Report of the trial of Charles N. Baldwin, for a libel : in publishing, in the Republican chronicle, certain charges of fraud and swindling, in the management of lotteries in the State of New-York. Containing, the publications in relation to this interesting subject - the evidence - the speeches of the counsel on both sides, and the charge of His Hon. C. D. Colden, Mayor of the city of New-York, to the jury ... / the whole being taken down in short hand, at the trial, with great accuracy, by H.W. Warner, esquire.

GPO 16—67244-1

REPORT

OF

THE TRIAL

OF

CHARLES N. BALDWIN,

FOR A

LIBEL,

IN PUBLISHING, IN THE REPUBLICAN CHRONICLE, CERTAIN

CHARGES OF FRAUD AND SWINDLING,

IN THE MANAGEMENT OF

LOTTERIES

IN THE STATE OF NEW-YORK.

CONTAINING,

THE PUBLICATIONS IN RELATION TO THIS INTERESTING SUBJECT—THE EVIDENCE—THE SPEECHES OF THE COUNSEL ON BOTH SIDES, AND THE CHARGE OF HIS HON. C. D. COLDEN, MAYOR OF THE CITY OF NEW-YORK, TO THE JURY.

THE TRIAL COMMENCED ON TUESDAY THE 10th OF NOVEMBER, AND LASTED UNTIL FRIDAY MORNING 2 O'CLOCK, WHEN THE JURY RETURNED A VERDICT OF

"NOT GUILTY."

THE WHOLE BEING TAKEN DOWN IN SHORT HAND, AT THE TRIAL, WITH GREAT ACCURACY, BY

H. W. WARNER, ESQUIRE.

New-York:

PRINTED AND PUBLISHED BY

C. N. BALDWIN,

CORNER OF CHATHAM AND CHAMBER-STREETS.

1818.

Southern District of New-York, } SS.

Be it remembered, that on the seventeenth day of November, in the forty-third year of the Independence of the United States of America, Charles N. Baldwin, of the said District, hath deposited in this Office the title of a book the right whereof he claims as proprietor, in the words following, to wit:

(L.S.)

"Report of the Trial of Charles N. Baldwin, for a Libel, in publishing, in the Republican Chronicle, certain charges of Fraud and Swindling, in the Management of Lotteries in the state of New-York. Containing, the publications in relation to this interesting subject—the evidence—the speeches of the counsel on both sides, and the charge of his Hon. C. D. Colden, mayor of the city of New-York, to the Jury. The trial commenced on Tuesday the 10th of November, and lasted until Friday morning 2 o'clock, when the Jury returned a Verdict of "Not Guilty." The whole being taken down in short hand, at the trial, with great accuracy, by H. W. Warner, Esquire."

In conformity to the Act of the Congress of the United States, entitled, "An Act for the Encouragement of Learning, by securing the copies of Maps, Charts, and Books, to the Authors and Proprietors of such copies, during the time therein mentioned;" and also to an Act entitled "An Act, Supplementary to an Act, entitled 'An Act for the Encouragement of Learning, by securing the copies of Maps, Charts, and Books, to the Authors and Proprietors of such copies, during the times therein mentioned,' and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

JAMES DILL,
Clerk of the Southern District of New-York.

INTRODUCTION.

Containing a brief account of the causes which led to the detection of Lottery frauds, and to our trial for a libel.

We live in an age of new inventions, and new discoveries. A set of sober industrious mechanics have lately been detected, in the neighborhood of London, in a conspiracy to rob their neighbors. Calculating on their safety from *situation*, they felt secure that their honest and industrious demeanor *by day*, would screen them from suspicion of robbery by *night*. But like most rogues who have relied on *situation* as a *screen*, they were protected only for a time, and very soon, that *situation* on which they relied, became not a screen to hide their crimes, but an index to point at them. Having procured money beyond the means of ordinary mechanics, and showing out to their neighbors a splendor beyond their situation—it was their situation, connected with that splendor, which first awakened suspicion; suspicion led to investigation—investigation to detection—and detection to punishment—just as in the case of the lotteries. And thus it often pleases Providence to use the *means* on which wicked men rely for protection, to draw down upon their heads the very punishment they wish to elude.

The history of the lottery frauds which have been practised for years, in our city, and the history of the manner in which these frauds have been detected, would be not only interesting but instructing to every attentive and reflecting reader. Neither our time, nor the limits to which we are prescribed, will permit us to enter minutely upon these histories. It must therefore suffice for us, on this head to say that the disclosures made by the witnesses at the trial, here published, prove that this community, where tickets have been sold to a greater extent and number, than in any other

part of the world; the honest and unsuspecting people have been swindled almost beyond the possibility of calculation. And it is a curious fact that the fraud was so deeply hid, and artfully played off under the cloak of a benevolent Jew—and an uncommonly pious Christian—that both Jews and Christians have been mortified if not disgraced by the trick.

It is no wonder that Managers should have been deceived by such deep and cunning hypocricy; and it is equally natural that the people themselves, whose cause we have espoused, should be our prosecutors in a criminal court for daring to asperse the characters of such exemplary men as Mr. Sickles and Mr. Judah. Indeed, we ourselves, although our senses informed us of the fact, could hardly believe it possible, that these men were indeed the agents behind the curtain who managed the frauds which we knew must necessarily exist

Having received information that a number had come out of our lottery-wheel in pursuance of a dream—and that the ticket on examination appeared to be soiled, we resolved to investigate it. Having been long conversant with lotteries, we were at no loss to find sources of information; and being in the confidence of lottery insurers, disclosures were made us which perhaps would not have been lisped to any person else. Having well understood the whole history of No. 15468 as hereinafter unfolded, and being convinced that the fraud was no little babe of this lottery, but on the contrary a most impudent knave, almost old enough to have a beard, we resolved to draw it forth to public view. And here we confess we had a trial of the most painful nature. We knew we were about to prefer a charge of fraud upon two citizens whom we long had loved, and whose friends and connexions were highly esteemed and respected in this community. We also knew that the disclosure might be injurious to the venders of lottery tickets, as well as to insurers, to some of whom we were indebted for our information upon

this subject. As to reform on the part of the Managers it was hopeless, unless by the explosion which we were about to create. And therefore with the sole view of producing this reform; we resolved, from the watch-tower of our Press, to sound the alarm, both to the people and our magistracy. We accordingly, on the 16th day of Sept. 1818, published in the Chronicle the following paragraph:—

CITIZENS, LOOK OUT.

It is a fact that in this present Lottery now drawing in our city, there is SWINDLING in the management. A certain gentleman in town received intimation last week that a number *named* would be drawn on Friday last! and it was *drawn that day!* The number was insured *high* in several different places. A similar thing had happened once before in *this same lottery:* and on examining the manager's files, the number appeared *soiled* as if it had been in the pocket several days! If this be true, *and we vouch for it*, it may be previously known who shall have the 100,000 dollars in this Lottery. It deserves immediate investigation by our magistrates.

Immediately on the appearance of the above, and within an hour after the publication, Mr. Judah, whose name had not been hinted at in the paragraph, in company with a friend, came to our office foaming with apparent rage. His whole anxiety seemed to be on account of the reputation of the Managers, and not at all for himself. He pronounced the paragraph a libel on *them*—and he informed us that Mr. Sickles was not a manager, a fact which at first had escaped our recollection. By threats which did not avail him much, and by persuasions which could not move us, he tried to produce from us a *recantation*: but at length, in justice to the Managers appointed by the law, whom in fact we never did intend to impeach, and on his producing a certificate from the Lottery Insurers, we consented to publish the following, which appeared in our paper of the 17th September, and which, without the prefatory remarks, Mr. Judah caused to be published in the morning papers of the same day.

We republish the following paragraph in our own paper, in justice to the *managers* authorised by law to *manage* the Lottery now drawing. We are happy to learn that the *error* of which we complained on Wednesday has been corrected—and we sincerely hope such *errors* may not

be repeated! we recommend to the *legal managers* of all lotteries to superintend the *drawings in person*, and to keep a good look out upon their *subordinate agents!* The temptations to fraud are very great, and too much care and vigilence cannot be exerted by those to whose *integrity* and *intelligence* the law has entrusted the superintendance of lotteries.

Error Corrected. The proprietor of the Republican Chronicle, having inadvertently published in this paper of last evening, a paragraph implicating some persons in the management of the present lottery, and having since heard that Dr. S. L. Mitchell and general Jeremiah Johnson, are the only acting managers, at present, in this city, I with pleasure declare, that I have the fullest confidence in the honor and integrity of those gentlemen; and I have since been informed, from a source which I have no reason to doubt, that an investigation, with respect to the insurance, has taken place, which resulted to the satisfaction of all parties concerned. CHARLES N. BALDWIN.

On the evening of that day Mr. Coleman taking the above paragraph for a recantation in fact, (although we never intended it for any thing like a recantation) and not knowing what were our motives, came out upon us with a publication of our first and second paragraphs, and with some severe remarks, very properly put, on the supposition that we had deserted our case. For that opinion he had probable cause, but he was in truth in error about it, as appears from the following, published in our paper of the 18th Sept.

We have asserted that there was *swindling* in the *management* of the present lottery now drawing in our city. We have explained, by saying that the *legal* managers, Dr. Mitchell and Gen. Johnson were *innocent* of that charge, but we have not *retracted* our *first charge*. We have seen the paragraph of the Evening Post, and we assure the editor we think and feel as he does, and both he and the public shall very soon be satisfied by our explanations and *proofs* of those particulars on which our charge is founded. There are other persons concerned in the *drawing* of the lottery, than the Managers appointed by *law!* We again recommend to the *Managers* to look well to every *drawing*. The practice of dropping numbers on the floor, picking them up and throwing them back into the wheel, and the still more *dangerous* practice of the boy in drawing several numbers at a time and throwing them into the lap of a *Sub-Manager*, is reprobated and *may* open a door to most pernicious SWINDLING! We have no doubt this lottery will be fairly conducted *now!*

We acknowledge here our obligation to Mr. Coleman for the expression of his opinion that facts should be disclosed. We were consoled by it, for our *best*

friends condemned us without mercy for daring to attempt it; and we were greatly encouraged to discover that in this attempt we should have the support of an editor, so able and independent as the editor of the Evening Post. We knew our contest would be no *carpet* play, for we foresaw all we have had to encounter.

Having collected our proofs to a point, we published the following in our paper of the 19th September.

This interesting subject has excited an extensive and deep sensation in this community. We are now prepared to assure the public, that on next Wednesday our paper will contain a plain statement of facts, relating to our late *serious charge*, that shall unfold to the public, a scene of *deep laid villany* in lottery management, such as the public have seldom witnessed. We once more acquit the State Managers of all *guilt!* We are happy to hear that the drawing of the lottery is suspended until Wednesday; that the managers are about to assemble and investigate the *truth* of our charges, and that Mr. Denniston has already arrived in town to fill the vacancy occasioned by the *sudden* retirement of one of the *sub*-managers of the *wheels!* On Wednesday next we shall speak at large on this very interesting subject.

Immediately on the appearance of the above paragraph, we were assailed on all sides, sometimes by threats of the most terrific nature, and sometimes by persuasions and *promises*. It seemed as if we should have to encounter defeat, disgrace, and *punishment*, if we persevered—and that we might walk on *velvet* if we would only be silent.

On the 23d September pursuant to promise we published our statement as follows:

LOTTERY MANAGEMENT.

We now enter on the painful but imperious duty of exposing all we know of the late disgraceful transactions in the management of the *Medical Science Lottery*, at present drawing in this city.

It is first necessary, for the better understanding of our statement, that the public should have a short description of the *mode* and *manner* of our drawings. All the blanks and prizes are placed in one wheel, and the numbers of lottery tickets are placed in another. The numbers are written or printed on fair *white* squares of paper, about two inches square, rolled round a wire, then tied up with a thread, and the wire drawn out, so as to leave the number in a small roll. In Europe, the boy who draws his numbers out of the wheel, is compelled to have his arm *naked* to his shoulder; he is confined to the drawing of one number at a time, and he must take each number between his thumb and

finger, and carry it direct out of the wheel high over his head, to let the spectators see that all is fair. This most important and wholesome regulation is not at all regarded by *our* managers here. On the contrary, our wheels, in this respect, have been so managed, that frauds might have been practised without the least danger of detection. The boy of this wheel has a frock-sleeve on his *right* arm, but he draws the number with his left hand—he draws three or four at a time, and carelessly throws them into the receiver's lap—drops them about the floor—picks them up—throws them into the wheel again, and manages them with all the *non-chalance* of a boy playing with useless rolls of paper. It will readily be perceived that when a handful of these rolls are put into a sub-manager's lap, it would be no difficult matter for him to *conceal one of them*, and after carrying it a few days in his pocket, call it against the stationary prize of $35,000, or $70,000, or any other *stationary* prize *he* pleased. And it will also occur to our minds, that *he* might be tempted to do this, either by the *hope* of buying a ticket of *that* number in the market, or by the *certainty* of gain from insurance on *that* number, at the different insurance offices in the city, for a *particular* day! From the neglect of our managers to adopt the European manner, very alarming accidents have several times happened, to the knowledge of the managers themselves; and it is somewhat a matter of surprise, that with all that their *experience* has taught them, they should still be so very careless as they are in the management of the *number*-wheel.

