allegations therein contained.

Signed, Ansel W. Ives, Alex. H. Stevens, Francis U. Johnston, Gilbert Smith, J. Kearney Rodgers, John Watts, Jr. Martin Paine, Daniel W. Kissam, Jr. Joseph M. Smith, Samuel W. Moore, Nicoll H. Dering, John C. Cheesman, Richard K. Hoffman.

NEW-YORK, Jan. 19, 1831.

Whereas a publication, signed Medicus, has appeared in the American Lancet, in relation to a secret Association of medical gentlemen in this city, intimating, among other charges, that they are obligated to aid each other in their professional practice, to the exclusion of other physicians, and being now convinced that the injurious allegations contained therein, are not true, I with pleasure acknowledge that I have hitherto entertained an erroneous belief of the objects of the Association, and regret the effects of the unfavourable opinion I have expressed on that subject.

Signed, JOHN STEARNS.

COMMUNICATION.

The publication of the very exceptionable letter addressed to me by the gentlemen said to belong to a secret society in this city, is, on their part, entirely gratuitous. My statement was prepared agreeably to their request, before I saw or heard of that letter, and had I anticipated its publication in connection with my statement, I should never have given it to them. They expressly stipulated with me to publish my simple statement alone, without any comment or remark. The result shows how much I have been deceived.

JOHN STEARNS.

LIBEL SUIT.

NEW-YORK, JANUARY 28, 1831.

THE trial of an action for a libel, brought against Drs. John G. Vought, William Anderson, and Samuel Osborn, commenced on Saturday last in the Court of Sessions.

The alleged libel was published in "The American Lancet" of 15th October, 1830, and is in the following words :

[For the commencement of the Indictment, see page 38.]

"To the Editors of the American Lancet.

"MESSRS. EDITORS,—

"The existence of a *secret society* among the medical gentlemen attached to the College of Physicians in this city, has long been a subject of complaint among physicians. This appears to be a branch of a similar society in Philadelphia, which was first made known to the public by the testimony elicited from some of its members, on a trial for slander. Although they refused to disclose the whole extent of the combination, sufficient was obtained to show that they were bound by the most solemn oaths to aid each other in their professional practice, consultations &c. and to oppose those of the profession who were not members, thereby effecting, as far as practicable, a perfect monopoly. The editor of the Medical and Physical Journal, in this city, published a sketch of the trial, and added a hope, that a similar society did not exist in New-York. This excited a most vindictive combination against the editor, and he had soon after to suspend the publication of his journal. This is only one instance of many that might be adduced of the existence in this city of a conspiracy against those physicians who are not on its list of members, or who have refused to take the illegal and profane oaths which they administer. A similar combination once existed among the tailors, to regulate prices and monopolize business; but an indictment against some of its members dissolved the conspiracy. That every member of

society conspiring against the common good, is liable to similar punishment, is a principle of common law, and established by precedent. [But I am more particularly opposed to this society from the injury which the medical school in Barclay-street may sustain. A report is prevalent that the president, trustees, and professors, of that college are among its members. This report, whether true or false, has the effect to organize an opposition to that college, which will result in sending pupils to other colleges, and withholding from that the patronage and support necessary for its existence. *Not in the indictment.*]

"If you wish to put down the secret society among physicians, you must identify it, you must place it in the college where it belongs, or designate the members some other way, that they may be known to the public.

MEDICUS.

"The following is a list furnished us; we have, however, heard of others belonging to the fraternity. The association can, without betraying its deeds, furnish a correct list, for it cannot be denied such an association does exist.

"JOHN WATTS, M. D. President of the College of Physicians and Surgeons, New-York; John Augustine Smith, M. D. Professor of Anatomy, in do.; John B. Beck, M. D. Professor of Materia Medica, in do.; James M. Smith, M. D. Professor of the Theory and Practice of Medicine, in do.; Alexander H. Stevens, M. D. Professor of Surgery, in do.; Edward Delafield, M. D. Professor of Obstetrics, in do.; Nicoll H. Dering, M. D.; Edward G. Ludlow, M. D.; Samuel W. Moore, M. D.; Ansel W. Ives, M. D.; John C. Cheeseman, M. D.; Gilbert Smith; Martin Paine, M. D.; John Kearney Rodgers, M. D.; Richard K. Hoffman, M. D.; D. W. Kissam, M. D.; Francis U. Johnson, M. D. Most illustrious and magnanimous seventeen! There seems to be something ominous in the number 17!!

ED."

Two hundred and seventy witnesses were subpenæd to prove that said society was a branch of the Kappa Lambda of Philadelphia, and that its members were in other places through the United States.

The indictment charges the traversers with having maliciously, &c. published this libel to the great damage, &c. of Edward G. Ludlow, M. D., John B. Beck, M. D., and divers others.

Messrs. Maxwell, J. R. Livingston, and John W. H. Bell,

appeared for Dr. Anderson ; Drs. Vought and Osborn pleaded in their proper persons.

Mr. Maxwell, on behalf of his client, moved that the parties should be tried separately, on the ground that it was necessary to his defence to make use of the testimony of the gentlemen with whom he was indicted.

Dr. Vought moved to be tried separately on a similar ground.

The District Attorney objected, and said he must try the defendants all together.

Dr. Osborn said, he not only requested, but he demanded a separate trial.

The District Attorney replied, that as for Dr. Osborn's request, he might make some reply ; but for his demand, he would make no answer.

Dr. Vought addressed the court and said, on his own part he was very desirous of having a separate trial ; that he was very unfortunately situated if he was obliged to be tried with the other two gentlemen, for these reasons : first, I want my trial postponed, as I am unprepared to make my defence ; second, I am here without counsel, my attorney on whom I depended to aid me, is out of the city, and I have had no time to prepare any other since I knew he could not be here to-day ; and thirdly, I depend on the evidence of these two gentlemen to prove myself not guilty of this libel ; and if I am deprived of their testimony, it is impossible for me to obtain justice on the trial.

The District Attorney replied, that he would take no advantage of Dr. Vought's situation, but was determined to try them all together.

Dr. Vought then said, he must be his own lawyer, and would rest his case wholly on the proof of his innocence of malice, and not upon the quibbles of the law.

Dr. Osborn made a similar request on the ground that he

could in no wise be implicated with either of the others if tried alone.

The District Attorney opposed these motions ; he contended that no one of the persons indicted could be used as a witness until he had been declared guilty, or not guilty.

The Court decided in favour of the view of the case advanced by the District Attorney.

The jury were then sworn, and the District Attorney opened the case, and proceeded to examine his witnesses.

Jonathan Seymour sworn. The work entitled the *American Lancet* is printed in his office ; Drs. Vought and Anderson were the editors ; does not know who wrote the article in question here ; does not know that Dr. Osborn had any connection with the work. Cross examined by Dr. Osborn—Never knew that Dr. Osborn had any connection with the publication of the work : by Dr. Vought—never saw the extra number of the *Lancet* (bound in the second volume) to his knowledge before ; does not know if that number was printed in his office.

George P. Scott examined. Is foreman in Mr. Seymour's printing-office ; does not know by whom the communication charged as libellous was sent to the office ; nor does he know who wrote the remarks which follow it ; does not know that Dr. Osborn had any connection with the article ; never knew that Dr. O. had any connection with the *Lancet* ; never saw him correct proof sheets ; knew only Drs. Vought and Anderson. Cross examined by Dr. Vought—He saw the extra after it was printed ; it was not printed in the office of Mr. Seymour.

John B. Beck, M. D. examined. Is a professor of medicine in Barclay-street College ; called upon Mr. Seymour after the publication of the libel, to know who were the editors of the *Lancet* ; (the information given by Mr. Seymour, as well as the general report on this point, were objected to as evidence) when the work was about to be commenced, Doctor

Vought called upon witness to subscribe for it, and witness always considered him the editor; read the matter charged as libellous; is one of the persons named amongst the seventeen; never belonged to any such society as is there described. Cross examined by Dr. Vought—In the conversation which was had between witness and Dr. V. when the work was about to be established, there was nothing which could lead witness to believe that there was any malice intended against any of the medical profession; Dr. V. asked witness at the same time to contribute articles for the work. Witness refused so to do.

Edward G. Ludlow, M. D. examined. Is a physician in this city; is one of the persons named in the libel; never belonged to a society of the character described therein. Cross examined by Dr. Vought—Dr. V. called on witness to subscribe to the Lancet; Dr. V. also asked the witness to contribute articles for it, stating as his reason for the request, that he (Dr. L.) had had an opportunity of becoming acquainted with the causes, &c. of western epidemics; witness at that time did not imagine Dr. V. had any malice towards any member of the medical profession; nor was Dr. V. ever guilty of any breach of medical ethics to witness's knowledge; witness heard there was a society in this city, but did not believe that its objects were those charged in the libel; has reason to believe that a society of physicians did exist, but does not know what its object were; has never applied for admission to this society, nor was he ever asked to become a member.

The District Attorney having rested the case for the prosecution here, it was submitted that there was no proof against Doctor Osborn. The jury, after a few minutes consultation, returned a verdict of *not guilty* in the case of Dr. Osborn.

Mr. Livingston opened the case for the defence, he dwelt upon the importance of the case not only as regards the character of his client, but as regards the medical profession, a proof of whose interest in the result, might be seen in the number of them who were present. He then took a cursory

review of the objects for which the "American Lancet" was established ; amongst these objects he said was the exposure of any evil, which its editors had reason to believe existed in the medical practice of this city. Because they have done this, said the gentleman, they have drawn down on them the enmity of seventeen individuals of great influence in this city. The gentleman then proceeded to define the law of libel, to show that malice was a necessary ingredient, and to show that the alleged libel bore on its face, evidence that its publication was not caused by malice ; the reason for its publication was stated in that part left out of the indictment. The gentleman, stated that he would be able to prove that Dr. Vought was out of the city when the article complained of was published, and that in such cases, Dr. Anderson had no power of publishing or withholding communications ; that we would prove the facts charged in the alleged libel were substantially true ; that as the editors did not seek this investigation, they certainly would not shrink from it ; they unfurl before you the banner of defiance ; they have clothed themselves in an armour of testimony that will bear them out triumphant.

After the gentleman had concluded, the District Attorney said he did not intend to permit any evidence to be offered as to the existence or objects of any society said in the libel to exist, unless the defendants could show that Drs. Ludlow and Beck were connected with it, as the indictment was laid for a libel against them.

Mr. Maxwell argued against this motion of the District Attorney, and cited the opinion of Chancellor Kent.

Dr. Hosack was called on, as a witness for the defence ; the District Attorney inquired what it was intended to prove by him. Mr. Livingston said he intended to show from the evidence of Dr. H. that the existence of a secret medical society in this city had long been a subject of complaint. The D. Attorney said he would permit this evidence if Mr. Maxwell declared that he expected to be able to show that Drs. Ludlow

and Beck were connected with it. Mr. Maxwell declined making any admission on this subject. The Court decided with the D. Attorney, and Mr. Maxwell took a formal exception to the decision.