At one lottery, a little boy was detected in the fact of having concealed a number, which he had received from his master, who was an insurer, and who had been employed to make up the tickets for the wheel, as Mr. Sickles was to make up the tickets for the present wheel. At another, a little boy was bribed to conceal a number, which afterwards it appeard, was *insured* in the city, and the man being detected by the information of the *boy*, was exposed by the managers, and his project defeated. At another lottery, the drawing had closed, when a *clerk* informed the managers that No. 17 was not yet called—but the managers settled the hash quickly, by one's calling No. 17—and the other's answering "*blank!*" In that instance, No. 17 had most likely been taken out of the wheel for some villanous purpose, and the owner certainly was deprived of his chance for the high prize by *somebody*. Many similar *accidents* have happened, and it is very strange that the wheel still is managed in the same harum-scarum and careless manner. The very day when Mr. Denniston drew the *stationary* $35,000, in the Owego Lottery, Mr. Sickles drew the number in a very *improper* manner. He put his *own* hand in the wheel, and took out the number. It is true the boy was, by some reason or other, absent, but we object to the manner! He has managed in a way more *improper* at other times, by taking out a handful, and opening them from his lap. And here we entreat the managers, forthwith, to adopt the European mode in all respects—it will prevent accidents and *strange suspicions*. It is for these reasons that we are now making these statements. We do not wish to accuse Mr. John H. Sickles, or Mr. Naphtali Judah, or Master

John Ten Brook. If it be true that Mr. Sickles is, or *was*, up to the 9th day, the only *substitute* at the *number*-wheel; that Master Ten Brook, his Grandson, draws the numbers from that wheel, that Mr. Judah received an *anonymous* letter informing him that No. 15,468 would come out on that day—that Mr. Judah, acting on the faith of that letter, insured several thousand dollars on that number—that the number did come out that day—that it was soiled as if the number had been worn in the pocket—and *is not* soiled now—then we say there has been swindling in the management of this lottery somewhere! And it is high time for the public to look to it! The certificates of the managers, the affidavits of Messrs. Sickles, Judah, and Ten Brook, to the contrary notwithstanding!

We now proceed to the particular facts relating to our charge against the management of the present lottery.

On the morning of the drawing of the fifth day, the No. 3,865 had been insured at the different lottery offices in this city for large sums. On the day of the drawing, that number came out, and the insurers found themselves severely touched, though no one as yet had any fixed suspicion of foul play. A similar fate happened to the No. 30 on the drawing of the *seventh* day. And the suspicion of one gentleman began to be excited to such a degree, that he was resolved to watch the management at the wheel with his own eye. It was perceived by the different offices, that on the 9th day, which was Friday the 11th instant, there was a great run for the insurance on one particular number, to wit, 15,468. At the drawings the managers are in the habit of calling one hundred numbers, and then stopping for a few moments to rest. The first and second hundred of this day, had already been drawn out of the wheel, and after resting, the managers proceeded to the third hundred. Here it was seen by an eye that watched the wheel closely, that Master Ten Brook put three numbers at once into the lap of Mr. Sickles, and the three hundred and *fourth* number was called, apparently without any communication with the wheel. *That number was* 15,468. The gentleman who watched, as soon as he heard the call 15,000, started, and prophecied it to be the *fatal* number 15,468. Nothing more was said at the time, and the drawing closed. Two gentlemen were now deputed to examine the files. They did so, and reported that the number was soiled as if it had been worn in the pocket. Another examination took place in the presence of eleven different people, and it was then discovered that, not only No. 15,468 was soiled, but also, the No. 30, drawn on the 7th day, and No. 3,865, drawn on the 5th day. Mr. Gilchrist was present at those examinations, and he was particularly careful that no one should touch the files but himself. He knows the numbers *were* soiled, and particularly No. 3,865 was almost the color of dirt; No. 30 was less soiled, but No. 15,468 was so plainly soiled, that every person present pronounced it to have been dirtied by carrying in a pocket.

We will now turn our attention to some facts which induced us to believe that it was *known*, at least, to one man beforehand, that those numbers would come out the days in which they made their appearance respectively. We forbear to make any remarks at present, on the

certificate of the managers published yesterday, accompanied by the affidavits of Mr. Sickles, Mr. Ten Brook, and Mr. Judah. We only say that if the tickets are *now* white, we can show that it is a further ground for still greater suspicion—and we think we can prove *who* it is that has made them white. And here we beg the managers to keep the keys of the lottery room in their own hands. That room ought never to be opened but by one of the *sworn managers appointed by law!* No sub-manager should have free access to it *alone!* Lotteries are very tempting and dangerous things! Experience teaches us that they cannot be too *prudently* guarded at every point, against the possibility of fraud, for all men are not honest that *seem* so! When the insurers out doors came to make enquiries who it was that had insured so highly on No. 15,468, it was discovered to be Mr. Thorne, a gentleman who keeps a Porter-House in Hudson-street, and the statement he is ready to make under his oath is as follows: On the morning of Friday the 11th instant, Mr. Judah called at his house *very early* in the morning, and expressed a wish that he should procure insurance for him on No. 15,468—and wished him to get as large sums upon it as could be had. He was very particular as to that number—so very particular about it, that Mr. Thorne asked why his directions were so strict as to that number. Mr. Judah informed him, that he had had a *remarkable dream* about that number—that he had heard the number called in his sleep, and dreamed he was at the City Hall when he heard it called. In consequence of these directions, Mr. Thorne, with the money of Mr. Judah (who is himself an *insurer*) went to the different offices and procured policies to the amount of *two thousand three hundred dollars*, and upwards! Mr. Thorne, also, saw on the files of the managers the *soiled* tickets, which the managers say are now *white*—and this fact, he, with many others, is ready to verify on oath, whenever called on in a proper way. He was so sensible of the fraud, that when Mr. Judah called on him for the policies, he refused to give them up. We now state, that at a meeting of lottery venders, called on this subject, Mr. Judah asserted, that he had received intimation that No. 15,468 would come out—not from his own dream—but from the dream of some other *dreamer*, by means of an anonymous letter. He swears to this fact in his affidavit of yesterday. This letter informed Mr. Judah, that the writer had dreamed this number would come out, and as he was "a very benevolent good man, and did a great deal for the poor," the secret was communicated to *him* coupled with *earnest advice* to insure on that number for *himself*. So by way of showing his *faith* in this dream, and his great goodness to the poor, Mr. Judah went to work to get two thousand three hundred dollars and upwards, out of the poor insurers, whom he pointed out to Mr. Thorne!

It was, however, agreed, at the meeting of the venders of lottery tickets, that there was fraud—the insured offered up his policies, and the insurers returned the premium. It may be matter of surprise to some, that those insurers should, many of them, within three days afterwards, certify that this lottery, in their opinion, was the "fairest drawn lottery in the union." But when we remember that they were greatly importuned to do so, and were deeply interested in the sale and insur-

ance of tickets, we can easily imagine that they should sign that certificate—for the present moment. When we asserted that there was swindling in the management of this lottery, we believed so. When we certified that the publication was "*inadvertent*," we only meant that it was so inasmuch as our charges seemed to apply to Doctor Mitchell and General Johnson, when it was only intended to apply to the *under* management—and therefore, without retracting any thing, we published our certificate acquitting *them*, and stating "that the affair of the insurance had been satisfactorily arranged." We have kept back our statement till to-day, for the purpose of hearing the result of the managers' investigation. We have much more circumstantial evidence, and when our story is fully heard, we think the public can easily account for the peculiar distribution of *stationary* prizes in some lotteries heretofore drawn. We stand ready to prove, that three numbers insured, one on the 5th, one on the 7th, and one on the 9th day's drawing, came out on their respective days—that the coming of *one* was certainly foretold once to Mr. Judah in his dream, and once to Mr. Judah by letter—that every one of those numbers *were* SOILED, so that eleven respectable witnesses of the fact will attest to it under oath, when called upon in a court of justice—that they came through the hands of Mr. Sickles, *who is removed from the wheel*, and if they are white now, we can tell pretty satisfactorily *who* made them so. Therefore, we say that it has been *possible* for a sub-manager to say when a certain number should come out, and what number should draw the 100,000 dollars—and this, altogether, is pretty good proof that there has been swindling somewhere.

Between our statement and that of the managers, we leave the public to judge. That there has been carelessness, every one will readily admit—that fraud *may* have been committed, is certainly *possible*. We think the *soiled tickets*—the dream—the anonymous letter—the insurance—the abandonment of the insurance—and the ease with which the tickets may be taken out, secreted and called, on a *particular day!* altogether places the charge of *fraud* beyond the power of contradiction!

As the managers have promised us a sight of their files this afternoon, we forbear publishing our affidavits and *other* evidence till another time.

On the evening the foregoing article was published, while the city was ringing with the noise which it had excited, the examination of the soiled tickets took place by Joseph D. Fay and Jeremiah I. Drake, Esqs. and Mr. Moses Allen, the result of which investigation will be found in the body of the trial. In consequence of repeated assurances on the part of Mr. Judah, Mr. Denniston, and the son of Mr. Sickles, to clear up the supposed frauds, and of promises to refer the investigation of them as hereinafter stated, we published the

following for the mere purpose of allaying public opinion and to alleviate the feelings of those we had so justly accused.

"On this subject an investigation is now taking place, in the course of which we *hope* to prove Mr. Sickles and Mr. Judah free from imputation. They are gentlemen well known to us, and they both have sworn they know nothing of fraud in this affair. They are men of established character, and no one who knows them can doubt their veracity under an obligation so solemn."

"The public are requested to suspend opinion as to *them*, until the result of this investigation shall be known. It is necessary, and justice demands that we should again say we never intended the slightest imputation upon the purity of the managers, Gen. Johnson, Dr. Mitchell and Alderman Denniston, Mr. Kent or Mr. M'Lean, or on the little boy, whose innocence we cannot doubt."

Notwithstanding the solemn assurance we received and the disposition on our part to give Mr. Judah and Mr. Sickles an opportunity to clear up the imputation that rested on their characters, we learned with no small degree of surprise that the investigation on their part had been very wisely declined. On the 29th of September the following statement under the signature of Mr. Judah himself appeared in the Columbian.

THE LOTTERY.

In an article of considerable length, published in the Republican Chronicle, of the 23d inst. and headed "Lottery Management," my name is introduced in a way calculated to make an unfavourable impression on the public mind; it is, therefore, a duty I owe myself, as well as the public, however unpleasant may be the performance of it, to give a statement of the transaction.

On Thursday evening, the 10th inst. when I came home, I found the following letter, written in an unknown hand, which had been left at my dwelling-house in my absence, by a boy unknown:—

"Dear sir,—Your friendly and benevolent disposition induces me to inform you, that I dreamed that ticket No. 15,468 will be drawn on the ninth day of drawing. I inform you, that you may benefit by my vision. A FRIEND."

To those persons who are unacquainted with the insurance of lottery tickets, it may appear absurd that dreams should have any influence on the choice of numbers to be insured; but those acquainted with the course of that business well know, that more than two-thirds of all the numbers insured are chosen in consequence of dreams. One person dreams and communicates it to another, and he to a third, and so on. Sometimes these dreams are realized, but oftener they prove fallacious. Five hundred numbers are drawn in a day, and any person that names one of those five hundred, by paying a premium graduated according to the number of days of

drawing, he obtains the sum insured, if the number named happens to be one of the 500 drawn on that day, whether it be a blank or prize.

On the morning of the 11th inst. having much business to occupy my time that forenoon, and knowing that the lottery was to draw again in the afternoon of that day, I went into Mr. Thorne's, who resides near me, and requested him to take that number in the way mentioned by Mr. Moses in the following affidavit:—

City and County of New-York, ss.