Mr. Maxwell was about to call another witness, when the D. Attorney said he would object to all evidence of the truth of that part of the article complained of, which is signed *Medicus*, unless the defendants could prove that Drs. Beck and Ludlow were members of the society there alluded to. Mr. Maxwell wished to know from the court what he was to defend his client from. He said if the D. Attorney cut out that part of the article signed *Medicus*, there was nothing in the other part which could be called libellous. The D. Attorney replied, he did not cut out any part, but he wished it to be understood that he merely objected to proof under the first part, until the connection of Drs. L. and B. with such a society was shown. The court decided with the D. Attorney, and Mr. Maxwell excepted to the decision.

Samuel Osborn sworn. The manuscript now shown, is the original of the article signed *Medicus*: witness did not write this communication. The list of names attached to this is in the hand-writing of the witness. Mr. Maxwell asked, do you *believe* this list was correct: the D. Attorney objected to this, and all other such questions, unless it could be distinctly shown, that Drs. Ludlow and Beck were members.

The witness however said that he believed the list was correct, and was about to give his reasons for this belief. The District Attorney said, he would like to treat the gentleman of the medical profession with courtesy, but he would remind the gentleman, that to persist in answering a question objected to, would be a contempt of court. The two papers were here again handed to witness, and he said neither of them was in the hand-writing of Dr. Anderson, nor had Dr. Anderson any volition with regard to the publication of the articles complained of. Dr. Vought was absent from the city when

the publication was made, and it was sent to the printing office, and published by the authority of the witness, Dr. Mitchill, and Dr. Pascalis. Witness himself decided that this communication should be published, and Dr. Pascalis coincided.

Mr. Scott recalled. Never before saw either of the communications now presented to him. When Dr. Vought left the city he told witness that Dr. Anderson had the editorial department under his control; does not know who brought the articles here shown into the printing office; all the business was carried on by the authority and responsibility of Dr. Vought: by Dr. Vought, do you know of your own knowledge, that I had the exclusive control of the work?

Ans. I do not.

The court here adjourned over to Monday.

Monday, January 10.

At the opening of the court, Dr. Vought commenced his defence. He said—

The alleged misrepresentation, from which I am about to defend myself, I trust will be duly considered, and all that may tend directly or indirectly to show my innocence, and also of all who are accused of the charge, be admitted as testimony before this court. The American Lancet never has denied its association, nor ever sailed under false colours, like the Kappa Lambda Journal, published in Philadelphia. At the time the communication in the Lancet, alluded to, was published, I was out of the city, and the control of the work left with the contributors, which, the contract between Dr. Anderson and myself will designate, which says, that “no personal feelings shall be indulged in, or inserted in said work, by either party, between themselves and other physicians; and all differences shall be referred to Drs. Samuel L. Mitchill, Felix Pascalis, and Samuel Osborn, whose decisions, in all

cases, shall be final." I will not pretend to justify the acts of others, who can speak for themselves, but own every motive which has governed *me* in the publication of this work, and trust the contributors will do the same. If so, mysteries may be unfolded to the great benefit, both of the medical profession and of the public generally. One year ago, about the first of January 1830, I commenced a monthly periodical, called the New-York Medical Inquirer, to be conducted by an association of physicians and surgeons, residing in different parts of the United States, under the motto—

Let mystery be stripped of all pretence,
And practice be combined with common sense.

It appears, gentlemen of the jury, that the American Lancet is arraigned on all sides. The steam quacks have published a pamphlet against us, and say we have conferred upon them, "without fear or regard," "the honourable title of *manslayers*." On the other hand, we are prosecuted in a far less honourable and more cowardly manner, by some of our medical brethren, who please to rank themselves among the patrons of the day. They have never dared, as the steam and root doctors did, to raise their pens in opposition to us, but fled to the grand jury with their complaints, without giving us an opportunity to make amends, in case we had found ourselves innocently led into an error.

The design of this work, (as the prospectus indicates, see the cover, Vol. I. No. 1,) was "to support truth, to expose error, and to render the profession somewhat more responsible to the public, than the mysteries of the art have heretofore made it; for, after all, it is the '*vox populi*' which decides in this, our favoured country." Again we say in the advertisement, (see No. 1, pages iii. and iv.) as follows:—

"It is not from an avowal of any singular principles that we desire to draw the public attention; we aim to acquire the acknowledgment of the fact, that the course we adopt will be conducive to the investigation

and propagation of medical truths; whereby the pharmacopœia of the physician may be enriched from the mine of experience, and those uninitiated in the mysteries of our profession, be put on their guard against the effects of licensed quackery or ignorant imposture.

“To investigate the pretensions of physicians who claim credit for their skill on the score of medical honours conferred at universities, and those of the scientific licentiate; to strip the mask from arrogant pretension, and convince the public that impudence is not learning, and that innate stupidity is not of consequence in the mystic knowledge of the healing art, will form one item of our design in this work.

“This journal, as our prospectus indicates, is intended to exhibit from time to time, as far as attainable, the prominent features in the practice of the several medical institutions of this country, together with reports of individual cases. Medical ethics, in principle and in practice, will be a subject of consideration, as also the *policy* pursued by the legislature of this state, with regard to the medical profession. The acts of medical societies will be discussed; their usefulness and the reverse investigated; and the merits of public men as teachers in the profession will be openly canvassed.”

The acts of medical societies have been discussed in our work, and it now remains for a jury of our country, before whom we are arraigned as criminals, and also the “*vox populi*,” to decide, whether we have canvassed the conduct of secret medical societies, to the injury of the public or not; and whether we are, as this bill designates, the “malicious and evil-disposed persons, and wickedly and maliciously contriving and intending, one Edward G. Ludlow and John B. Beck, and *divers other persons*, to detract, scandalize and vilify, with force and arms, wickedly and maliciously did write, print and publish, and cause to be published, in said pamphlet, entitled the American Lancet, a certain false, scandalous, and defamatory libel, *purporting to be a communication* to the editors of the American Lancet.”

“Medical Ethics,” as our prospectus also indicates, “in principal and in practice, will be a theme for this work.” This subject embraces one of the prominent features of the Lancet alluded to, and accordingly must be involved in the present discussion, connected with this alleged libel.

We shall endeavour to prove, that this subject was not connected with the work from wicked or malicious motives, to persecute or injure individuals, but for the general interest of the medical profession, and for the welfare of the public. We shall try to prove that secret and private associations, consisting of medical men, have existed in our city and country, formed for concocting measures to promote the individual interests of their own members, to the injury of the mass of the profession and the public ; and that such acts are deemed a breach of the proper medical ethics which ought to govern a free and liberal profession.

We shall not attempt to prove that men have no legal authority to form secret societies, to accomplish their ends ; but we shall try to make it appear that the liberty of the press entitles us, as editors of a public journal, to warn our brethren of the effects of such associations, and even expose the names of its members to the public, when we are credibly informed who they are, as we have been in this case. Does not the liberty of the press allow editors of newspapers to warn the public of the improper character of politicians who are set up for offices of emolument in our government ? If any intrigue is known to be used by individuals, is it not published without reserve ? If members of *christian churches* or even *ministers of the gospel*, are guilty of conspiracy, hypocrisy, or immorality, are not their names published in the daily prints ? And why have not the editors of medical journals the same privilege to expose the acts of designing men, who combine to monopolize the interest and the honours of the profession ? Why not expose the secret measures, secret remedies, and private quackery, which corrupt the profession, which pick the pockets of our honest and innocent yeomanry, and in fact bring thousands to a premature grave ?

I shall attempt to prove before this jury, that my design, as the proprietor and editor of the *American Lancet*, has always been, to publish nothing but the truth, without partiality to

either of the medical colleges which existed in this state, or to any individuals : see *Lancet*, Vol. II. page 3, where it says in a note :—

“ We have been accused of partiality to both colleges, and of leaning towards the old college for the purpose of getting its support.

“ We refer our readers to our columns for the refutation of this charge, and shall offer no other defence. The surmise in the ‘ *Medical and Physical Journal*,’ of April last, stating that ‘ its editor is understood to be’ a certain gentleman ‘ whose talents and learning are not unknown to the profession in this state,’ is gratuitous.

“ In the editorial arrangement of this work, from its commencement to this date, no individual editor has been acknowledged, the matter being prepared, as always avowed, ‘ by an association of physicians and surgeons.’ We profess to labour, ‘ to support truth, to expose error, to improve the medical profession, and to instruct and benefit heads of families upon subjects connected with medical science.’ These are the objects contemplated, instead of the ‘ two-fold object’ mentioned by our brother journalist, ‘ to impart medical information to the people, and to correct certain abuses in the medical profession.’ This is a subject upon which we have already tested the taste of both the profession and the people, sufficiently to satisfy us with our ‘ difficult dilemma.’ ”

And again in the same No. pages 4 and 5, we say :

“ Our design is to open our columns to all whose practice and principles are sound and honourable. We are willing to be considered the open foes to dealers in medical mystery, either in colleges, societies, secret combinations, public institutions, or private practice. We know that already we have roused the hostility of a set of impostors, who for years have kept closed from the public eye the gates of medical knowledge, which heretofore have stood, and still remains to be, too much cloaked in a technical and dead language, well calculated to conceal its virtues or vices from all who have not spent years in investigation. It is indeed mortifying to hear that we are judged the enemies of our own profession even by those whose duplicity and hostile disposition leads them, for self-interest, to frown at and ridicule the cause we have undertaken to advocate, which we deem calculated to remove much evil, both to the public health and the profession at large. We console ourselves with the flattering countenance we have already received ; and that the most honourable and scientific of our own profession, with our most enlightened private citizens, favour us with their patronage, seeing, as we

do, that the age in which we live is one of reform, and he who is engaged in repairing abuses in the medical art, where health and life are at stake, has undertaken a noble and invaluable enterprise, unjust in principle to no individual; but if once fully attained, must prove a great and lasting benefit to the human family.

"In the succeeding numbers of this journal we shall be indefatigable in the medical department, to recommend the following objects of reform:

"We shall oppose, expose, and denounce all secret medical associations, organized for the purpose of monopoly in teaching or practice, and the compulsory measures of obliging physicians to pay a *bonus* for joining medical societies."

The work speaks in favour of Dr. Beck: see *Lancet*, Vol. I. page 27, as follows:

"Is Dr. Hosack ignorant that before 1795 all his brother doctors in New-York were believers in contagion, and that, according to the avowal of Dr. Townsend himself, there are at this time not more than three or four contagionist doctors in that city, where we find above four hundred persons exercising the healing art? Is he ignorant that at each new apparition of the yellow fever in New-York, the number of medical contagionists have progressively diminished, until they are now reduced to three or four believing in contagion? Is he ignorant that after the epidemic of 1822, the last that afflicted that city, one of his most distinguished pupils, Dr. John B. Beck, from respect to truth, publicly renounced the doctrine of contagion? Is he ignorant that Dr. Beck has exposed with candour the motives for changing his opinion, in an eloquent and learned refutation, which he made in 1823?"

Does this look like partiality towards *Rutgers College*?

I shall also prove, that the control of the *American Lancet*, (or, at least, that part of it which relates to the secret medical associations or communications, which might tend to injure individuals or associations,) was consigned to the *fatherly care* of an association of old and respectable physicians in this city, consisting of Samuel L. Mitchill, Felix Pascalis, and Samuel Osborn: see a letter from these gentlemen in *Lancet*, No. 1, page vii. and not to the care of Dr. Anderson or myself.

The District Attorney here interrupted Dr. V. by remarking.

that it was out of order to introduce matter in an opening address, which it was not intended to give in evidence.

Dr. Vought replied, he hoped the court would permit him to lay before the jury a vindication of the course which he had believed necessary to follow, and of the objects for which that work in which the alleged libel was published, was established, with a view of showing that it was not for the gratification of malice that the publication was made. The *Lancet* was established for objects in which he (Dr. V.) felt so deeply interested that he had parted with even that which is called the symbol of professional dignity—*his horse and gig*. He made this sacrifice for the interest he felt in the advancement of the medical profession.

The Court said, it is the undoubted right of every citizen to defend himself in that mode which he believes is best calculated to make his innocence apparent; but it is not easy for gentlemen unaccustomed to the forms of procedure in judicial courts, to confine themselves within the strict boundaries of the point at issue.

Dr. Vought replied, he intended to prove all that he should state. Dr. V. proceeded to address the jury, as follows:

If the court please, and gentlemen of the jury, this is a subject of great interest to the community, and far more to myself. I consider my interest, honour, reputation, my life, and all, at stake in the decision of the question. I feel as if I had been surrounded by reptiles, watching the opportunity to sting me with their poisonous tongues. Like snakes in the grass, they have been crawling around me for years, ever ready to enfold me in their windings. The Medical Society of the City and County of New-York was at one time converted into a secret medical monopoly. Their business was done by caucusing; and when my document of complaints against their president, was handed to them, I was ordered to leave its walls; and they refused to go into business so long as I remained. They were adamant to impartial justice. I appealed to the

society for redress, for justice, and for a hearing of my own defence : it was denied me. I hope and trust I shall not have a similar cause of complaint against this court before whom I am arraigned as a criminal. The letter was read.

“ NEW-YORK, JUNE 14, 1830.

“ TO THE EDITORS OF THE AMERICAN LANCET.

“ GENTLEMEN—

“ We have received your favour of the 12th instant, informing us of the new arrangements you have thought proper to adopt, for the continuation of your journal; and of the laudable motives by which you are actuated; also requesting us to contribute by such materials as we might think appropriate and instructive.

“ The new title that you inscribe upon it indicates an operative spirit, which is felt to the quick from the *London Lancet*, but more particularly from the *Parisian*, which reviews generally the medical and surgical practice of all hospitals, as well as that of the most fashionable practitioners.

“ We observe that every where, and for a great many years back, medical journals are nothing better than a collection of memoirs or essays on professional subjects; the prominent object of which is to constitute the *Æsculapian* authorship and fame of the respective writers. Some of these productions are good; but of others we are not induced to say much as to scientific improvement. The whole is ephemeral; all, in a few years or months, is engulfed in swelled piles on our shelves by the numerical figures or data, which were perhaps even forgotten during their short interval of exhibition. Who is he in the path of science, who would place his fate, honour, and reputation in the ranks of a periodical? All these push each other out of the way; for rarely will you see the modern *essayist* on the same subject, quote or mention anew his most ancient *predecessor*! They must therefore at early time disappear, and be mingled with the dust of all periodicals; or rather like the sands of the beach, be scattered away before the winds of heaven.—*A natorum et qui nascentur ab illis.*

“ But, gentlemen, it will not be so with your *LANCET*, provided it cuts keen and pricks deep; especially, if you *analyze* and *review* the scientific, systematic, botanic, and improved practice of our own days, and compare it with the old practice. Nothing is more common, now-a-days, than to hear of the sudden death of a man, young and strong, who had just been cured of a most violent chronic rheumatism, and the like! Above all,

gentlemen, permit us to recommend to you to hold up the necessity of freedom in medical instruction, unshackled from the forms of privileged professors; because emulation is then never fostered and promoted; science is best obtained and diffused in the ranks of equality, in which the nation herself impels every one to become the first. Oppose, also, the existence of all privileged medical bodies, organized as grand juries over the profession, whether for science or for morals. Such tyranny, in a land of liberty, cannot be countenanced. We would as readily be under the authority of a capuchin convent, or the intrigues of the inquisition; for even there we could relieve ourselves by *hypocrisy* and *duplicity*; means, which we, as physicians, absolutely reprove. Expose, also, by well authenticated facts, the arts of secret associations for *medical sectarianism*, by *selected medical caucuses*, with every departure from medical courtesy, policy, and ethics.

"Under such principles and rules, we doubt not but you will meet with encouragement and success, not only by our feeble help, but perhaps from that of many more who are better able to observe and select the materials and means of elevating the medical character of the proud and populous city of New-York.

"With friendly feelings, and esteem, &c.

"SAMUEL L. MITCHILL.

"FELIX PASCALIS.

"SAMUEL OSBORN."

It will also appear, in an extra, of which I acknowledge myself to be the author, addressed to the volunteer contributors of the American Lancet, written and printed in Auburn, Cayuga county, and submitted to the examination of two of the contributors in that place, Drs. Smith and Pitney, that no satirical motive against individuals, was designed by me; but, on the contrary, that the general interest of the medical profession be made the whole object of its editor and proprietor: see Extra, page 195.

The Court said, it would perhaps tend to shorten the opening, by considering that there were but two things necessary to rebut: first, the charge made, that the publication was libellous, within the meaning of the law; and next, that the defendants are the authors of it.

Dr. Vought proceeded with his address to the jury, and the court permitted him to continue.

"AUBURN, Cayuga County, September 25, 1830.

"To the following gentlemen, who have volunteered their services as contributors to the American Lancet, late New-York Medical Inquirer, viz :

"*City and County of New-York*—Samuel L. Mitchill, Felix Pascalis, Samuel Osborn, William James Macneven, Valentine Mott, D. M. Reese, J. F. Schroeder, Samuel Akerly, M. Hoit, C. A. Lee, James Hart, William Anderson, G. E. Harrol, C. C. Yates, Z. H. Harris, J. G. Vought, William Grayson, James M. Pendleton, B. Ober.

"*County of Albany*—Z. W. Lay, A. March.

"*County of Oneida*—Alexander Coventry, John McCall, P. P. Batchelder, Thomas Goodsell, J. N. Meacham.

"*County of Cayuga*—J. H. Smith, Joseph Cole, Joseph Pitney, Ira Doty, Curtis C. Cady, C. Waldo.

"*County of Seneca*—Caleb Loring, G. L. Rose, S. V. R. Bogart, Daniel Hudson.

"*County of Ontario*—William Frisbie, Ralph Wilcox.

"*County of Wayne*—J. B. Pierce, N. Peck, Levi Gaylord.

"*County of Livingston*—E. P. Metcalf, E. Hills, S. Daniels.

"*County of Genesee*—H. H. Webster, T. H. Woodruff, S. O. Almy, A. Wilcox, A. R. Butler.

"*County of Erie*—J. Trowbridge, John E. Marshall, Aaron Long, Orlando Wakelee, L. & P. P. Spalding, C. Chapin.

"*County of Otsego*—Benoni H. Marks.

"*County of Monroe*—J. B. Elwood, Gideon Tabor.

"*County of Niagara*—John S. Shuler, J. R. Skinner, H. Maxwell.

"*County of Tompkins*—C. P. Heermans.

"*County of Onondaga*—Richard R. Davis, A. S. Ball.

"*County of Greene*—E. Pierce.

"*County of Chautauque*—Vine Elderkin.

"*County of Yates*—Lewis A. Birdsall.

"*County of Madison*—John Payne, Stillman Spooner.

"*Boston, Mass.*—John C. Warren.

"*Philadelphia, Pa.*—John Eberle.

"*Mossmouth, N. Jersey*—J. B. Throckmorton.

"*Cincinnati, Ohio*—Joseph W. Hageman.

"*New-Haven, Conn.*—William Tully.

"*West Indies*—William Stevens.

"These observations are respectfully addressed, and also to those gentlemen in different parts of the United States, who will hereafter unite with the above-named members of the medical profession. Among you, gentlemen, are our aged, experienced, enlightened, and liberal brethren, wholly independent of the medical quarrels and animosities which have existed between the two medical colleges in New-York. You are among those of our profession who know not what it is to stray from the path of rectitude by rewards and promises," &c. (See the Extra, page 195.)

The Court said, it is quite immaterial whether they were but two, or were fifty editors, however respectable the character of each might be; and with regard to the absence of Dr. Vought, it made no difference in the case; the absence of an editor does not alter the case: he had only to sail over to Brooklyn when a libel was about to be published in his paper.

Dr. Vought proceeded, and said he was in Canada, and not in the United States.

And again in the same extra, pages 197 and 200, which was read.

I have yet another reason to advance, if the court please, why I have individually, and with my own private means, commenced and continued the publication called the American Lancet, late Medical Inquirer; which reason may become a circumstantial if not a positive evidence, that some of the gentlemen who have arraigned me before this tribunal, have done so from malicious motives, to satisfy an old grudge, and to wholly ruin me in the estimation of the public. If malice is the question, the balance is much in my favour.

In 1825, I came to this city, almost a perfect stranger, and commenced the practice of my profession, in a quiet, unobtrusive manner, with a determination not to interfere with the medical quarrels in this city. After one or two years, I began to do a little business to support myself and family in a humble station. I then applied to the Medical Society of this city and county, (after filing my diploma, according to law,) for membership, which was refused, for reasons unknown to me. In

January 1828, I sent for the then President of the Medical Society, to consult with me, on the case of a patient which I had attended, for five or six days. He came to see the patient, but instead of consulting with me, refused to see me, and prescribed for the patient himself.

Considering this so gross a breach of medical ethics, I asked of him, by letter, the reasons for his conduct, whose answer only added insult to injury. I then again threw my documents before the Medical Society, to claim membership and redress, which were again refused. My documents were concealed as often as I presented them, and when I personally appeared, to claim my right as a citizen, I was ordered out of the society, and deprived the liberty of making my own defence.

It was then necessary to give the public a statement of my situation, which I did, in a paper called "*Exposure of Facts*," and which mentions the names of some of my complainants. I must beg the favour to read a portion of this document, page 1. Then in a letter to Dr. Cock, President of the Medical Society, after stating to him the reasons why I was rejected, I proceeded as follows, page 3. (For the foregoing, see Appendix [A] in this pamphlet.)

The District Attorney objected to this proceeding, and the court overruled this reading.