Isaac Moses, of the said city, merchant, being duly sworn, doth depose and say, in the presence of Almighty God, that he has seen, with much surprise, in a certain Newspaper called the Republican Chronicle, printed in this city, and edited, as this deponent is informed, by one Charles N. Baldwin, a certain publication of the 23d inst. headed "Lottery Management," and purporting to contain, among other things, the substance of a conversation between Mr. Naphtali Judah, of this city, and Mr. Thorne, who keeps a porter-house in Hudson-street, and wherein it is stated, "that on the morning of the 11th inst. Mr. Judah called on Mr. Thorne very early in the morning, and expressed a wish that he should procure insurance for him on No. 15,468, and wished him to get as large sums upon it as could be had; that he, Mr. Judah, was very particular about it, and that he informed Mr. Thorne he had had a remarkable dream about that number—that he had heard the number called in his sleep, and dreamed he was at the City-Hall when he heard it called. And this deponent further says, that he was present at the conversation alluded to, and heard all that passed between them on the subject, and believes he has a very distinct recollection of what took place on the occasion: that so far from Mr. Judah's informing Mr. Thorne that he had had a remarkable dream about the number 15,468, he merely informed him that it was a number that had been dreampt of, and not that he had dreamed of it himself, or that he had heard it called in his sleep or that he was at the City-Hall when he heard it called; that this conversation took place after breakfast, at about 8 o'clock, and therefore not "very early," as he asserted in the said publication; that Mr. Judah gave Mr. Thorne about 110 dollars, and informed him that he might lay it out in the different offices, and that he might be interested to the amount of one half, or in any proportion he might choose; that Mr. Thorne thereupon consented to become interested in connexion with this deponant in the sum of $ 250. And this deponent further saith, that at the time above-mentioned he kept a Lottery-Office in a part of the premises of the said Thorne, on their joint account; and that he, this deponent, is informed, and believes it to be true, that the said Thorne has received ten per cent. on the whole amount insured on the said number; and has refused to account with this deponent for any part of the same. And further this deponent saith not. ISAAC MOSES.

Sworn the 21st day of September, 1818, before me,

ISAAC ADRIANCE, *Notary Public.*

This number happened to be one of the 500 drawn on that day, and was therefore entitled to the amount insured. As the gentlemen who keep offices for insurance refuse to go large sums on any particular number, this number was taken in different offices each one taking it for a small sum; and when this circumstance was known, that this number was run in a number of offices, they from that fact grew suspicious, and went to the files to examine it—and when there, saw, or fancied they saw, that the number was soiled. One of those gentlemen, Mr. Healy, and who was as much interested as any of them, says it was not soiled. In confirmation of his opinion, I refer to the certificate of the managers, and the other proofs hereafter stated; but if this or any other number was soiled, would that fact be sufficient to prove that it had been soiled by "wearing in the pocket," or that it had been fraudulently drawn from the wheel—when it is known that those numbers have been printed between 8 and 9 years ago, and have lain during all that time, (till put into the wheel,) on the shelves of the room where G. & R. Waite's bookbinder works? as appears is the case, from G. & R. Waite's certificate, who printed those numbers, which is as follows :—

"We certify, that the numbers for the lottery wheel, which is furnished for the Fifth Medical Science Lottery, have been printed about 8 or 9 years, and have constantly laid on the shelves of the room where our bookbinder works. G. & R. WAITE."

On the next Monday after the said number came up, I caused a meeting of the gentlemen concerned, and then showed them the anonymous letter I had received, and informed them I had taken that number in consequence of that letter; but that if there was the least suspicion about it, I would not take one dollar for a thousand. I then abandoned the insurance, and returned the amount to those who had settled. An additional motive for this course, was my desire to remain on good terms with the gentlemen comprising those offices that I do business with. Those gentlemen were all satisfied as to my conduct, and deputed Mr. Burtus to communicate the same to me and my friend, Captain Myers, whom I requested might be present at the meeting. That communication was in these words :—

Mr. N. JUDAH, *New-York, 17th Sept.* 1818.

Dear sir—The following is a copy of a letter sent to your friend, Captain M. Myers. Respectfully yours, JAMES A. BURTUS.

CAPTAIN M. MYERS, *New-York, Sept.* 15, 1818.

Dear sir—The explanation made by Mr. N. Judah, at the meeting of the Lottery-Office keepers, yesterday, was perfectly satisfactory to all concerned, and Mr. Judah was exonerated from all impropriety of conduct. Respectfully your's, in behalf of the meeting. JAMES A. BURTUS.*

* When this letter was written by Mr, Burtus, he had been greatly importuned by Mr Judah and his friends to say something to allay the feelings of Mr. Judah. Mr. J. swore

But, after all, to show the little confidence I placed in the anonymous letter, I refer to the following affidavit of Mr. Hart, from which it will appear that he, acting as my clerk, was not prohibited from taking that identical number from the different offices, nor limitted in the amount to be taken on it—he might have taken it for three times the amount that I had caused it to be insured for, as nothing is more common, when one person runs a number, for others to do the same.

City and County of New-York, ss.

Leon Hart of the said city, the sole clerk at the office of Mr. Judah, being duly sworn, doth depose and say, in the presence of Almighty God, that when he went to the City-Hall, in order to get the numbers from the different offices, that neither Mr. Judah nor any other person gave him directions not to take No. 15,468—he did take all that was given him on the said number, and would have taken as much upon that number as upon any other number, and further this deponent saith not, LEON HART.

Sworn this 25th day of September, 1818.

ISAAC ADRIANCE, Notary Public.

On the same day that this said publication appeared in the Chronicle, but, after the paper was published, another examination of the files took place, in consequence of an agreement made the day previous by and between the managers on the one part, and Mr. Baldwin on the other. This examination took place according to said agreement, in presence of the managers and several other persons—and Joseph D. Fay, esq. the counsel of Mr. Baldwin, and Jeremiah I. Drake, and Moses Allen, esqrs. were chosen to critically examine and report their opinion as to the appearance and character of the said suspected number. The two last mentioned gentlemen were of the same opinion as the managers, that No. 15,468, showed no indication of being soiled by wearing in the pocket, but Mr. Fay thought otherwise, whereupon, the managers took that number, together with the rest that were on the same file, being about 150 in all, and placed them on a table, with the numbers downwards, and requested Mr. J. D. Fay to pick it out, who after examining for upwards of one half hour, could not locate on the said number. In addition to the foregoing statement, I submit to the dispassionate consideration of the public, the following certificates and affidavits :

*** We the undersigned, venders of lottery tickets, having seen, with regret, a certain communication, tending to bring our state lotteries into disrepute, have no hesitation in expressing our fullest confidence in the integrity of the managers of said lottery.

We, therefore, assure our distant correspondents, that no Lottery

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he was innocent, and having given up the policies, the parties insuring could do no less than to say " that was perfectly satisfactory to all concerned," and that he should be by them " exonerated from all impropriety of conduct," whatever the public might be pleased to think about it. But Mr. Burtus, and the others, did not intend that letter for publication ; and they afterwards became masters of many more facts, touching the fraud, than they were when the meeting alluded to took place, and would not likely give another such a letter to Mr. Judah.

in the union has been conducted with more integrity, all communications to the contrary notwithstanding.

G. & R. WAITE,	S. & M. ALLEN,
DAVID GILLESPIE,	BENJAMIN CRANE,
JAMES A. BURTUS & CO.	JUDAH & LAZARUS,
JOHN REID,	O. C. GRACIE & CO.
R. WAITE, JUN.	WILLIAM SMITH,
DANIEL D. SMITH,	ABM. P. BROWER.

Whereas it has been published that a certain Number in the Lottery for the promotion of Medical Science No. 5—to wit, the Number 15,468, drawn on the ninth day of the drawing of the same, was examined by the said Publisher, on the Managers' file, and appeared to him soiled, as if it had been in the pocket of some person for several days, and whereas it has been charged that there is swindling in the management, connected with a scene of deep laid villany, and whereas also the public sensibility has been considerably excited by these publications and charges. The undersigned Managers of said Lottery, have carefully examined the numbers on their files, and more especially the Number 15,468 alledged to be soiled as if carried several days in the pocket, and they are of opinion that there is no indication of such soiling, and that the number does not appear to have been carried at all in the pocket of any person and we are further of opinion, and from our knowledge, and from the annexed affidavits, that the declarations and asseverations to that effect are wholly without foundation. We do further state, that John H. Sickles is the only substitute which has been engaged in the drawing of the aforesaid Lottery up to the 9th day's drawing, and that John Ten Brook was the only Boy that drew the numbers from the wheel on the aforesaid ninth day's drawing. Mr. Judah is the gentleman that caused the insurance to be made.

Subscribed, SAMUEL L. MITCHELL,
JEREMIAH JOHNSON,
ISAAC DENNISTON,

City of New-York, ss.

Naphtali Judah of the said city being duly sworn, declares in the presence of Almighty God, that he has not at any time during the drawing of the Lottery No. 5, for the promotion of Medical Science, received any information whatever from the managers or from any person substituted by them or either of them, or from either of the Boys employed at the drawing of the said Lottery—that the number 15,468 should be drawn from the wheel during the ninth day's drawing, upon the 11th Sept. inst. the day when the said number was actually drawn; and that he received no information about the said number, or the alleged drawing of the same on that day, except by an anonymous Letter, and further that he has no reason to believe that either of the managers, or the substitutes, or boys employed by them, wrote that Letter, or was privy to or concerned in writing the same.

NAPHTALI JUDAH.

Sworn before me the 21st day of September 1818.

ISAAC DENNISTON,
Alderman for the City of Albany.

City of New-York, ss.

John I. Sickles, of the City of New-York, being duly sworn, declares in the presence of Almighty God, that he has no knowledge of any unfair transaction in the drawing of the Lottery No. 5, for the promotion of Medical Science; that, on the contrary, he is fully convinced the drawing of the same has been fairly and properly conducted; that he has never made any communication to Mr. Naphtali Judah concerning the appearance of the number 15,468 on the ninth day's drawing, or concerning any other number. And further saith not.

JOHN H. SICKLES.

Sworn before me, the 21st Sept. 1818.

ISAAC DENNISTON,
Alderman of the City of Albany.

City of New-York, ss.

John Ten Brook, of the city of New-York, being duly sworn, declares in the presence of Almighty God, that he never has at any time during the drawing of the Lottery for promoting Medical Science, No. 5, concealed any number drawn from the wheel, nor made any communication whatever concerning numbers not drawn, or about to be drawn from the same. And further saith not.

JOHN TEN BROOK.

Sworn before me, this 21st of September, 1818.

ISAAC DENNISTON,
Alderman for the city of Albany.

There is one other fact that I will add to the foregoing statement, and evidence, by way of answer to an intimation made by Mr. Baldwin. He says the managers can direct where the capital prizes shall go—I have only to say, they have never sent any in my direction—for I have been in the lottery business upwards of 28 years; and in the course of that time, I suppose, I have had upwards of thirty thousand tickets which remained unsold, drawn to me in the lotteries of this state, and never had a prize in any of them beyond one thousand dollars; whereas, from that number, according to the doctrine of chances, I ought to have drawn a number of the capital prizes; had the managers been disposed to favour me, and were they bad enough to have done so through any motive whatever, they could with the same facility have directed to me a capital prize as to have predicted the time any particular number would come up.

The truth is, if practices like those charged, were to be encouraged, it must be evident to all that know me, that from my engagements in lottery business, I should be the first and principal victim of such frauds. I forbear to comment on the absurdity of the imputation—and in submitting this statement, with the evidence of its truth, I feel confident, that an enlightened public will duly appreciate the motives of those who have endeavoured to injure me in the estimation of my fellow-citizens.

NAPHTALI JUDAH.

New-York, September 28, 1818.

In the same number of the Columbian we find the following editorial paragraph in relation to the foregoing statement.

Lottery—We publish in this paper a mass of evidence, proving that the late reports of unfair management in the Medical Science Lottery, are without any foundation in truth—The confidence with which they were *at first* disseminated, and the plausible aspect which they wore, were well calculated to deceive those who did not know the circumstances of the lottery, and the parties implicated. The very respectable managers, (Dr. Mitchell, General Johnson, and Alderman Denniston) have given these reports a respectful consideration, and it appears they are all *fully satisfied* of the fairness of the drawing.—What man will presume to question such testimony, or suffer suspicion to bias him in a case of such high importance?

We are highly gratified at this result, and trust that *the press* will do justice, as far as possible, to all who have been named in connection with these resports.

In reply to which we published the following on the next evening.

We perceive by the editorial paragraph in yesterday's Columbian, relating to this subject, that our friend Spooner, as well as ourselves, has been, what the country folks call, under the *hatchel!* And does he think that the reports of unfair management in the Medical Lottery are without *any* foundation in truth! Will the public think so? Friend Spooner, it wont do! So much has already leaked out, that if we both should certify that all is fair, the public would not believe us, even on Mr. Judah's statement. After all, it is a queer thing, that a man should have information by anonymous letters, that a ticket will come out on a certain day; that he should insure two thousand three hundred and fifty dollars on it—that the ticket should come out on the day appointed—that it should be soiled in a peculiar manner—that the insurance should be abandoned, because there was unfairness; and that the parties should then all certify that there was *no* unfairness at all! This is certainly queer! and it is the more queer, when it happens that there are *soiled* tickets which hit the insurers for *three* days successively. There are several important facts, which Mr. Judah in his statement seems to have forgotten—one of which is, that when Mr. Fay expressed his opinion that the ticket No. 15,468 was soiled, he saw it on the file, in a fair light by the window. And, that when Mr. Denniston had taken them off the file, and laid the tickets with their backs upwards (in doing which he was some time occupied alone by *himself!*) it was *twilight*, in a *cellar* room, in the City Hall, and that Mr. Fay, after looking (not more than *three minutes* at farthest, instead of half an hour!) said it was too dark to distinguish the tickets fairly, and gave it up; but a person *did distinguish* the ticket by the back immediately after, and took it out of the bunch. And that person then offered to bet 50 dollars to 5, that he would pick the ticket out in that way as often as Mr. Judah or Mr. Denniston would make the bet. Mr. Judah forgot also to state that Mr.

Drake was *his* Counsel, and that Mr. Allen is a man too much *interested* in this concern to be impartial—and that these are *reasons* why their opinion, as well as Mr. *Denniston's*, might differ from the opinion of all other persons on that subject. We saw the tickets and say that they were soiled; four other gentlemen (*disinterested*) were present, and will confirm our opinion. Every body agrees with us on this point, except the Managers, Mr. Judah, and his very good friends who think him free from imputation! Will Mr. Judah and Mr. Denniston be so kind as to tell us why they declined submitting this issue to Messrs. Emmet, Wells, and D. B. Ogden? This is now a dispute between the *Lottery Men* and the *Public*. Why should not the public have a choice of arbitrators? And indeed why should the lottery managers, or any person *connected* with them, be judges in a case which they have now made their own? We want only a *fair* investigation—and Mr. Allen says "fair play is a jewel," and we assert that if we are denied it, our inference is, it is another proof of something wrong. There are men *about* the lottery *up to any thing!* Not a bit too good to lie and *cheat* too! If those soiled tickets could speak, and old lotteries could tell us secrets from their "charnel houses," alas! alas! how would this public be astonished at their relations! We have done some good. Yesterday the lottery was drawn in a decent style. The boy was ordered to put his proper arm in the wheel—to take out but *one* ticket at a time—and when he carried it direct over his head, and held it high up for the public eye, the public burst forth with applause!

We have given Mr. Judah's statement, and hereafter we will throw some more light on this mysterious affair. We are told Mr. Judah said we were going to *recant!* So *we will* when we are convinced there is no fraud! but not on *his* statement—no "nor by *compulsion* Hal!" even if "compulsions were as thick as blackberries." We have been *threatened!* But come what will, the mystery shall be fairly investigated. We yesterday discovered *another* witness to the fact, that tickets have been called in this lottery, "which tickets did *not* come *directly* from the *wheel!!!*" And if this be true, no wonder there are dreams, visions, and anonymous letters flying about as thick as shadows; "communicated from one to another, from him to a third—and *so on!*"

On the same evening a statement of Tunis Wortman, Esq. appeared in the Columbian in behalf of the managers, not very creditable, however, to either of them. This statement was followed on our part by affidavits and proofs, unfolding part of the evidence which has since come out more fully on our Trial. On the second of October, we published the following:

LOTTERIES AGAIN.

Unawed by *frowns*, by *flattery* unsubdu'd,
By truth directed, be *our* task pursued;
Tho' *terror's* scaly crest indignant nods,
Tho' *fools* and *knaves* usurp the seat of gods!
Tho' *titled* men our *homage* may demand,
We'll still retain our *independent* stand.

If the public have supposed from our paragraph of the 24th of September, that we meant to retract from our charge of fraud in the management of the lottery, they have miscontrued that paragraph, and are much mistaken. It is true we were *sorely beset* on *all* sides, and if the terrible threats of certain gentlemen could have awed us into a recantation, they were not sparing of those threats, either in number or in magnitude. After our statement of the particulars of the fraud, (and we again assert, that he who says there is no fraud must be at least half blind,) all the parties concerned in this thing, from Alderman Denniston to Mr. Judah, hurled their fulminations at our heads with so much fury, and so roundly swore there was no fraud, and so earnestly assured us that there should be an investigation in which every thing would be satisfactorily explained; and then they solicited us so *affectionately* to say something to allay public opinion, that we thought it but justice to tell that public that an investigation was under way—and that we really *hoped* to prove our very good friends all innocent. We offered to submit the investigation to Mr. Emmet, Mr. Wells, and Mr. D. B. Ogden, disinterested gentlemen, in high standing, whose decision would have weight to bear down the popular opinion, in case that decision should be against *us!* Mr. Denniston accepted this offer, and generously promised to bear his proportion of defraying the expense of investigating; but the next day, we learned somewhat to our suprise, that investigation before those gentlemen would not be altogether desirable on the part of Mr. Judah and his friends. It was then stated that the Attorney General, and all the Managers would soon have a meeting, at which there would be a thorough examination of all the facts. Bye the bye, we have a word or two to say about all offers of submission to the managers, and other persons on their behalf alone. The managers have already certified that the tickets "are not soiled as if worn in the pocket."—We again say "*They are so soiled.*" They have also said "there is no foundation for the charge of fraud." We again say "there is foundation," and we will prove it.

The more we think of the managers' certificate, the more we are astonished—and the further we inquire into this thing, the more we are convinced that the public are so much a party concerned in the affair, that they, as well as the managers, ought to have a chance for *hearing* and *seeing* into this mystery. We have a great respect for the Managers, and for the officers of the state generally, but no power shall shake our determination to speak the truth, and no high-handed certificates shall stop us in our attempt to expose frauds, which we think have disgraced our state so long that every *good* man ought to be happy to see them detected. There must be an entire new revolution in lotte-

ries and lottery management. And some *persons* who have been long enough about our lottery wheels, must be *removed*, or we will never let this interesting subject sleep as long as we can hold a pen. We have been told that our publications hurt the sale of lottery tickets! Is this a reason for hushing up a fraud? We were also told that we hurt the reputation of the state. We deny it. Not we who expose, but those who wish this fraud hushed up, *disgrace this state!* And now we ask Mr. Judah, did you not in a late lottery, insure on *four* tickets at one drawing? Did they not *every* one come out? What were the chances against their coming out? And did you not receive 3200 dollars for your bits? When these questions are answered, we have a few queries for Mr. Denniston—whom we caution, in a *friendly* way, not to involve us in a newspaper warfare with any of his minions. "*I pray you avoid this!*"

On the same evening an editorial paragraph appeared in the Columbian, which to us appeared rather strange, for we could not reconcile it with our principles of honor, that the editor of a public print should become the advocate for fraud and corruption, from party motives; we therefore published the following:

Truth and Justice. Mr. Spooner says he has no object in mentioning the lottery subject, but "to defend *truth* and *justice*." And then he strangely falls foul of us, and says "the charge has been solemnly investigated," and talks of 'a fair verdict of acquittal!" Why, there are not three men in this world, *out of his circle*, that agree with him.—Lift up thy nose, friend Spooner, and thou wilt smell fraud in the air, as Sancho did bacon. "Out upon it, and fie for shame!" Dost thou believe in *ghosts* and *dreams?* As sure as you are alive, there has been villany abroad—and "it smells *rank* to Heaven!" We shall breath a little, to hear what the Comptroller and Attorney General say, and then we will give further proofs.

Soon after these publications had appeared. Mr. M'Intyre, Comptroller of the State, caused an investigation to be commenced, on the part of the State, by eminent gentlemen, viz:—Mr. Emmet, Mr. Harrison, and Mr. Lawrence—but the Grand Jury having taken the affair into consideration, it was deemed improper for those gentlemen to proceed. By that Grand Jury we were indicted at the October term, for a libel; and that is the Grand Jury who made the presentment about which our opponents so much boasted—and which occasioned the following to appear in our paper of the 16th October

Lottery. We understand that the Grand Jury in and for the body of the city and county of New-York, having gone through a wide range

of inquiry on this same subject of the lottery, have indicted *nobody* for a fraud, a *great many* for insuring, and *us* for libelling. And now, ye who have been guilty of fraud in this or any former lottery drawn in this state, tremble !—the truth shall no longer hang enveloped in the mists and clouds cast upon it, by *interested*, *biassed* and *timid* men, for by the powers of an independent and a fearless mind, we will make the *truth shine out*—even if we do " hurt the sale of tickets in the Medical Science Lottery ! !". A slander has long gone abroad, that our state is so corrupt, that there are no honest men in it. There is *one* at least, who, come what will, is not to be moved by the persuasions of party friends, or the threats of powerful adversaries, from his fixed purpose to speak and act *uprightly* on this great and most interesting occasion.—We are glad to be put upon our defence, for having charged that there *was* swindling in the management of our Medical Science Lottery.—Whoever chooses to identify himself with the swindlers, by protecting them, let him do so—but if we do not spare him, let him not blame, and he *shall* respect us.

On the 19th October, after we were indicted, there appeared in the Columbian and several other papers, advertisements triumphantly asserting that the Grand Jury, after five days patient investigation, had presented as a fact, that there was "no foundation for our charges of fraud." We knew this to be untrue—we, therefore, thought proper to publish the following in the Chronicle of the 20th of October.

To the great dog who barks about the *immaculate* lottery, and all the little dogs who bark in *tune* with him—we can only say, " hold your tongues ye liars of the first magnitude," for ye know that our hands are tied up by the respect we have for that court in which our trial is pending. There is but one way to sell your tickets. *Be honest.*

Thus closed our editorial course relating to the interesting subject of lottery frauds. It is impossible for us to describe, nor can the public ever know the nature or severity of the many struggles and difficulties we have had to encounter. Our hopes, our fears, our feelings have all met with the most powerful appeals. If this public have supposed, from some of our paragraphs that we " vacillated," it must be charged only to the peculiar situations in which we were placed. We stood alone against " a host"---we dropped our weapon to parly with our opponents---but we never sheathed it. We have been indicted---we have endured the labor, the expense, and the ignominy of a criminal prosecution, for unfolding to this state, most interesting truth---but our acquittal is triumphant---for truth is great, and will prevail, especially in our happy country, where we have magistrates incorruptible, and juries that are honest.

TRIAL, &c.

GENERAL SESSIONS, *ss.*

COURT MET ON TUESDAY, NOV. 10, 1818, PURSUANT TO ADJOURNMENT.

Present,

The Hon. Cadwallader D. Colden, *Mayor of the City of New-York.*

George B. Thorpe,
Reuben Munson, *Esqs.* } *Aldermen.*

COUNSEL.

For the Prosecution.	*For the Defendant.*
P. C. Van Wyck, *Dis. At.*	Joseph D. Fay,
John Wells, &	Josiah O. Hoffman, &
Peter A. Jay, Esqrs.	David B. Ogden, Esqrs.

JURORS.

Jacob Vanderpool,	Israel Purdy,
James W. Robinson,	John Good,
Harman Shatzel,	Nathan Robbins,
Isaac Collins,	Oliver Vanderbelt,
Grove Wright,	Edward Arrowsmith,
Isaac Burr, Jun.	Edward Higgins.

The People,
vs.
Charles N. Baldwin. } Indictment for a Libel.