Dr. Vought continued with an extempore address to the jury.

He then turned to that portion of the *Lancet* which is complained of, as so great a grievance to the gentlemen who were supposed to belong to a certain secret medical association in this city, which is a communication in No. VIII. pages 193 and 194.

The whole of the article is not in the bill, which alters the face of it. I would be glad to learn who are the *divers others*.

The District Attorney said it was an unmeaning expression.

Dr. Vought said, there was no unmeaning expression in the *Lancet*, and he hoped there would be none in the bill that had arraigned him before this court.

The following is the passage omitted:

"But I am more particularly opposed to this society from the injury which the medical college in Barclay-street may sustain. A report is prevalent that the president, trustees, and professors of that college are among its members. This report, whether true or false, has the effect to organize an opposition to that college, which will result in sending pupils to other colleges, and withholding from that the patronage and support necessary for its existence."

Before I proceed to act upon this portion of the *Lancet*, which is charged to be libellous, I will point out a portion of the work, since this publication, for the consideration of the jury, which may lead to prove, that in any case, where we have been misinformed, we are willing to make both an acknowledgment and also an amendment for our indiscretions. This has been offered to the gentlemen, who, it is said, think themselves wrongfully injured by the *Lancet*. They, however, have not called on me, nor do I know they have upon any other person concerned in the *Lancet*, for redress. If they had done so, their request might have been received with attention: see No. XI. page 269, which says:

"Now we beg explicitly to state and be understood, that nothing is more foreign to our views and policy, than to attach blame or implicate any man contrary to his merits and conduct, and without the fear of grand jurors, while we are conscious of seeking the interest of the community. We say, that the gentleman may have an opportunity by us, to come forward and declare his disconnexion, or his never having been one of such a body, upon the condition, however, that he informs us of all he knows about said society, we will then exonerate him from the charge, and promise to bring him off with honour."

And also my displeasure about the insertion of other communications, during my absence: see page 271:

"During my absence from the city, some communications, addressed to the editors of this work, have been admitted in its columns, which are said to exhibit private enmity against individuals in this city; though I

attach no blame to those contributors, who were friendly enough to offer their opinion, on admitting articles of doubtful propriety.

"All who write for the American Lancet, are to understand, that their private animosities are not to be vented under fictitious names in the pages of this work, so long as one who is concerned in publishing it, labours solely for the general interest of the medical profession. The American Lancet was never by me designed to record slander, or be made a tool for those who dare not meet their adversaries, (either professional or otherwise) face to face."

As a further evidence that a secret medical association existed in this country, and its branches are spread in other places, and in this city, which admits of just grounds to expose the same, see a printed document from Philadelphia, addressed to the editor of the New-York Medical and Physical Journal, January 29th, 1830, of which the following is an extract. (See Appendix [B] of this pamphlet.)

The District Attorney objected to its being read, and was sustained by the court.

Dr. Vought continued.

I ask for nothing but justice, and trust that this jury of my country, in this land of liberty, will grant my request. I rest my cause upon my innocence, and upon the facts that I shall prove.

Dr. Vought closed here.

Dr. Cox was called up and sworn. He was asked whether he had heard of the existence of a secret society of physicians in this city; the District Attorney objected to this question.

Mr. Maxwell replied; he said, if the defendants had made the statements complained of in good faith; if they had reason to believe that a secret society was in existence; they were justified in making the statement, with a view of eliciting the facts connected with the belief. In support of this view of the case he cited the case of *Delano versus Jones*, 1st Russell on Crime, page 335, and 4 Espinass, 191. In this case it was holden, that as the libel was published in good faith, with a view of eliciting information relative to the charge made, that therefore

no prosecution could be supported. Where, said the gentleman, is the difference? Here we have two respectable medical gentlemen who had reason to believe that a secret society existed in this city—an association of a character which presented obstacles to the advancement of all persons not within its circle—meeting and opposing them at every point with all that efficiency which unity of design and organization conferred on them. The defendants believing these things, make the inquiry, for if your Honor examines the phraseology of the article complained of, you will perceive that it is not expressly said that the society did exist, but merely asked for information on the subject. And if they have made a *mistake* in giving the names of persons who were not members, I trust they are not for this act to be tried under criminal law. I now contend, if it please the court, that I have a right to put the question to Dr. Cox, with a view of showing that it was generally believed that there was such a society in existence. The defendants were materially interested in ascertaining the truth or falsity of the existence of such a society, and surely this in itself fully justified them in offering this testimony.

The District Attorney said his objections were two-fold, even if your Honours, said he, had not decided against the admission of this testimony. What could be asked the witness whom they have called? He could only give them reports, which were, perhaps, industriously circulated, and these surely could not be testimony. But your Honours have decided, that no evidence could be received unless the connection of Drs. Beck and Ludlow with this association could be shown. There is no analogy between this and the case quoted by the opposite counsel; in that, there was no assertion made that the party had been guilty of bigamy, but a mere seeking for evidence on the subject. It is notorious that a gang called the Forty Thieves were organized in this city, and if an editor had thought proper to publish my name and that of his Honour the Recorder as members of the band, when we could show

we were not members, would not that, I ask, be libellous as regarded us? The Court decided with the District Attorney.

Dr. Cox recalled and examined. Knows Dr. Anderson; knows him as a respectable physician; a society of the nature described, the witness would consider injurious to him in the way of his profession; if aware of the existence of such a society, he would feel himself bound to expose it. Mr. Maxwell here said, that though he was precluded from introducing positive proof on the subject, it should be taken for granted from all that appeared, that such a society did exist. The examination resumed—He would consider it meritorious in the editors of the *Lancet* to expose such a society. In reply to the District Attorney, he said he was not a member, and if his name was given as one, he would consider it as a libel.

Mr. Maxwell—Did you speak lately to any of the members of this society?

D. Attorney—I object to this.

Mr. M.—How many members are there?

D. A.—I object to this.

Mr. M.—Do you know such a society exists?

D. A.—I object to all such questions. Surely the gentleman knows that this is not the usual course of professional procedure.

Mr. Maxwell sat down and called Dr. Beck—examined. Witness feels injured at being named as a member; a society of this nature would be highly injurious to young men in the profession who were not members of it; by Mr. Maxwell—Do you believe that such a society did exist? The District Attorney objects to this. Mr. M. contended that as a cross-examination he had a right to put the question. The District Attorney replied that this was new matter, and therefore was not within the line of cross-examination. Mr. Livingston contended it was not new matter; it was but following up that question put on the first day by the District Attorney, that is, “Are you a member of this society?”

The Court decided with the District Attorney, and Mr. Maxwell excepted to the decision.

Mr. Maxwell. Did you ever declare you believed that such a society existed in this city? The District Attorney objected to this. Mr. M. contended that he had a right to put the question with a view of testing the veracity of the witness, as on the former examination he said he did not believe such a society existed—the witness explained the answer he gave; he said that his reply was, that he did not believe a society of the precise nature described did exist in the city.

The Court decided that Mr. Maxwell might put the question.

Mr. M. put the question thus—"Have you ever said that a secret society existed in this city, which was extremely pernicious to the interests of such physicians as were not members of it?"

The Court decided that this question was too general.

Mr. Maxwell excepted.

Witness knows Doctor Manley, and has the utmost confidence in him; would not however surrender his own belief to that of Dr. Manley; witness and Dr. Manley had several conversations relative to the existence of a secret society; "Did you ever furnish a list of names to Dr. Manley, as those of members of a secret society?" "Do you mean a written list?" "Either." The witness hesitated, and Mr. Maxwell repeated the question. The witness said, it was matter of general conversation amongst the physicians of the city that a society did exist; witness did mention the names of several persons whom he believed members; did not know of his own knowledge that these persons were members; the opinion given to Dr. Manley of this society, and the opinion which witness holds of all secret societies are, that persons who are united are supposed to have a community of interests, and when this union is a secret one, they may be supposed to [be able to effect it with more certainty, as the persons likely to be obstacles to their views are not likely to be aware of their de-

signs ; witness does not know whether he gave the names of the persons with a view of reflecting credit or discredit on them ; does not know that he gave the names as those of persons obnoxious ; may have expressed a belief that such a society had the effect of forwarding the private interests of the members of it, in opposition to those of persons not members ; believes that if such a secret society exists, it ought to be broken up ; has complained in general terms that all secret societies have an injurious effect ; believes, in fact, knows, that a secret society has been in existence.

Dr. Ludlow examined. Does not know that he has been proposed as a member, nor that he has been rejected. By Mr. Maxwell—Did Dr. Stevens ever tell you that you were proposed as a member ? the District Attorney objected to this. Witness saw the libel about the time it was published ; never went to the editors to have the mistake relative to his name corrected ; went to the grand jury and there complained, his motive for this was to protect himself ; he thought that the libel, if believed, was likely to injure him in his practice as a physician ; knows Dr. Anderson to be a gentleman of respectability in his profession, and does not believe he had any malice towards witness ; the witness made the same replies with regard to Dr. Vought.

Dr. Beck recalled. Believes that Dr. Vought had no malice against him ; it is possible that Dr. Anderson may have had some ill-feeling towards witness ; his reason for believing this is, that he criticized two works written by Dr. Anderson, in consequence of this a coolness ensued, but they had been on good terms since, but recently witness said he heard that Dr. Anderson had made use of expressions against witness. [Dr. Anderson here mentioned through Mr. Maxwell, that he had not made use of the expressions charged.]

Dr. Stearns examined. Quest.—Do you know who is the author of the communication ? The witness paused, and asked the Court whether he was obliged to answer this. The Court said,

No, if it criminales yourself. Declines answering ; it is not written in Dr. Anderson's hand writing or Dr. Vought's ; knows Dr. Anderson as a gentleman of respectability in his profession as a surgeon ; knows Dr. Vought also as a respectable professional gentleman.

The defence having rested here, Mr. Livingston said, before this case goes to the jury I wish it known to the community, that we are here prepared to prove all that we have alleged in the libel ; that there are near two hundred witnesses in the court to this point.

The District Attorney said, that he thought it improper to make such a statement before a jury after the decision of the court ; he could, if he chose, make an opposite statement ; he could assert, that if the rules of this association could be laid before this jury, they would perceive that it is formed for the most useful and scientific purposes.

Mr. Maxwell rose to address the jury. He dwelt at some length on the importance of the case ; he was satisfied, he said, that his clients might with safety entrust the case to an independent jury, against the combination of a body of physicians, or any other powerful body of individuals. Although not engaged for Dr. Vought, he has now done me the honour to confide the summing up of his case to me. I shall now present the case of Dr. V. as being equally meritorious with that of Dr. Anderson. Both of these gentlemen ought to be acquitted : both ought to be justified by a jury of their country, as they stand already justified by the good sense and candour of a great majority of the most respectable men of the profession.