The District Attorney not appearing in court when the cause was called, Mr. Jay opened the indictment very briefly to the jury. He said the defendant was the editor of a public newspaper, printed in the city of New-York, called the Republican Chronicle and City Advertiser, in which, on the 19th and 23d of September last, two publications had been made which were, by the indictment, considered libellous in regard to the managers and other persons concerned in the drawing of the 5th Class of the Medical Science Lottery; and that those libels in-

volved not only the interests of personal reputation, but those also of the revenue of the state. He told the jury that Mr. Baldwin had sought the prosecution, and had pledged himself to make good the charges he had published. He would now have an opportunity of doing so if it was in his power. And should those charges be established, he said the jury would of course acquit the defendent.

Mr. Jay then proceeded to read the supposed libellous publications, not from the indictment, but from the papers in which they had been printed; and by the consent of the opposite counsel, he read the articles entire, without confining himself to those parts on which the indictment was particularly founded.

The names of the Managers of the present lottery were admitted by the defendant's counsel to be Doct. Samuel L. Mitchell, Gen. Jeremiah Johnson, Moss Kent, Isaac Denniston and John M'Lean.

And the fact of the publishing by the daefendnt being also admitted, the proceedings on the part of the prosecution were here rested.

Joseph D. Fay, Esq. one of the Counsel for Mr. Baldwin, then opened the defence, in an address to the Jury, as follows:

May it please the Court, Gentlemen of the Jury,

As this very interesting trial will probably occupy much of your time and patience, I will now endeavour to unfold to you the outlines of Mr. Baldwin's defence as briefly as I possibly can, without shrinking from the duty which I owe to him, and to the station which I hold in his behalf. I, however, must apprize you, that the facts which are involved in this important cause are very numerous, and extremely difficult to be comprehended, except by those who are familiar with lottery transactions.

I begin, Gentlemen of the Jury, by here publicly declaring, that Mr. Baldwin, in all the publications which have appeared in his paper in relation to the subject of lotteries, never intended to suggest, and I am fully warranted in the assertion, he never did suggest one single idea derogating from the integrity or the purity of those managers of our lotteries, whom the executive of our state has appointed to that important office. On the contrary, it will be seen, by a perusal of those papers hereafter to be exhibited in evidence, that he has, on all occasions, expressly acquitted from all guilt, not only those managers, but the boy whom they have employed at the number wheel, and who, is made a party to this indictment.

But, however painful it may be to our feelings, we deem ourselves compelled, by an imperious sense of duty, here to pause in our declarations of acquittal. Nay, we do expressly and directly charge Mr John H. Sickles, the person called the sub-manager of our lotteries, and Mr. Naphtali Judah, a citizen of our city, with hav-

ing entered into a conspiracy to make money out of our lottery wheels, by contrivances, of a deep, daring, and fraudulent nature. It may well astonish you gentlemen, that men who have heretofore maintained among us standings of most high respectability, should be allured, by the hope of gain, to practices so nefarious as those which I am about to disclose. But who is he that can withstand continual temptations? What man is so strongly armed in virtue that familiarity with vice may not subdue him?

It will be necessary for you, Gentlemen, in the first instance, to understand that for years past strong suspicions have existed in the bosoms of many people, that our lotteries had a special and unaccountable kind of failing *somewhere*. By some means which were, until Mr. Baldwin's late discoveries, wholly inexplicable, it has often happened that tickets have been missing from our Lottery wheels. The managers have deemed this circumstance so much a matter of course, that they have been for a long time in the habit of counting the tickets prior to the drawing of the last day, for the express purpose of ascertaining deficiences, and supplying them by the addition of new tickets. And although these deficiences have been regularly discovered at every lottery which has been heretofore examined, it is matter of some surprise that such uniform evidence of something "rotten in Denmark" should never have produced one single effort on the part of our managers towards a reformation in their mode of preparing the wheels, and conducting the drawings of our lotteries.

We shall show you, Gentlemen, that at one lottery, some years ago, at which Mr. Sickles assisted in making up the tickets for the wheels, and at which he also assisted in drawing the numbers *from* the wheels, exactly as he has done at the Medical Science Lottery, now drawing in our city, while the managers were all busily engaged in drawing and calling the numbers, Mr. Judah stepped forth, and requested that all proceedings might be stayed, for that he had something to communicate concerning the *number* then about to be opened. He declared that he believed that number was not fairly taken from the wheel. The managers expressed great surprise; but Mr. Judah said he knew the number, and would precall it. He did so; and on opening the number, it was found, to the astonishment of all persons present, that Mr. Judah had called it correctly! Whether Mr. Judah had derived his information about that number from a dream, or an anonymous letter, or whether his watchful eye at that moment discovered a peculiar motion on the part of Mr. Sickles the agent at the wheel, are conjectures, Gentlemen, which at this late crisis it is impossible for us to resolve into certainty. But it is very probable that the discovery which the keen eye of the interested Mr. Judah made in that moment, for ever afterwards compelled Mr. Sickles to be his tool and slave: that Judah has since that moment, with all the power of an eager and triumphant magician, waved his prophetic and dream-creating wand over our lottery-wheels: and that since that moment, a community of interests

and feelings has produced an intimacy between him and Mr. Sickles, which, step by step, has conducted them both to that tremendous precipice, on the edge of which they this day stand, *trembling*.

We shall be able to prove, on the part of Mr. Baldwin, that at another lottery the No. 17 was discovered, after the last drawing, never to have been in the wheel at all. We shall show you that when this curious fact was whispered to the managers, one of them immediately called "No. 17," and another of them answered "*blank*"—and that this mode of *drawing*, or rather *calling* that number, was so far satisfactory to those managers, that nothing more was done by them on this subject. We do not mean to lisp a syllable against the legal managers of our lotteries; Gentlemen, they are all honorable men, above reproach, and above suspicion; but we do say, that the owner of of No. 17, was, in that lottery, defrauded of his chance for the prizes in that lottery, by *somebody*. And we cannot but express our surprise that this alarming accident should have produced no attempt on the part of our managers, towards reforming the mode of making up the numbers *for* the wheels, and the manner of drawing those numbers *from* the wheels.

We shall be able, in the course of our defence, to prove, that, at another Lottery drawn in this city a year or two since, some desperate adventurer attempted to bribe the boy at the number-wheel to give him a number out of the wheel secretly. The boy happened here to be an honest lad; and, as in duty bound, he informed the managers of this attempt. The managers thought proper to take a number of that wheel, to give it to that boy, and instructed him to give it to the man who had offered to bribe him. He did so. The man took a memorandum of the number; returned the number to the boy; and desired him to call the number, as if from the wheel, at the ensuing day's drawing. The man went immediately to the different offices, exactly as Mr. Judah did, to make insurances on this number: and, no doubt, he knew it would be called at the ensuing day, just as well as if he had been inspired by a dream, or instructed by an anonymous letter. In this case, however, the inspiration was communicated as well to insurers as to the man; and he was, on that account, able to effect but small insurance. On the expected day the man was called out from the crowd; and he and his nefarious scheme publicly exposed by the managers. But, was he indicted by those managers? No. Was he in any legal way punished? No. Did this discovery induce the managers to take a single step for preventing a repetition of such attempts? No. Did it produce any reformation in their mode of drawing? Not any. What became of the number taken out of that wheel? did they put it back again? No: but they made a new correspondent number, and put *that* in the wheel.

In another Lottery, one of the managers, after the drawing of a certain day was completed, retired to his lodgings; and in the evening, on opening his vest, very much to his astonishment, a ticket rolled forth from his bosom. This happened to Mr. Kent, the bro-

ther of our Chancellor, a gentleman against whose spotless integrity it is impossible for one moment to entertain the slightest suspicion. But, how came that ticket in his bosom? Who placed it there? Conjecture ran on various subjects: some said one thing, some another; but it was finally concluded, that some person, for a fraudulent purpose, had obtained possession of that number, and wishing it to be called on that day, had, intending to throw it into the lap of the manager next to the wheel, missed his aim, and thrown it into the bosom of Mr. Kent! But, lap or bosom, no matter how it was done, or for what fraudulent purpose, alarming as it was that such things should be, it passed off like all its fellow-accidents, only emboldening villany to make new attempts; but producing no attempts towards a reform in the mode of conducting our Lottery wheels.

We shall also give, in evidence, in the course of this defence, that, at another Lottery, *ten tickets* were said to have been missing out of the number wheel during the whole drawing, until the last day. Those tickets had been found in a crack of the floor; and what is more, Gentlemen, they were found by Mr. Sickles, aswill appear from his own oath before the late Grand Jury. And what is still more, it will appear that none of the managers ever heard any thing about the strange affair until it came from that oath of Mr. Sickles. And worse and worse, Gentlemen, it will appear, that no one but Mr. Sickles himself can inform us how those tickets were replaced in the wheels. And is it to be believed, that all this can happen, connected with the dreams of Judah, the insurance, the successful hits, the soiled tickets, and all the foul play connected with them, and yet Mr. Baldwin be criminal for daring to say there is swindling in the management of our Lotteries somewhere? Ten tickets in a crack! How came they there? How came Mr. Sickles to be the very fortunate finder of those tickets? How came it, that a circumstance so very extraordinary, and so important, was carefully concealed from the managers of our Lottery? Be assured, Gentlemen, that it is no common accident, which takes ten tickets out of the number-wheel of a Lottery, and places them in a crack of a stage floor, under a carpet, and near the seat which Mr. Sickles occupies at the drawing of the Lottery. If he is faithful, how could such things happen? If he is honest, why conceal them from the managers? But, Gentlemen, when you shall be informed, as our evidence will show, that the numbers of those tickets were known to Mr. Judah, and others out-doors; that prophecies, dreams, and inspirations were abroad in this community about them; and still more, when you shall learn that those very numbers could not be called by Sickles, because a watch was very unexpectedly placed at his elbow, and a ring of men formed around him to prevent expected frauds concerning those very numbers; you will no longer be at a loss to account for tickets being soiled, as if worn in the pocket; and the whole mystery of Mr. Judah's prophetic dreams. and splendid successes, is wholly unravelled, and satisfactorily ex-

plained. How can such things happen, and yet Mr. Sickles and Mr. Judah be the honest men they claim to be? Mr. Sickles is the man to guard the wheel; he is the only manager who takes the numbers as they come *from* the wheel; he makes up the numbers, and puts them in the wheel; he has made up the wheels for all our lotteries for ten years past; and let him inform us satisfactorily if he can. If he puts *all* the numbers in the wheels, and the managers lock them up, so that none can come *out* of the wheels unfairly, how is it that they do get out, ten at a time, Gentlemen? How prophecies, dreams, and anonymous letters circulate about this insulted, this robbed community, foretelling, with all the accuracy of inspiration, the very hour of their coming! And why, suffer me so ask those managers, who have certified to this community that these tickets were not soiled; who have certified that there was *no* fraud; why is it that Mr. Baldwin should be indicted for a malicious libel, because he honestly and bluntly differed from them in opinion about facts so condemning as those we have before us? And how is it that all these wonderful events should pass under the watchful administration of faithful managers, "like summer clouds without their special wonder," and not produce on their part one single step towards a reformation in their mode of conducting the lotteries of our state?

It is a fact too well known to require any evidence on the subject, that the carelesness of the boy and of the sub-managers at the wheel, has long existed so conspicuously as to excite the surprise as well as censure of every body, the managers excepted. They have dropped numbers on the floor so repeatedly as almost to induce a belief that it was done with some design. They have taken numbers time after time from the floor, and put them again into the wheel; and they have picked up numbers from the floor, and I venture to say, called them as from the *wheel;* though they never *were in* the wheel. Mr. Sickles takes numbers, two, three, and sometimes literally *a handful* from the wheel, and places them helter-skelter in his lap, covered with a handkerchief, the tickets open; and thus he calls them, not according to the fair chances of the wheel, but according as he pleases to select them from his lap! Is it not astonishing to this community, that all this monstrous conduct should be permitted to pass for years under the eyes and noses of our managers without producing one step on their part towards a reformation in their mode of drawing? Nay, Gentlemen, we will prove to you that the mode of drawing, instead of being reformed, has been of late years altered, and much for the worse; that the facilities to fraud are at this day much greater than they have been under former managers.