This is not the first time attempts have been made to intimidate public spirited men from a discharge of solemn duty. History furnishes shocking instances of the abuse of the criminal law by powerful combinations of the ambitious or profligate to suppress the truth, or punish those who dared to publish and assert it. The time was even in this free country, when a man found no protection in the publication of the

truth, though it unmasked the treason or profligacy of public servants, or branded the violator of private life, however pure the motive—however justifiable the end of publication. I thought that ungracious time had passed away—that the statute-book had demolished so foul a foe to freedom and free discussion.

We come into this court with a desire to *prove the truth*—the existence of a secret society, whose objects we believed to be pernicious—whose influence was unseen, unknown, and yet felt, feared, and deprecated by the profession.

We were prevented from proving *the truth* of the matters alleged to be *libellous, wicked, and false*. This decision of the Court I protest against as being contrary to constitutional principles. The fact of Drs. Beck and Ludlow not being members is admitted; but this fact is a mere incident, and collateral to the grand and controlling ground of defence, that a secret combination existed amongst physicians, which the defendants promulgated to the world, and which, having the control of a free press they were bound to do. [Here Mr. Maxwell argued that the matters excluded were essential to the defence.]

But we have been able to lay enough before you to enable you to draw your own conclusions. I must ask you, gentlemen, to give your calm and deliberate consideration of the facts and all the circumstances which have been laid before you, and to the law as applicable to the case; you are the sole judges in this case of the law and the fact. You are not entirely to disregard the opinion of the Court, whose knowledge of criminal law and humanity in its administration are well known; but you are the sole judges, both of the law and the fact; you alone are responsible to the people for the verdict to be returned.

Gentlemen, the first point for consideration is, whether there is proof of the publication. Admitting this to be a libel, admitting it to be false and malicious, yet there is no evidence

that Dr. Anderson was accessory to its publication. It is in evidence that Dr. Vought was absent from the city when the publication was made and until after it had been made, and here you have before you the true authors, the printers and the publishers of it. The allegation is, that the defendants caused this matter to be written, printed, and published; now I ask you, is there any evidence that they caused it to be written, printed, or published? So far from this, it is before you that neither of them knew anything about it until after it had appeared in print. It is proved by Dr. Stearns, that the original was not written by Dr. Anderson—it is proved that the list of names was furnished by Dr. Osborn. Dr. Anderson it is proved, had no control over the publication; he was in the establishment merely as an assistant editor. Now as to the printing, he had no control over it. Dr. Vought with whom Mr. Seymour had made the contract for printing, and whom Mr. S. considered himself responsible to, was absent from the city. But besides you have it in proof before you, that Drs. Pascalis and Osborn had the sole power of inserting or rejecting communications. It has been sworn before you, that Dr. Anderson had no volition on the subject of inserting the communication in question: so with respect to the printing and writing, he is completely exonerated. Now as to the publication, have you the slightest proof that he ever distributed a single copy? No—the only proof relied on is, that he was an assistant editor. He had no control either as to the writer, or printer.

As to Doctor Vought, I admit that an editor is liable for any thing which appears in his paper, if he has the control of it; but here the general rule cannot be applied, as it has been shown that Dr. Vought was absent, and it has been shown that during his absence his character as editor was superseded. Is it not monstrous then, that you should hold him responsible—he who had never seen the article until after it had appeared in print, and who had surrendered his authority before its appearance to persons who are before you, and who

are amenable to their country if aught there is in the allegations for which they ought to be held responsible. [To show the necessity of strict proof in case of libel, Mr. Maxwell cited the case of *Harding versus Greening* from *Espinasse's Reports*.] Now in this case, he asked, is it not much stronger? Dr. Anderson had no control over this publication in the absence of Dr. Vought; and the latter, in surrendering his authority as editor, did not give to Drs. Osborn and Pascalis any authority to publish a libel against Drs. Beck and Ludlow.

But the second ground of defence is, that the publication is not defamatory. If read and construed fairly, there is nothing in it which brings it within the definition of a defamatory libel. With regard to one branch of the case I must put you on your guard. If an injury has been done to Drs. Beck and Ludlow, it can only be in reference to them as private citizens. The indictment does not contain any colloquium. It is not charged that it was published of them as physicians—it contains nothing which charges that the publication has injured them as in their profession as physicians: now if you believe that there is nothing defamatory in the publication as regards their private capacity, the defendants must be acquitted. With regard to this you may take their own opinions.

In the opinions of some honourable gentlemen, some things in this secret society are perfectly right and proper, while in the minds of other persons equally honourable, the same things are deemed improper and pernicious. Among the names of gentlemen given here as members of this association, are to be found those of Dr. John A. Smith, Dr. Stevens, and several other gentlemen, who would never belong to any society they thought unworthy. You find many highly respectable men, who think there is nothing wrong in belonging to a secret society; while on the other side, you have respectable men who think it wrong to belong to any society which is secret in its nature. It is a mere matter of opinion. Now a matter of opinion, which this evidently is, and expressed to

be in the publication, is not a fit subject for a criminal prosecution. On the face of the publication I deny that there is any thing more than an expression of opinion, or a supposed state of facts; they merely state that a secret society did exist: there is no assertion that the members had fraudulently associated, or had associated for unlawful purposes, the tendency of the society is reprobated. In support of the argument that the statement of a fact, and the drawing an erroneous opinion from it, is not a subject for criminal prosecution, the gentleman cited the case of *Van Rensselaer versus Dole* from 1st Johnson's cases. The counsel on the other side will ask, are men to be thus held up to the public as conspiring against the common good: I answer with the judge in the case I have just cited, that the mere expression of an opinion where the true grounds of that opinion are given, is not punishable as a libel. (Here Mr. Maxwell illustrated his argument.) My clients expressed their opinions, giving at the same time the facts upon which they founded it, so that every individual might judge for himself; my clients had a right to express an honest opinion, when they laid the truth before the public. They were bound as faithful watchmen, to give information to the profession, that such a society did exist—and to warn them that there was danger to be apprehended. If any of us were aware that some members of any particular profession had instituted a secret society from which some of the members of that profession were excluded, would we not naturally infer that there was something objectionable, from the fact of secrecy being imposed; and if such an opinion was publicly expressed with good motives, ought the writers to be subjected to a criminal prosecution? (In support of this argument the gentleman here cited several authorities.) Now gentlemen, continued he, is there any thing in the alleged libel, save a charge that the members of the association were unsocial, that they did not choose to mingle with all the members of the profession to which they belonged? There is no more in

the alleged libel than an assertion that some individuals were associated for the purpose of advancing their own interests ; a matter in which some persons think them right, and some wrong. Another ground upon which I rely for the acquittal of the defendants is, that there was no malice, that the names of Drs. Beck and Ludlow were given by mistake, under an impression that they were members. It is shown to you that my clients had no malice towards Drs. Beck and Ludlow. Before you can convict them you must make a return on your oath, that these two names were in the words of the indictment, *wickedly and maliciously* published. Two things the jury have to find, before they can render a verdict of guilty against my clients—they must first find that the publication is false, and then, that it is malicious ; because the mere fact that a statement is false, is not sufficient ; the ingredient of malice must also be proved. I will now ask if every step taken by these men does not prove that their intentions were pure ? they exhibit no bias in favour of either medical college, but are entirely independent. They opened their columns to essays on all scientific and medical subjects ; and to all matters likely to benefit the profession to which they belonged. Only a few weeks before the publication of the article complained of, you see in the same work a high, and I am sure a deserved eulogium on Dr. Beck, against whom we are here charged with holding malice. In Dr. Vought, is to be seen an instance of a man so entirely devoted to the interest of the object in which he is engaged as to have been induced even to dispose of his horse and carriage, to enable him the better to support the work—to aid his younger brethren in overcoming the obstacles which present themselves before young men in entering the profession. Drs. Beck and Ludlow themselves testify, that Dr. Vought had no malice towards them ; with respect to Dr. Anderson you have to be sure, heard from Dr. Beck that he had heard some idle stories : I have no doubt tale bearers did go between them, but my client, who is a young man who holds a very high rank

in his profession, disclaims having used the words imputed to him. [The gentleman here proceeded to give a rapid view of the principal parts of the evidence, to show that there was no malice.] To prove further said he in continuation, that the publication was made in good faith and without malice, you have only to recollect, that both my clients are members of the medical profession, and therefore deeply interested in the truth or falsehood of the reports, that the society did exist.

Mr. Maxwell examined at length the law of libel, and the principles applicable to this case.

Could these gentlemen have a better mode of ascertaining the truth or falsity of the reports in circulation, than by thus publishing them, and thereby giving to the parties named an opportunity of setting the public right? You see, gentlemen, that in a succeeding number, the editors avow their wish to publish any correction of the statement which might be furnished to them.

Now, gentlemen, I will request your attention for a few moments longer. The law requires not only that a publication shall be false, but it must have the additional character of malice to bring it within the definition of libel. In proof of this opinion, I will read you the opinion of an able lawyer, expressed by him in defending the rights of the press. [The gentlemen here read from 3 Johnson's Cases, page 354.] And now, gentlemen, I will give you the opinion of one of the sages of the law, that you may see how far it coincides with that of General Hamilton. [He here read from 2 Kent's Commentaries 12, and the case of *Broke versus Bolingbroke*, quoted in a note, page .] This, continued the gentleman, is not only the established opinion in this state, but also in other states. [Here he cited the opinion of Chief Justice Parsons, of Massachusetts, in the case of the *Commonwealth versus Clapp*.] The same also holds in the State of Pennsylvania, as will be seen in 2 Binne, page 517, *Brackenbridge*, justice, in the Court of Errors. All these conclusively show,

that the malice, not the falsity or mistake, connected with the publication is that which constitutes the libel. But in addition to all these authorities, I will read you a recent opinion given in our own state, one which has become embodied in the law of the land ; a law to restrain which would fix a shackle on the people more galling, and more destructive to their liberties than any other which could be placed on them. [The gentleman here read the decision of Chief Justice Savage in the Supreme Court, in the case of *Root versus King*, 7th Cowen, and of Chancellor Walworth in the same case, 4th Wendall.] There is another case to which I will refer you ; it is that of the *People versus Coleman*, the editor of the *Evening Post*, to be found in the City-hall Recorder. Here the editor charged a citizen with kidnapping, an action was brought, and the defendant relied for his defence on the fact that he had reason to believe the facts were, as he stated, and the Mayor decided that the defence was good. It is given in evidence, my clients have avowed, and I now avow, that we have no possible malice against any member of the medical profession ; and can it be possible that any arguments to be used by my learned friend, the District Attorney, whose eminent talents I so well know, can induce you to believe we had malice ? Can you believe that two gentlemen, holding the rank they do hold in the medical profession, could be induced to become the base libellers you must believe they are, before you convict them ? Surely not, so well satisfied am I that such a result cannot follow, that I leave the case before you with the greatest confidence in your discrimination and independence of mind.

The District Attorney, *Mr. Hoffman*, addressed the jury in a fluent and eloquent style. He said, he would not keep the floor as long as *Mr. Maxwell* had, to tire their patience, notwithstanding he spoke for near an hour. He would convince them, by the testimony given, that the defendants were guilty of libellous conduct in the *Lancet*, as respects his clients, *Drs.*

Beck and Ludlow, who were gentlemen of high standing in their profession, and who had sustained injury in consequence of being mentioned in the *Lancet* as two out of the seventeen charged as being members of a secret medical association. He quoted the different law cases which Mr. Maxwell had advanced to convince the jury that malice was necessary to be proved, to convict a criminal for a *libel*, and argued that those cases were unlike the present case under consideration, and that it was not necessary to give direct proof of malice to convict the defendants in this case.

He said he respected the opinion of this court as much as any other, and hoped the jury would do so also in relation to the charge this would receive from it. I was aware, said he, of the natural tendency which the case would take by trying the defendants separately; that the one might turn round and testify for the other: and no sooner did Dr. Osborn become acquitted, than he gave his testimony promptly in favour of the other two.

As to Dr. Vought, his being disappointed in his counsel to aid him, has caused me to give him more scope than I ever have an individual before, on law points, in a case of this nature: he has had great latitude granted him by the court, which may have operated in his favour. The District Attorney spoke at great length on this point, and finally said, Doctor Vought has read copiously in the *Lancet* to convince the jury that it was an independent work, and that Dr. Beck's interest was as much considered as that of many others; and a certain portion of it Dr. Vought read to the credit of Dr. Beck; notwithstanding Dr. Beck's testimony proves that the whole drift of the *Lancet* is contrary to his interest and against the interest of the college to which he belongs. Therefore, I will now read a few lines in the *Lancet*, which may alter your opinion as respects its partiality. (See the *American Lancet*, p. 150.)

Dr. Vought rose and said, if the court please, I object to the District Attorney's reading any portion of the *Lancet* that

I did not read in my opening, unless he will allow me to argue on the portion that he wishes to read.

The *District Attorney* said he had allowed Dr. Vought to read at great length what he pleased, and thought it unfair that Dr. V. should deprive him of reading one or two lines.

Dr. Vought said, if your Honour will allow me to argue on the points he wishes to read, and give me a chance to rebut the impression they may make on the minds of the jury, he may read the whole *Lancet* if he please, with all my heart; but on any other ground, I object to his reading.

The *District Attorney* laid down the book. He soon after closed his speech by saying, that the jury must, according to their duty and the oaths they had taken, find the defendants guilty of a libel. It is left to the court to impose the penalty.

[For what the *District Attorney* wanted to read, see Appendix [C] in this work, consisting of six *queries*, which no gentleman, either in the Barclay-street College, or in the Medical Society, have as yet thought proper to answer. We are willing these queries should be read and answered to the full satisfaction of the seventeen alluded to in the *Lancet*.]

The Recorder, in his charge to the jury, gave a lucid and interesting exposition of the law of libel. He considered the subject from the earliest period, and traced the times and causes which moderated its rigour. He gave his opinion of the principles upon which the jury should determine the matter submitted to their adjudication: he held, that if they were of opinion, that the libellous matter was false as regarded Drs. Beck and Ludlow, (of which he professed himself to have no doubt) that it was then their duty to raise an inference that it was malicious; that the inference of malice must be rebutted by the defendants; that if the jury believed the defendants had no bad intention in their hearts towards Beck and Ludlow, or in other words, had rebutted the inference of malice towards them, at the time of the publication, they were not guilty, and it would be the duty of the jury to acquit them; but that, if they be-

lieved the defendants had not sufficiently explained the publication, and rebutted the inference of malice, it would be their duty to convict, however painful and disgraceful such a conviction might be to the very respectable defendants.

The jury retired, and after an absence of something short of an hour, returned a verdict of *not guilty*.

INDICTMENT.

City and County of New-York, ss :

The jurors of the people of the State of New-York and for the body of the City and County of New-York, upon their oath present, That John G. Vought, late of the first ward of the City of New-York, in the County of New-York aforesaid, Physician, William Anderson, late of the same place, Physician, and Samuel Osborn, late of the same place, Physician, being the editors and proprietors of a certain pamphlet entitled "The American Lancet," and being malicious and evil-disposed persons, and wickedly and maliciously contriving and intending one Edward G. Ludlow, of the said city, Physician, and John B. Beck, of the said city, Physician, and divers other persons, to detract, scandalize, and vilify, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and thirty, at the ward, city and county aforesaid, with force and arms, wickedly and maliciously did write, print and publish, and cause and procure to be written, printed and published, in the said pamphlet, entitled "The American Lancet," a certain false, scandalous, and defamatory libel, (purporting to be a communication to the editors of the American Lancet) of and concerning the said Edward G. Ludlow and John B. Beck, and divers others, and containing the false, scandalous, malicious, and defamatory words and matter following, that is to say : "Communication," &c. (see page 3.)

APPENDIX.

[A]

" *To the Editor of the ' N. Y. Medical and Physical Journal.'*

" The last No. of the ' North American Medical and Surgical Journal,' published in this city, ' under the *auspices* of the Kappa Lambda Society of the United States,' contains an ' article,' entitled ' Medical Politics,' comprising both an angry philippic against *you*, for having ventured to notice, without anathemas, a pamphlet entitled '*A report of the trial of an action for libel, in which Dr. George McClellan was plaintiff,*' &c.—and also a furious diatribe against the offending pamphlet and its ' reporter.'

" The incoherence of this ' article,'—the absence of all specification in its charges,—and the manifest heat in which it has been written,—ought to convince all observers that it has been prompted by such excessive irritation as could be caused only by the touch of unwelcome truth.

" The alleged misrepresentation must be in the following passage, viz :

" ' This society publishes a journal or medical review, purporting on the face of it to be fair and impartial. For a considerable time after the establishment of that journal, it sailed under false colours, bearing the names of certain respectable men, as individual editors, while in fact it was published by the secret-oath society. The impartiality of a *review*, commencing with a display of candour like *that*, and conducted by fifty physicians or more, bound together by a solemn obligation of mutual commendation, can be readily appreciated.'

" Now, every word of the above citation, is easily shown to be true.

(1) That the society publishes a journal. To deprive the editors of the benefit of a quibble which would distinguish between the publication of the journal ' *by*,' and its publication ' *under the auspices of*' the association, I refer to their ' preface to the *fourth* volume,' in which the editors disclose the existence of the Kappa Lambda Society, for ' several years' then past; the branches of which, ' established in various parts of the

country, acknowledge a mutual connexion;—and where the same editors also declare that the ‘Philadelphia Kappa Lambda Society, from its central position, was entrusted with the publication of a medical journal,’ &c. ; and further, that ‘this journal is the fruit of the authority thus delegated,’ &c.

“The North American Medical and Surgical Journal has been, therefore, from first to last, published by the Kappa Lambda Society.

“(2) Does it not ‘purport on the face of it to be fair and impartial?’ It may be presumed that no proof of this allegation is wanted.

“(3) Did it not for a considerable time practice some sort of *disguise* or *concealment*, to which the common figure of ‘sailing under false colours,’ is aptly applied? Did it not bear the names of respectable men as individual editors,—and was not the society, which *in fact* published it, fairly designated a ‘secret-oath society?’

“The journal *did* then for a considerable time, *videlicet*, nearly two years, carry the flag of Dr. Hodge, &c. as private adventurers merely and sole owners; but the fact is now undeniable that Dr. Hodge, &c. were not *proprietors*, as they publicly claimed to be, nor sole editors or conductors, as they professed; but agents for proprietors, a committee merely, speaking only as they were ‘permitted’ (as they have since declared) by their principals) whose names and whose qualifications for the critical judgment seat, are still undivulged and unknown to the public.

“That the *true colours* were not hoisted till October, 1827, seems therefore to be indisputable.

“That the association is held together by the obligation of an *oath*, was established by the solemn affirmation of one of the same editors, as mentioned in the pamphlet, and not denied. His testimony is positive; and his integrity and intelligence unquestioned.

“That the society is a *secret* one seems scarcely a subject of doubt; yet the ‘committee for publication,’ in their recent ebullition, seems to deny it.

“The very existence of the society,—although its ‘branches were established in various parts of the country’—was entirely concealed until October, 1829, when the ‘committee’ (in the preface to the 4th volume) made a *restricted* disclosure respecting it. The whole amount of the disclosure is, that the society had existed, and was extended, as above cited,—that its founder was Dr. Brown,—that it was intended to be co-extensive with the Union,—that its objects are to elevate the character of the medical vocation, by inculcating a higher standard of excellence in both the professional and ethical relations and duties of physicians,—and that the journal had been established, &c. as above mentioned.”

NOTE. *From a report of the trial of an action for libel, published in Philadelphia in 1829, in which Dr. George McClellan was plaintiff, and Dr. Francis S. Beattie was defendant, on the evidence of Dr. William E. Horner, (see page 57) as follows:*

"This gentleman is *said* to be a member, as are also Dr. Ritchie and Dr. Coats, of an association called the Lambda Kappa Society. That they are positively so, cannot be certainly pronounced, because the organization of that association is *secret*, and membership may be suspected, but not absolutely known. This society comprises probably a great deal of individual respectability, being composed of more than fifty, perhaps seventy, physicians of this town. Its existence, however, is an opprobrium to the medical profession, and its tendencies manifestly evil. Dr. Benjamin H. Coates, in the course of an examination, on his solemn affirmation, in a cause recently tried, was interrogated as to some matters connected with the character of this association. He at first declined giving any information; but being reminded of the compulsion under which he stood, he let out these characteristic particulars, viz.: that the association is a *secret* one, and that the members, on being admitted, take an oath or solemn affirmation, binding themselves to mutual, but secret aid and support. In what manner they pass their time at the meetings of the association, or how their common funds or united efforts are applied, has not been made known.

"Surely no honourable purpose in professional life can require the aid of such a combination. Men may find advantage in secret societies, for personal and gainful ends; but science, knowledge, virtue, character, must flourish best in open light. In a profession in which success depends on talent, education, and industry, concealment of every kind has long been resigned to quacks, as fitting the degraded means by which persons thus denominated, pursue their aims. In this enlightened age, in this intelligent and virtuous community,—that well educated members of one of the proudest of all professions, should seek for means of advancement in secret associations, and secret oaths of support—cannot but excite our special wonder. The proper course for a physician is easily designated. To study the science thoroughly, to practise faithfully, to deal with his competitors candidly, and to publish in some form or other whatever additions to the common stock of medical knowledge he may chance to acquire,—such is the direct road to eminence, lying broadly open, and far preferable to any tortuous or hidden path that shuns the light of day. It is not difficult for one that sees even the surface of medical politics in Philadelphia, to discern some of the bad fruits of this disreputable association. Indeed examples are easily cited. When the gentleman above

named, was compelled to disclose the fact of the secret oath, &c. he added that he entertained no sort of respect for any physicians, with very few exceptions indeed, who do *not* belong to that association! Afterwards, having conversed with his friends, he thought proper to recant or explain away this rash expression; but the feeling which prompted it, and the source from which that feeling sprung, are too obvious to be misunderstood. Dr. Reynell Coates also, who gave testimony in this case, and was doubtless regarded by the jury as a perfectly impartial witness, said very frankly to a gentleman in the court room, that he was the warm personal enemy of Dr. M'Clellan, and the warm personal friend of Dr. Beattie. Now it is believed, that no circumstance can account for this enmity, except that Dr. M'Clellan is *not* a member of the Kappa Lambda Society, and falls therefore under the ban denounced previously by Dr. Benjamin H. Coates. It will be observed that this was no expression of disapprobation, but of *enmity*,—a sentiment that can not have been excited by any thing that has ever occurred in the intercourse, whether personal or professional, between Dr. M'Clellan and Dr. Coates. Dr. Beattie is a member of the association, according to the statement of Dr. B. H. Coates.