In the late class of Medical Science, Judah insured tickets which we will prove to you he knew were not in the lottery-wheel. And, again, he hired agents to fleece the insurers, by obtaining insurance on tickets which he knew, by the conspiracy between him and Sickles, were to be *called* on the day insured against; by which corrupt and fraudulent means he made hits so very extraordinary as to con-

vince all the Lottery Officers that he was aided by something more than the mere chances of the wheels. All this while Mr. Sickles and he were very intimate. Mr. Sickles, the sub-manager, as he is called, but, in truth, Gentlemen, he is the sole manager in all things; he and Judah were every day together, morning and evening. Sickles read the papers at his office daily; they were closeted together; and their business, no doubt, Gentlemen, was peculiarly interesting to them both. Why were they together, hand and glove, whispering in secrecy? What special reason would there be for this brotherly connexion between this benevolent Jew, and this pious Christian, in lottery business? You shall soon know, Gentlemen. For if our witnesses have not been bribed, or threatened out of the reach of this Court's process; if they this day shall dare to tell the truth; (and I pray that the God of truth may inspire them with courage and virtue to speak truth;) they will in one hour unfold to you all, a train of interesting facts which will explain all the mysteries of Judah's dreams, and excite the surprise, wonder, and indignation of this community.

One thing, Gentlemeu, I am sure, we shall prove, that wherever Mr. Sickles has been seen to whisper unusually often, there fortune has dropped her favours with uncommon profusion. To Mr. Judah she has thrown her gifts to an extent brilliant beyond example: not, indeed, in the way of prizes, but in the way of frequent hits against his brother insurers, pointed out by dreams, inspirations, and anonymous letters. Magic has been at work for him; and to us, poor mortals, who could not see his wire workers behind the curtain, it really seemed as if he were favoured by supernatural assistance.

To Mr. Denniston, who could not well play at insurance, and who was also seen to whisper with Mr. Sickles, kind fortune has given the Owego prize of 35,000 dollars, unless report be true that Mr. Sickles owned the half of it.

To Mr. Isaac Ogden, the broker in Wall-street, and a large contractor for Owego tickets, a gentleman with whom Mr. Sickles was all at once on a *whispering* footing, fortune became suddenly so profuse as to throw into his lap one prize of 70,000 dollars, 2 stationary prize, Gentlemen; several other stationary prizes, and about six hundred thirty-dollar prizes, by way of selling off his tickets to advantage. And all things considered, Gentlemen, it is strange that fortune should dispense her gifts thus splendidly, not through the prize-wheel, where she was blind, but through the other wheel, where, by the aid of Mr. Sickles, her eyes seemed to be wide open. Indeed, it was only stationary prizes which Mr. Sickles could catch —for, skilled as he is in the game, it does not yet appear that he has learned to catch a floating prize. That's a game beyond the reach even of *his* art.

When ticket No. 15468 made its ever-memorable appearance in this Medical Lottery, Mr. Jansen (a gentleman who will hereafter testify in our behalf) saw certain peculiarities attending that number, which he thought indicated indubitable evidence of fraud. To

explain myself to your comprehension on this point, I must here make you acquainted with the mode of drawing, and the manner of keeping what the clerks call slips, or accounts of numbers as they come from the wheel.

[Here Mr. FAY gave a full and clear account of the slips, the black marks made on them under every 100 numbers drawn at the drawings, and the manner of drawing 100 at a time, and then stopping to rest. He then proceeded as follows:]

Mr. Jansen remarked that No. 15,468 came out nearly the first in a certain hundred, and was immediately under a black mark. On turning back to examine No. 30, which had been run for insurance on a former day, that also appeared to be first under a black mark upon the slips. And again on turning back to No. 3,165, another number which had been run by Mr. Judah's agents on a former day, that likewise was found to be the first under a black mark upon the slips! Mr. Jansen thought such *uniformity* in chances at least extraordinary. He knew full well, that in lotteries, there is no such thing as uniformity and it might well excite the suspicion of a gentleman of his knowledge of chances, when he saw three numbers which had been run for insurance on three successive days, coming out uniformly on their respective days, and stationed uniformly under a black mark! This circumstance induced Mr. Jansen to relate his suspicions to Mr. Sharp, and they both agreed, that if the tickets were examined, they might possibly, to use their own expression, "*smack of the pocket.*" Whether they do "smack of the pocket," you, Gentlemen, will be able to judge, when you shall see them, and examine them for yourselves. We shall prove to you, that those three numbers were insured by Mr. Judah's agents on the 5th, 7th, and 9th days of drawing. He has confessed to this community that the coming forth of one of them was foretold to him by an anonymous letter; and our testimony shall convince you that he told Mr. Thorne that its coming was foretold by a dream of his own. He said he dreamed that he was in the City-Hall, when he heard the No. 15,468 called; that he awoke, and then fell asleep, and dreamed the same thing again. Now, Gentlemen, we have no objection to admit that a dream may be an honest dream; but when it is connected with such suspicious circumstances as those which attend this, where is the man weak enough to credit this dreaming story? A man may indeed pre-dream a number, which by an extraordinary coincidence may come from the wheels as pre-dreamed, and he may be benevolent enough, like Mr. Judah's "unknown friend," to impart his inspiration to another, without any hope of benefit for himself; but if the agent act upon it like Judah—if he tell one story as to Thorne, and another as was told to the insurers—if when the ticket is drawn, it come not from the wheel, and have on its back the character of a ticket worn in a pocket, rely upon it, Gentlemen, the God behind the oracle is not a *God*, but some cunning and deceitful priest, playing off his tricks to cheat credulity. The days of dreams and oracles have gone by; and we shall insist upon it, in behalf of Mr. Baldwin,

that the statement of Judah himself, miscalled his denial, and by us presented to you in evidence as his CONFESSION, is alone a full justification for the utmost extent of all Mr. Baldwin's publications. For if it be true that Mr. Judah was informed that 15,468 would make its appearance on the 9th day—and it did so—who is the dreamer that pre-dreamed this event? Where is this most excellent friend of Mr. Judah, who thought proper to select him from this whole city, as the only benevolent man who was worthy of this momentous secret? Why does he permit his good friend to suffer in the vital part of reputation, when one word could save him? Why has not Mr. Judah advertised for him? And why has this mysterious number come through the hands of Mr. Sickles? Remember it was called by Mr. Sickles, and we shall show you it was called in such a way as proves conclusively a combination well understood between him and Judah.

But, Gentlemen, we have more than this to justify Mr. Baldwin's publication; and now I will proceed to inform you why it was, that Mr. Baldwin has published the charge of a deep laid scene of villany to swindle this community: and when you shall hear it, you will say it was his duty loudly and again to sound the alarm to this insulted city.

Notwithstanding the dream, the anonymous letter, the soiled tickets, the confessions of Judah, the insurance, the cunning direction to insure in such a way that no insurance should come back again on Judah; notwithstanding his bullying about the charges of fraud, and then his admission of it by abandoning his policies: notwithstanding all those condemning and, I say, conclusive evidences of fraud, there are some men among us so charitable as to believe Judah and Sickles innocent, injured men; the lottery free from all suspicions of fraud; and Mr. Baldwin a guilty wretch for publishing his charges. Charity, Gentlemen, is a virtue a sweet virtue! It forms, at once, the basis and the ornament of our morals, and our religion. Priests and good men, orators and poets, wherever they find it, delight to behold, to praise, and adore it, But, Gentlemen, it is the right kind of *charity*. It is not that kind of charity which takes sides against the honest Mr. Baldwin, for publishing truths important to this community; and acquits Judah after his guilty confessions which have appeared in print. That kind of charity which throws its mantle over frauds and crimes, and spits in the face of an upright man for speaking his opinions of them, which brandishes its weapon to protect a villain, and keeps it sheathed in the cause of a man of truth; that is not the charity which is acknowledged by our morals or our religion.

And allow me to add gentlemen, the hardened criminal who hopes by his impudence to out-face his accusers—who thinks by his ill-gotten wealth and his powerful friends—his threats and his bribes, to walk about among us unwhipped of justice for such frauds as Mr. Baldwin has unfolded, is not the man that merits our charity. And now gentlemen I will bring home this conspiracy to the very feet of these conspirators.

We will show you that Mr. Sickles made corrupt propositions to two different lottery insurers that if they would help him to money he would play into their hands; we will show you that he did play into the hands of Judah in the Medical Science Lottery No. 4; and we will prove this from his own guilty confessions made to two different men. We will show you that he kept certain low numbers out of the wheel; that he was seen about this City with the numbers in his pocket, and that he confessed he had made Judah the master of his secrets, and that he was sorry for it. He told them that they had nothing to fear as to certain low numbers *for they were not in the wheel;* that he and Judah foretold the forth-coming of those numbers forty-four day's before they made their appearance—that Judah reaped the full harvest of his knowledge; and that on the 44th day the numbers marched forth out of the wheel to fulfil the dreams of Mr. Judah and the prophecies of Mr. Sickles.

And now gentlemen I have to assure you that Mr. Baldwin has published no libel! He has published nothing false—certainly nothing malicious! The first paragraph which appeared in his paper on this momentous subject was merely to sound the alarm to this City, and from the watch-tower of his press he thought it was time to cry "Citizens look out, for there is swindling in our Lotteries!" To his other publications he has been reluctantly compelled by the weak and vain attempts of Judah to justify his guilt, and screen himself from public indignation.

But, gentlemen, I hope no apology is necessary for the daring, the noble, the exalted course which Mr. Baldwin has pursued. No subject is so generally interesting to the people of the United States, as the faithful, upright, and correct management of our lottery wheels. There is hardly a citizen from one end of the Union to the other, who is not at times, an adventurer for the tempting prizes which fortune promises through lottery chances. He therefore who sees any evidence of a fraud about a lottery wheel, and winks at it, or passes it over in silence, no matter from what motive, whether of *hope* or *fear*, merits PUBLIC CENSURE. And by the same unerring rule, the good man who encounters dangers, and grapples with the fraud to hold it up to public ignominy merits PUBLIC PRAISE.

Indeed, Mr. Baldwin's independent course, in Roman and Grecian days would have met with a sure reward of public honors. The crimes which he has exposed, lay heavy on our whole city. The evils which he has already remedied, and which his exposure will continue to remedy to the remotest time, entitles him to the name of PUBLIC BENEFACTOR. Those who have heretofore held tickets in our lotteries, have for years past had no fair chance for the high *stationary* prizes for which they have adventured. Our citizens have been swindled to an extent beyond all calculation. Hereafter, thanks, to Mr. Baldwin, we shall have our chances in common with other men, dreamers or not dreamers; and let me therefore hope that you will not merely acquit Mr. Baldwin, but that you will acquit him with all the honors that can be imparted in a court of justice. And may all who this day hear his defence—and all men who may hereafter understand it, acknowledge him as the champion of the people's rights—and let him be known as

the daring reformer of those lottery frauds which have for years festered in our country. He merits not an indictment—but praises—not punishment—but a laurel—and every honest man in our city—every honest man in this state ought to give him thanks.

The defendant's counsel then ordered several witnesses to be called on the part of the defendant. Among others, Conrad Brooks, Jackson Haines, James A. Burtus, and Abraham P. Brower, were called and did not appear. And it having been suggested that these witnesses had resolved to absent themselves from the trial, notwithstanding the process of the court had been duly served upon them, Mr. Fay moved his honor the Mayor for an order in the cause, to send an officer for them, to compel their attendance. The court declined making such order, and said they had no power to proceed in that way; but were willing to exert such powers as they possessed to bring the witnesses up, and proposed to send an officer in the first instance to notify them that they must attend. Mr. Hoffman observed that he had known a compulsory order granted in like circumstances, in a criminal prosecution. Mr. Fay said, there were very important witnesses who would never testify in *this* cause, if they could avoid it. He therefore desired a compulsory order. The court again expressed a disposition to exercise the utmost authority which really belonged to them in the case; and said the only question was, whether they had the right to make such order as was desired. They stated the practice in trials for misdemeanor like this, to be, not to attach the defaulter in the first instance, but to cite him to show cause why an attachment should not issue against him. The witnesses were not yet to be deemed criminal.

At length, upon the suggestion of his honor the Mayor, an affidavit was made and filed, proving the service of the subpœnas; and thereupon, an order was entered against the absent witnesses above named, requiring them, forthwith, to appear, or show cause why they should not be attached; and an officer was sent to serve a copy of the order.

Thomas W. Thorne was then sworn as a witness for the defendant, and examined by Mr. Hoffman.

Q. Where do you live?

A. At the corner of Hudson and Reed-streets.

Q. Did Mr. Judah ever call on you in relation to the insurance of one or more tickets, in the present class of the Medical Science Lottery?

A. Yes, on the 11th of September last.

Q. At what time of day?

A. Very early—I was in bed—Mr. Moses called me up to see him.

Q. What did Mr. Judah say to you?

A. He bade me good morning, and requested me to go and get a number insured for him. I asked him what number. He said he had had a dream.