Two of the pernicious consequences of a secret cabal are thus developed—the spirit of exclusiveness and proscription that condemns or approves by the single test of fellow-membership in the secret league, is one; and the animosities, misconstructions, misrepresentations, and false estimates of character that must flow from it, are too evident to need particular indication;—the other is the doubt that must hang on all testimony borne by medical men, whether in a court of justice or in society, if it is all to be tinged or coloured by hidden partialities arising from concealed associations, and unrevealed obligations resting on secret oaths!

An association of this kind realizes all that has been urged or suggested against masonry, by its warmest enemies—without the pretence, however, of being able to supply that exercise of charity which is the real boast and virtue of the masonic institutions.

It is said that the Kappa Lambda Society has branches elsewhere, or perhaps this may be but a branch whose baleful root is in some other community. If so, the evil agency of such an instrument of mischief may be infinitely greater than is generally known. No professional character can be safe against an organized system of dispraise and injustice. This society publish a journal or *Medical Review*, purporting on the face of it to be fair and impartial. For a considerable time after the establishment of that journal, it sailed under false colours, bearing the names of certain respectable men as individual editors, while in fact

it was published by the secret-oath-society. The impartiality of a *Review*, commencing with a display of *candour* like that, and conducted by fifty or more physicians, bound together by a solemn obligation of mutual commendation—can be readily appreciated!

Some gentlemen who became members without knowing the real character of the association, have, it is said, declined to attend its meetings, but they are bound by the unlawful oaths that were administered to them there, not to expose the circumstances which move their honest disapprobation and disgust.

The honourable portion of the medical profession, ought to join, not secretly, but openly, to discountenance all such hidden contrivances to elevate particular individuals above their real merits, or to intercept the just reward of true excellence. Mutual support is due from all good men to each other, and if candour, liberality, and fair dealing be observed by the most elevated, the example will be followed by others, for the sake of appearance, at least, if not for the love of virtue. It is unquestionably so in the legal profession; why cannot it be so in the profession of medicine?

[B]

“*Exposure of Facts*,” published February, 1828.

“Painful as the task is, the necessity of self-defence compels me to expose a copy of the following letters for public perusal. The magnanimous and loyal power of the medical Society, combined with the professors of the old college, are fearful odds against one, who is only a medical man among you, almost penniless, though not entirely friendless. I feel myself a man, and as such, have always meant to show myself; and rather than be duped, misled, or silently suffer myself abused by the mighty men of my profession, I will sacrifice my health, my life, my all, in opposition to such measures. I have appealed to the hon. society for redress, and as often as my documents were presented, so often have they been meanly evaded; not even read before the society, but treated with silent *dignity*. It is true, the former president filled the chair with *dignity*; but was it not that *dignity* which many make use of as a cloak to hide their ignorance and duplicity? By some I am met with fawning treachery, which warns me of the canker in their *hearts*. I placed myself before the *heart* of the Medical Society, and found its feelings adamant to impartial justice. I now look to another source—the public *heart*, which I trust is not callous to the touch of humanity. May not the public yet learn that arbitrary and supreme as our society assumes to

be, it is only a body of trustees, and not the sole owners of medical science? Fee simple may be found in the breasts of such as make improvements in medical science for the general good of the community, whether they be in or out of the society.

" To Dr. Thomas Cock, President of the Medical Society of the City and County of New-York.

" JULY 26th, 1828.

*" DEAR SIR—*Please excuse the liberty I take in thus addressing you on a subject of no personal interest to yourself, further than as it relates to the arduous task of fulfilling the duties of the office you have aspired to, as President of the Medical Society of the City and County of New-York. It has been my fortune to be placed in friendly and honourable competition with some of the medical profession, justly enjoying eminent degrees, whose worth and talents I highly respect, and in such association and council I have felt the glory of the medical profession. It has also been my fortune to meet the reverse of the profession, and the former president who held the office you now enjoy, is one who has manifested his wisdom, first by refusing to consult with me in a case where he was sent for expressly by my consent and approbation, and secondly, by taking the patient on his own hands and prescribing, when I had been the attending physician for several days. This was done in a most ungenerous, ignorant, and insulting manner, contrary to all medical ethics; and when called on for an explanation, he added insult to injury, by plumply and falsely denying the charge. After such occurrences, his conduct towards me in the society, at the last meeting, may be easily accounted for. It may be thought by many, an improper step in me, to come before the society and claim my right of membership; but I was actuated by the necessity of self-defence on the occasion, and although I declare frankly that I meant to advance no dishonourable allusions to the society, still my disposition towards the president then presiding, was not altogether the most friendly and conciliating, for which I consider I have ample reason to proclaim—and as in my views the step was legal and honourable, I have no further excuse to offer. Therefore I considered myself a legal member of the society independent of its members and officers, and as I observed to the president, I left the society on account of its being improper to remain while a question was discussing relative to my own situation, and not because I thought the president or members had power to deprive me of my seat as a legal member. When my diploma was handed to the *Comitia Minora*, about one year ago, they thought proper not to recommend me as a member, and the reasons I understood were, that I had opened an infirmary for the cure of diseases

of the digestive functions, had an interest in a patent recipe, made an improvement on bathing-tubs for the convenience of families, and published a treatise on bowel complaints, in which I have recommended my improvement in the cure of these complaints, &c. &c. &c., all of which they say assumes the character of quackery, and shall deprive me from being a member of the Medical Society.

"Now, dear sir, if an inquiry be made into the conduct of the profession generally, I would be glad to learn where the line of quackery (according to the true signification of the term) shall be drawn. It is the object of all who attend to the practice of medicine, at least to make a livelihood by it; at all events, I never yet found one who strictly attended to it merely as a source of pleasure. Is it not evident to every candid observer, that all ambitious practitioners do make an effort in various ways to obtain the confidence of the public? and on a deliberate investigation of facts, do not a majority of the profession stoop to the level of the meanest of their fellow-creatures, by pursuing a course of (what is justly termed by some) *private quackery*? I am one who is accused of open and public quackery, and still I feel myself on a par with (and guilty no farther than) the most respectable and honourable part of my profession. For ten years I have confined my attention to that branch of medical practice, which is acknowledged by the profession at large to be the most difficult to obtain general success. And because I have convinced some, that improvements on the common practice in such cases, may be accomplished, they call out quackery. My time and my fortune have been devoted to my profession. I have opened an infirmary for the cure of diseases of the digestive functions, on my own plan, and with my own means, which is approved by many of the most learned and honourable part of the profession. I ask, who are the persons that opened the Eye and Ear Infirmary,* and the Infirmary for Diseases of the Lungs?† And

* "[Note by a member of the Society.] Dr. Cheesman is undoubtedly protected in his *sign* for the cure of diseases of the eye and ear, because he is or has been one of the *commitia minora*, and a surgeon of the New-York Hospital. The difference is, Dr. C. rides under the sanction of an official station, (the charlatan car) with the full approbation of the Medical Society; when an individual who may possess much greater merits and acquirements, is prohibited the ordinary right of proclaiming his own merits, the result of personal and arduous experience. The medical tribunal to which he may have recourse, should possess and exercise the power to suppress and disparage the pretended superior skill of opponents whose failures are the cause, and the only cause of opposition. The physician to the New-York Infirmary for diseases of the bowels, has published his theory, principles, and practice, and dedicated his work to his medical subscribers of the United States. The practice in other infirmaries in this city is concealed from the public eye. *Quere*—which is most dangerous to the community, public or private *quackery*?

† "[Note by a member of the Society.] Have the founders of the Infirmary for diseases of the lungs incurred the approbation of *quackery*? And was not the present resident physician

wherein have I acted more dishonourably to the profession than those concerned in these establishments? They used their abilities to render their work popular and beneficial to society, and my exertions are made for the same purposes, in my own behalf. I have published a work on diseases of the bowels, and as to the secrecy of its contents, remedies, or principles, (please accept a copy of it). I will beg to refer you to pages 53. 56, 57, 96., and a case 101. &c., together with the general principles of the whole work, designed not so much for the benefit of physicians and persons residing in cities, as for families distant from correct medical information and medical prescriptions. There have appeared before the public some newspaper *puffs* in favour of the merits of the author; but I know of none less modest and more in the superlative form of a *puff*, than the notice in the Evening Post, headed, '*New-York Medical and Physical Journal*,' which says:

"It ought to recommend it to the *special notice* of the faculty. It has received a powerful addition of editorial talent in the persons of Doctors A. Smith, T. R. Beck, Stevens, and J. R. Smith, and presents a *combination* of professional talent *unsurpassed* by any similar work in the *Union*."

"As to my interest in a patent recipe, sanctioned by the general government, I conceive the Medical Society has no more right to investigate this matter, than they have to investigate my interest in a farm, or will, or any thing else. This is confined to the business of the apothecary establishment, and so long as it does not interfere with my professional services as a physician and surgeon, the subject is foreign from the powers of the Medical Society; at all events, they have no right to act upon it before they admit me as a member. On this head I can only be considered on a par with the inventor of Hull's trusses, who has always retained his seat in the society; and on the same principle I retained mine in the county of Monroe, in defiance of all overbearing opposition. My name being attached to an American invention, I consider no more disgraceful or dishonourable, than the names of many of the professors of medicine (who hold the highest medical honours) being attached in the form of certificates, &c. to most of the inventions, patents, and improvements which are daily hawked through our country, from east to west and from north to south. When we look at the jarring state of the medical profession in this city, how contemptible does it appear to every unprejudiced and honest eye! The best of the faculty does not escape

(Dr. Manly) one of them? Let physicians only obtain the countenance of their masters in the Medical Society, and they may then play the *quack*, either public or private, without molestation.

the malicious charge of *quackery*, from some quarter or other. The friends of the two colleges call each other quacks and impostors; and every artful, and I had almost said, disgraceful means, are used to build up the one by the destruction and downfall of the other. Those who are attached to the Medical Society use their utmost to persecute and disgrace such as do not feel disposed to comply with their wishes and come under their dominion and control; and several of their most respectable members have withdrawn from the society with disgust, and a determination never again to show their faces within its walls.