Q. And what was that?

A. Why, he had dreamed that he was in the City Hall, and heard a number called, and he immediately clapped his finger on the lottery book.

Q. What number? A. 15468.

Q. He dreamed he heard it called, and put his finger on it?

A. Yes. And being waked by the circumstance, he said he afterwards fell asleep a second time and dreamed the same thing again.

Q. And did you agree to get insurance for him on that number?

A. Yes. Mr. Judah made out a list of the offices where I was to insure, and the several amounts.

Q. How much in all?

A. $2600. He paid me the premium money, and I got the insurances effected according to his directions, excepting as to one office.

Q. Were you interested with him?

A. He told me I might have part with him, as much as I pleased, by paying my proportion of the premium. I agreed to take $250 out of the $2600. He gave me $110 to pay the premiums.

Q. Did he say he had himself had the dream?

A. He did. He spoke of no other dream but his own, to my knowledge.

Q. Why did he tell you to apply at particular offices?

A. So that they might not come back on him. That is what he said.

Q. You took $250.

A. Yes. But I afterwards let Mr. Moses have one half of this, on paying his part of the premium. After I had effected the policies, Mr. Moses wished to have more insured on the same number. We agreed that Judah was a lucky man. I offered to get insurance on some of the numbers above or below 15468, but thought there was enough on that already. Moses said he would'nt give a fig for any other number in the book.

Q. He said he would'nt give a fig for any other?

A. Yes. For he said Judah dreamed of a number in the last lottery, and it came out; and I afterwards took $100 more jointly with him on the same number, and some small amounts had been previously taken on my own separate account, so that my entire interest in the number was $260.

Q. Did the ticket come out? A. Yes.

Q. And what did you think of Judah's dream then?

A. I wondered how a man could dream as he did. When I was told it was out, I said, "My God, how is it possible a man can go to bed and dream himself into a small fortune before morning."

Q. Did you see Moses again after the drawing that day?

A. Yes. He came in afterwards.

Q. And what did you say to him?

A. I said, well Mr. Moses, we have hit 'em. He answered coolly, yes—and nothing more was said. In a short time Mr. Judah came in.

Q. You had heard of the suspicions about the fairness of the drawing before this?

A. Yes.

Q. Well, what passed with Mr. Judah?

A. He took hold of my hand and shook it heartily and said, well, we've hit 'em. There were then several persons present. I told him, that might be a very friendly shake, but that I didn't take it so. Mr. J. requested an explanation, and took me one side. We went out of doors. I informed him that the insurers suspected that all was not fair. He said he would blow out the brains of any man who should dare to say any thing against his innocence, or something to that effect. He said the insurers objected on account of their having to pay their hits; but that he'd make the rascals pay.

Q. Did you attend the meeting of the insurers the next morning?

A. I did. They all came to the Hall and examined the ticket.

Q. And what was the result?

A. Every man agreed that the ticket was soiled.

Q. Who was present at that examination?

A. There were ten or eleven present.

Q. All insurers?

A. Two or three of them, I believe, were not.

Q. From your own examination, was it soiled or not?

A. I think it was—a space about three quarters of an inch broad across the ticket—and a yellow spot on the corner.

Q. What was the number you examined?

A. 15468. All agreed it was soiled.

Q. Did you examine any others.

A. Yes, number 30 and a number in three thousand which I dont exactly recollect. They both appeared to be soiled.

Q. Did Judah afterwards call on you?

A. Yes; he had called before I got home, and he came again afterwards.

Q. What day was this?

A. The 12th of September. I then told him his hits would not be paid. He said they should, and demanded the policies, which I informed him I had promised to keep in my possession till the next day. Mr. Moses was present.

Q. When did you see the insurers again?

A. On Monday the 14th.

Q. Was Judah there?

A. He was, and then produced an anonymous letter which he read as being the reason of his having gotten that particular number insured.

Q. By the Court. Where was this meeting?

A. At Mr Smith's in Greenwich-street.

Q. And what passed?

A. Mr. Judah produced the anonymous letter; and I then said to him that he had told me that he had dreamed it, to which he made no reply.

Q. By Mr. *Hoffman*, Did you ever hear of that letter before.

A. Never; I never heard of any thing but the dreams, before.

Q. Were the policies given up at that meeting?

A. Yes. Mr. Judah agreed to give them up and receive back his premiums, which was done in the room.

Q. Did the insurers notwithstanding pay you your share in the policies?

A. They did. I had never dreamed nor received anonymous letters on the subject; they paid me because they believed me innocent.

Q. Did Moses receive any money for his part in the transaction?

A. Mr. Judah gave him a $100 bill, which he accepted with thanks.

Q. Did you ever before know Mr. Judah to go abroad to other offices to get insurance?

A. I never did.

Cross-examined by the District Attorney.

Q. Who was present at the examination of the ticket in the hall?

A. Mr. Abraham P. Brower, James A. Burtus, John Smith, Mr, Gilchrist, the mangers' clerk, Samuel Healy, Mr. Samuel N. Sharpe, and others.

Q. Were any of the managers there?

A. No.

Q. Did all those people look at the ticket?

A. Yes.

Q. How long were they there?

A. From half to three quarters of an hour.

Q. Were they all unanimous?
A. They all agreed, as I think, to a man.
Q. Did you examine any other numbers?
A. three or four above and below, to show the difference.
Q. What o'clock was it?
A. About twelve, or from that to two.
Q. Was Moses present?
A. No.
Q. Are you not in some connexion with Moses in the business of lottery insurances?
A. None whatever, except that I let him have part of my house on condition that if he do any business I am to have half of the profits.
Q. Did not the insurers pay you ten per cent to get rid of the hits?
A. No, nothing of the kind.
Q. Did you give Moses any part of what you received?
A. I gave him back his premium, and nothing more. I acted for Judah and Moses as their agent.
Q. Have you ever dreamed on your own account?
A. Yes.
Q. By the *Court*, And made insurance upon the faith of it?
A. Yes, I have even done that too.
Q. By the *District Attorney*, What was Mr. Judah's reason for giving up the the policies?
A. I do not recollect particularly. He said at the time he did not wish to have any noise about it, that he had always done what he could for the lottery business, that he had often endeavoured to get on the grand jury for the purpose of befriending the insurers, and that he might prevent complaints, or words to that effect.
Q. Are you certain he said he had himself dreamed?
A. I could not be mistaken. He told me he had dreamed, and at the same time put his finger on the number.
Q. By the *Court*, Did not he say also that he awoke, and then slept and dreamed again?
A. He did. I cannot be mistaken.
Q. By the *District Attorney*. Did you ever know a prize drawn in consequence of a dream?
A. I can't say that I have.
Q. By Mr. *Hoffman*. Had you ever before been employed by Mr. Judah to get insurance?
A. Never.

Robert Gilchrist, sworn. Examined by Mr. Hoffman.

Q. What office do you hold under the managers?
A. I have been their clerk for about five years.

Q. Do you know of a little boy's having at any time been detected in concealing a number?

A. No, It was before I was a clerk.

Q. Were you clerk in the first of the Medical Science Lotteries?

A. Yes.

Q. Were the managers the same then?

A. They were.

Q. Do you know of the number 17 having been omitted to be called in any of these lotteries?

A. No; I was not then present.

Q. Who drew the stationary prize of $35,000 in the Owego Lottery out of the wheel?

A. Mr. Sickles.

Q. Was not a little boy then in the habit of drawing the numbers?

A. Yes; but he was not then permitted to draw the stationary prizes.

Q. Who drew the stationary prizes after the boy was prohibited?

A. One of the managers. Mr. Sickles has also done it.

Q. have the managers permitted him to put his hand into the wheel to draw out the stationary prizes?

A. Yes. (Mr. *Jay*.) Undoubtedly.

Q. By Mr. *Hoffman*. Have you ever seen more than one ticket in Mr. Sickles' lap at a time?

A. Yes.

Q. How many?

A. Several.

Q. As many as three or four?

A. Perhaps more than four. Mr. Sickles may have taken out four or five at a time, that he need not put his hand out for every ticket.

Q. By the *Court*. What did Mr. Sickles do with the tickets?

A. He generally handed them to the other managers.

Q. By Mr. *Hoffman*. Have you seen the boy put one, two or three, in Mr. Sickles' lap at a time, or before any of them were called?

A. Yes.

Q. Had not he then the option to call one or another of these first as he chose?

A. I shoul l judge he had.

Q. By the *Court*. Had he the opportunity of calling them as he pleased?

A. He might, though he generally called them in the order in which they were laid down?

Q. By. Mr. *Hoffman*. Had he a handkerchief in his lap?

A. Generally?

Q. Who acted at the wheel on the 9th day's drawing of the present lottery?

A. Mr. Sickles.

Q. By the *Court*. Did he draw at the wheel all the day?

A. No sir, I think the boy was there; Mr. Sickles received them from the boy.

Q. By Mr. *Hoffman*. As to the mode of drawing in the lottery, how is it done?

A. The practice is to draw 100 numbers, and then to make a rest.

Q. You keep the managers' book? A. Yes.

Q. Do not the lottery insurers also keep books?

A. They have what are called slips or check books.

Q. Was the number 15,468 at the beginning of the third or fourth hundred?

A. I believe it was about the third or fourth of the third hundred.

Q. Was that number insured?

A. I have heard it was; and know only from report.

Q. Were you present at the examination on the 12th?

A. Yes; I was at both the examinations which took place in the Hall.

Q. Did you exhibit the number 15,468 for the persons who were to examine?

A. Yes.

Q. Had it the appearance of being soiled?

A. I thought it had.

Q. When were these examinations had?

A. They were, I believe, on the evening of the 11th and the morning of the 12th of September.

Q. At what time of day was the first?

A. Near 5 o'clock in the afternoon after the drawing had closed for the day.

Q. Was Mr. Thorne there?

A. He was not. Two gentlemen, Mr. Sharpe and Mr. Crygier, came in, and asked if I could show them the number on the file. They took the file, but said they could not find the number. I then found it and showed it to them. They examined it.

Q. And it was soiled?

A. It appeared to be; it was different from the other tickets on the file.

Q. And what took place next day?

A. The next day Mr. Thorne and all the other gentlemen he

has named were present. They were very unanimous in the opinion that it was soiled.

Q. And you thought so?

A. I have always been of that opinion.

Q. Did they examine any other numbers?

A. Yes; they examined 3865.

Q. Was that number soiled?

A. I thought so, and that was the opinion of the gentlemen who were present.

Q. When was this ticket drawn?

A. I do not recollect; but it was either the 5th or 7th day, I believe.

Q. Was this number insured on?

A. I do not know, I have heard so.

Q. By the *Court*. It may be important to ascertain when it was drawn?

A. I can ascertain it by turning to the book, (witness examines the book) it came out the 5th day in the 4th hundred.

Q. By Mr. *Hoffman*. Was any other number examined?

A. Yes, number 30.

Q. Was that also soiled?

A. It appeared to be, but not so much as the others.

Q. In what part of the hundred was this?

A. It came out the 12th number of the 2d hundred on the 7th day. Number 3865 was the 10th number of the 4th hundred.

Q. Was number 30 insured?

A. I know only from report.

Q. What is usually done with the wheels in the intervals of the drawing?

A. After a day's drawing is over, they have usually locked up the wheels and the files. The books and the key have been commonly left with Mr. Sickles; that is, until the 10th or 11th of September.

Q. By the *Court*. Was this by order of the managers?

A. Yes.

Q. By Mr. *Hoffman*, Could Mr. Sickles have access to the tickets when the managers were not there?

A. Mr. Sickles kept the key of the closet where the wheels were put, and Mr. Skates had the key to the outer door.

Q. Did you ever know of a number of tickets being found under the stage in the 4th Class of the Medical Science Lottery?

A. I saw the tickets in the hands of the managers and understood they had been found under the stage. It was in the Union Hotel, William-street, where there was a stage erected for the purpose of the drawing.

Q. How many tickets were there?

A. There were four.

Q. By the *Court*. How did you learn they were found as you mention?

A. The managers said so.

Q. You heard them? A. Yes.

Q. By Mr. *Hoffman*. What became of the tickets?

A. I think they were kept till the last day's drawing, to ascertain whether they belonged to the wheel; and the last day they were found wanting to the wheel, and were put in.