"But, dear sir, I will trespass on your patience no longer with this unpleasant subject. I address you with wounded feelings, and a hope that your mind will not be biassed by the prejudices of others. I have made two honourable attempts to connect myself to your society, and am now aware that the gigantic power of the society is collected to crush me at a blow. But I ask of them no pity. Let envy and jealousy rage around me, conscious of my own innocence, I feel myself elevated far beyond their reach.

"Let me close, by informing you that I was educated in Schenectady, Albany, and Philadelphia, and have practised medicine and surgery in this state since 1813, under as legal, and I trust honourable diploma, as the state of New-York has power to confer. You are at liberty to use this letter either publicly or privately, in or out of the society, as you may think proper, with my declaration as first stated, of no dishonourable intentions towards yourself or the society.

"Respectfully, yours, &c.

"JOHN G. VOUGHT."

This letter and several others were not answered, although I have since been admitted a member of the New-York Medical Society. J. G. V.

[C.]

FOR THE AMERICAN LANCET.

MR. EDITOR,—The following queries, addressed to those concerned, may possibly open the door to further light on the same subject.

Quere 1st.—Was not the late Medico-Chirurgical Society got up by a few interested individuals, for the sole purpose of securing to themselves offices in the City and County Medical Societies?

Quere 2d.—Was not _____ the founder of the former Society, and did he not descend to the lowest species of intrigue, cau-

cusing, and sycophantic fawning, to obtain his election? and when obtained, did he not advise the dissolution of said Society?

Quere 3d.—Were not a greater part of the present officers of the Medical Society, members of the Medico-Chirurgical Society; and were not their meetings turned into caucuses, and they employed in electioneering for themselves?

Quere 4th.—Was not a certain professor in Barclay-street College, the secret spring of this hidden machinery; and was not every thing arranged according to his *beck* and nod?

Quere 5th.—Was not a certain honest gentleman humbugged by a certain caucus-nomination, in order to secure his support for the caucus ticket?

Quere 6th and last.—Is not the Medical Society of the City and County of New-York, as at present organized, a mere tool of the Barclay-street College, and is not the profession disgraced by being represented by a set of *whippers-in*, who have neither *name*, *talent*, *principle*, nor *honour*?

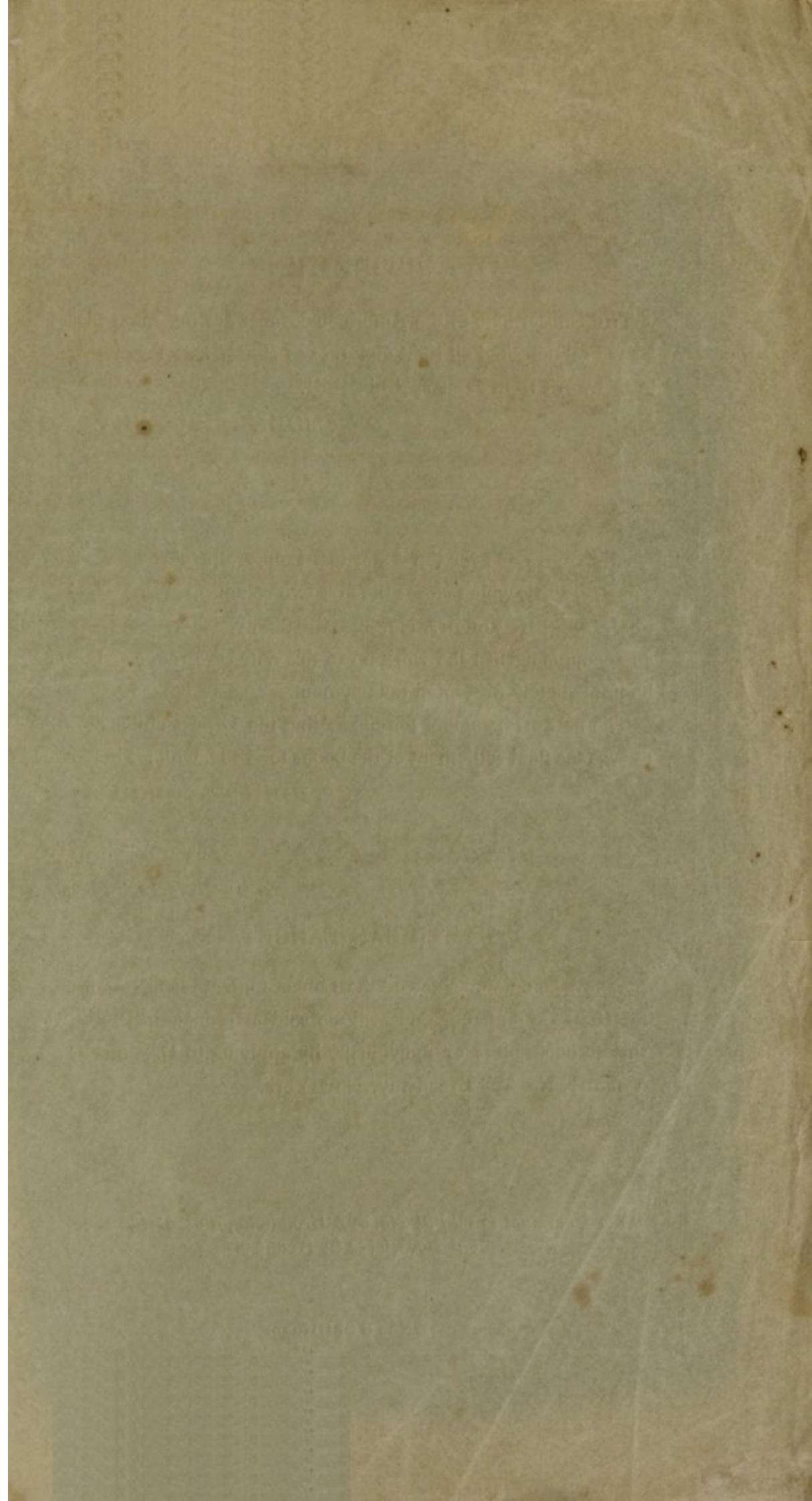
MORE ANON.

NOTE.—The author of these queries may have been mistaken in relation to the Medical Society.

A MEMBER.

[From the *N. Y. Constellation*.]

LIBEL SUIT.—A case has just been tried before the Court of Sessions in this city, wherein the state was plaintiff, and Drs. Vought, Anderson, and Osborn, were defendants. It was for an alleged libel published in the *Lancet*, of which the defendants were editors. The libellous words consisted in accusing Dr. Beck, and some dozen or fifteen other physicians, among whom were most of the medical professors of the college, of having formed a secret association for the very laudable purpose of monopolizing the cream of the practice, and of keeping down those aspiring fellows, the younger members of the medical profession. This accusation was taken in high dudgeon by the professors, and others therein mentioned, more especially as they were termed in the libellous article, "*the immortal seventeen*," in allusion to those political champions in the senate, who denied the people the privilege of voting for their own electors. But the jury, not having the fear of the "immortals" before their eyes, and it being proved that such secret association did exist, returned a verdict of *not guilty*.



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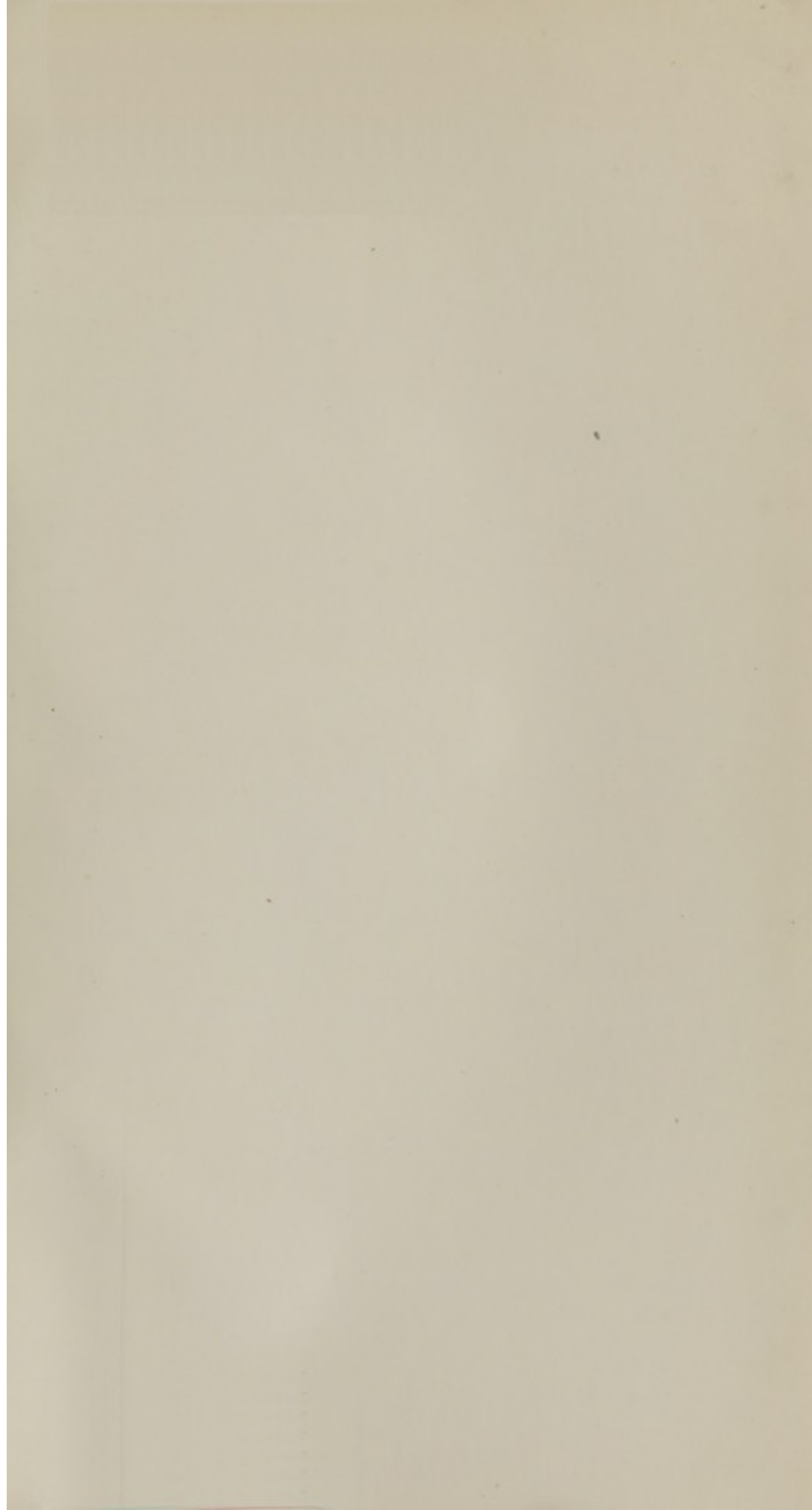
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