Q. What numbers were they?

A. I think they were in the 14,000.

Q. Did the managers caution you not to say any thing about it?

A. No.

Q. Do you know of Mr. Sickles ever having found any tickets?

A. I have heard so, but do not know.

Q. By the *Court*. Did you see the soiled tickets after the examination?

A. I saw one of them sometime afterwards.

Q. Did it appear soiled then in the same manner as at first?

A. No material alteration.

[The files were then produced in Court, on which were the soiled numbers, and the court and jury examined those numbers.]

Q. By the *Court*. This ticket, 15468, appears to have been folded—would putting it into the wheel and drawing it out occasion this?

A. I should think not.

Q. There are two foldings in it, distinctly two—How do you account for that?

A. I cannot account for it.

Q. By Mr. *Hoffman*. To whom did the stationary prize of $35,000, in the Owego Lottery, belong?

A. I have understood it was drawn to Mr. Denniston.

Q. Have you heard Mr. Denniston say any thing on that subject?

A. I have heard him say he was the owner of only half.

Q. Who, did he say, owned the other?

A. He refused to mention.

Q. Did not he say Mr. Sickles was interested in it?

A. No. He said Mr. Sickles had no part in it.

Q. Do you know of his having lent Mr. Sickles part of the money?

A. I heard him say he had lent Mr. Sickles some money after he returned from Albany; I do not know how much.

Q. Who paid that prize?

A. I have reason to believe it was paid at Allens' for I have seen the ticket in Mr. Allen's possession. But Mr. Denniston told me that he got his money from Mr. Ogden.

Q. Do you know that Mr. Allen's check was out for $10,000 upon that ticket?

A. I do not know the fact.

Q. You are still clerk to the managers, Mr. Gilchrist?

A. Yes.

Q. Have they not, since Mr. Baldwin's publications, altered the mode of drawing?

A. They have in some measure. The boy formerly had his sleeve fastened round the wrist; now the arm is prepared by stripping it up to the elbow.

Q. Have they since endeavored to prevent the drawing of several numbers at a time?

A. They have always tried to prevent that.

Q. Has it happened since the alteration?

A. I believe not.

Cross examined by Mr. *Jay*. Q. How did the managers secure the wheel?

A. They put a paper over the key-hole, on which one or more seals were placed.

Q. Who kept the seal?

A. The managers kept the seal, and also the key of the wheel which they kept locked.

Q. Was Mr. Denniston a manager of the Owego Lottery?

A. No.

Q. When did the practice of the stationary prizes being drawn by the managers or by Mr. Sickles, commence?

A. With Medical Science Lottery No. 4, which was before the Owego Lottery.

Q. Who were the managers that made this alteration?

A. Mr. M'Lean and Gen. Johnson.

Q. How are these tickets printed?

A. I don't know.

Q. Have they been printed a long time?

A- I belive so.

Q. Was Mr. Denniston present when the Owego prize was drawn?

A. I believe not.

Q. Is Mr. Judah present generally at the drawing of the present lottery?

A. I have seen him there often.

Q. There is some manager always present?

A. Yes.

Q. Mr. Sickles is their substitute?

A. Yes.

Q. What is the mode of drawing and proclaiming the tickets?

A. The number is first called at the number wheel, and then the ticket is drawn out of the other wheel as nearly at the same time as possible.

Q. The number is first called?

A. Yes.

Q. By Mr. *Wright*, (Juror) Is one of the managers always present?

A. I believe always, at least one.

Q. By the *Court*. Could Mr. Sickles, at the number wheel, without any understanding with the manager or person at the other wheel, control the drawing of the prize?

A. I should think not, without combination.

Q. By Mr. *Hoffman*. Who prepared the tickets for the wheel?

A. Mr. Sickles.

Q. And he assists the managers in putting them into the wheel?

A. Yes.

Q. Would it be possible for Mr. Sickles to keep tickets out of the wheel, if he were so disposed?

A. I should think it possible.

Q. Have you ever seen a manager asleep when the drawing was going on?

A. Not exactly a sleep.

Q. Dozing?

A. Yes.

Q. By Mr. *Jay*. When the new arrangement was made respecting the boy's sleeve, was this done without Mr. Denniston's knowledge?

A. Yes. He came from Albany and knew nothing about it, and was preparing the boy's arm as usual, when Mr. M'Lean stopped him.

Q. Is it possible to prevent fraud, if the persons employed at the wheels be pretty dexterous, as well as fraudulently disposed?

A. I should think not.

Q. The managers trust Mr. Sickles to count for the wheels?

A. Yes.

Q. And they don't count after him?

A. No.

Q. By Mr. *Hoffman*. Did you ever know tickets counted by Mr. Sickles, to be recounted after him?

A. I don't know that I have. They count what they put in themselves, and he counts what he puts in.

Q. By the *District Attorney*. Don't they all count?

A. Every one counted when I was present.

Q. By Mr. *Hoffman*. Who prepared the tickets for the Owego Lottery?

A. Mr. Sickles.

Q. Has not Mr. Sickles been more frequently at the wheel than any of the managers?

A. I believe he has, at the number wheel.

Q. Who drew from the wheel the number of the principal prize in the Owego Lottery?

A. Mr. Stuart. He drew the number from the number wheel.

Q. He was a manager?

A. Yes. But it was not for himself.

Q. By the *Court*. After the tickets were prepared, did the managers take any steps to detect mistakes, if any, in the counting?

A. They couldn't judge of the bundles counted by Mr. Sickles. The tickets were prepared in bundles of a thousand.

Q. By the *District Attorney*. Was Mr. Sickles' hand open when he drew the stationary prize for himself?

A. I do not know.

Q. By Mr. *Hoffman*. Do you remember any thing about a certain number five?

A. Nothing particular, except that I conversed with Mr. Jansen about a low number, but do not recollect what.

Q. By Mr. *Jay*. Do you recollect what happened respecting the payment of what Mr. Thorne had insured?

A. Yes. The amount paid him was just ten per cent on the whole; but it was ascertained by a calculation, in order to apportion the sum to be paid among the respective insurers.

[The Court here took a recess for one hour. At a quarter past 6 P. M. His Honor the Mayor resumed his seat, and the trial proceeded.]

Abraham P. Brower, sworn.

Says he has been some time engaged in the selling of lottery tickets—only about two and a half years, however, on his own account. Does not know of any concealment of any numbers by one of the boys at any time, except from hearsay. Has heard of one of the boys having been bribed. Witness was present at the examination of the numbers 15468, 3865 and 30; did not take particular notice of the last; the two first appeared to him to be soiled, the second, however, more than the first.

Q. By Mr. *Hoffman*. Were you a vender of tickets in the fourth class of the Medical Science Lottery? *A*. Yes.

Q. What conversation had you with Mr. Sickles during the drawing of that class?

A. I often saw Mr. Sickles and had conversation with him.

Q. Did you ever converse with him respecting the low numbers?

A. Yes.

Q. What did he say?

A. He asked me if I insured. I told him sometimes. He told me there were certain numbers I need not be afraid of.

Q What were the numbers?

A. I think he mentioned number three, as one of them.

Q. What did you reply to him?

A. I think I mentioned to him that I was very sorry he had said any thing to me on the subject.

Q. Did he not tell you that those low numbers were not in the wheel?

A. I think not. He only said I need not be afraid of them. He has since told me, however, that he had said that in jest.

Q. Did not he request you to keep the fact a secret?

A. Yes.

Q. This was after the publications in the Chronicle?

A. Yes.

Q. What answer did you make? Did you or not tell him that he ought never to have communicated the fact to you?

A. Yes, I believe I did.

Q. Do you know when number three came out?

A. No.

Q. Was it one of the numbers afterwards found out of the wheel?

A. I do not know.

Q. By the *Court*. Do you know whether it came out early?

A. It did not—but I do not know exactly when.

Q. By Mr. *Hoffman*. Was this information given you to enable you to insure upon the low numbers?

A. I do not know what his views were.

Q. Did he mention Judah's name to you?

A. I do not remember.

Cross-examined, by Mr. Jay.

Q. Are you intimate with Mr. Sickles?

A. Not very.

Q. Have you any interest in common with him?

A. No.

Q. Can he make any thing in consequence of what passed between him and you?

A. Not that I know.

Q. Are you sure he was in earnest?

A. I cannot tell certainly.

Q. It was class No. 4 he spoke of? *A.* Yes.

Q. Did you take his advice and insure?

A. I do not know whether I did or not.

Q. Did you believe Mr. Sickles when he told you that? Did you insure any more on that account?

A. No.

Q. By the *Court.* Did it influence your insurance?

A. I do not exactly know.

Q. Would you have insured number three as you did if he had not given you the information?

A. I do not think I would.

Q. How long since that lottery was drawn?

A. About one year.

Q. By Mr. *Jay.* Did you sign the certificate that the lottery was fairly drawn?

A. Yes.

[Mr. *Jay* here proceeded and read the certificate before the Jury. See p. 15, introduction.]

The witness said he had been present at the examination with Mr. Thorne; that Thorne told him $250 or $260 of the insurance he had effected was his own; that this sum was equalized among the several insurers, but not paid as being ten per cent. on the whole.

Q. By Mr. *Hoffman.* Did you insure largely on ticket No. 3?

A. I do not think I did.

Q. As much as two thousand dollars?

A. I think not so much.

Q. One thousand dollars?

A. Perhaps I might.

Q. Did you not insure on this number in consequence of Mr. Sickles' information.

A. No; I insured on all that were presented.

Q. Did not you insure on number three at a late period of the drawing?

A. Yes.

Q. Had not the information from Mr. Sickels an influence on your mind in making that insurance?

A. Yes; because he told me so.

Q. Did you insure on that number for Mr. Judah?

A. Part for myself and part for Mr. Judah.

Q. When you got the insurance from Mr. Judah it was that the number would not come out?

A. Yes.

Q. Did you not act on Mr. Sickles' information?

A. I do not exactly know; I insured all that was asked of me, not that any more than any other number.

Q. You insured pretty largely on number three? A. Yes.

Q. What was your reason for doing so?

A. Because I did not like to disclose what Mr. Sickles had said to me.

Q. That was your reason? A. Yes.

Q. And you went to Judah to get him to take a part?

A. Yes.

Q. If you had not taken all that was offered to you, you would have felt yourself obliged to explain?

A. Yes.

Q. And this is the reason why you took so much on number three?

A. Yes. I did not wish to injure any body.

Q. By Mr. *Jay*. Did Mr. Sickles' information amount to an objection in your mind against your becoming an insurer on that number? A. No.

Q. By the *Court*. Supposing you had been going to make an insurance for yourself merely, would you have made it in the same manner as if you had not received this information?

A. I do not think I should for myself.

Q. By Mr. *Jay*. You believed Mr. Sickles to be serious and intending to give you good advice?

A. At that time I did. He has since said he was in jest.

Q. By the *Court*. To what extent did you cover yourself with Mr. Judah?

A. Seventeen hundred dollars.

Q. What was the whole amount of the insurance?

A. About $2200.

Q. Did you gain any thing on your iusurance?

A. Yes. I was allowed 12 and a half per cent. on Mr. Judah's part.

Q. By *Mr. Hoffman*. Did you ever insure for Mr. Sickles?

A. No.

Q. For Judah? A. Yes.

Q. Did Judah hit you on number 30, or on 3865? A. No.

Q. And did you insure on 15468? A. Yes.

Q. Did you cover yourself in part at Judah's office on this number?

A. Yes.

Q. And did you hit him? A. Yes.

Q. Did you ever hit on the faith of a dream?

A. I believe I did once. It was in a Philadelphia lottery.

Q. Was it your own dream? A. Yes.

Q. Do you know any body else that has hit on the faith of a dream?

A. Why dreams are constantly talked about by those people that insure.

Thomas B. Jansen, sworn.

Says he has been in the lottery business a dozen or more years. Knows nothing of the truth of the report of a boy having concealed some numbers 10 or 12 years ago. Recollects the circumstance of a man being exposed for attempting to bribe the little boy, Ten Brook, Mr. Sickles' grandson, lately employed at one of the wheels. The man was forced to get up on a table and beg pardon.

Q. By Mr. *Hoffman*. How was the attempt of the man upon the boy discovered?

A. The boy told it to his grand-father. The managers then got a number for him and let him go to the man with it. Some of them followed him. He showed it to the man, and was requested to have it called the next day. The next day the man came to the drawing and the boy pointed him out, and he was exposed.

Q. Was the boy considered to have acted corruptly?

A. Not at all.

Q. Do you know any thing about a certain number, 17, in a former lottery?

Q. Yes. It was in Union College Lottery, 3d Class. The drawing of the lottery closed, and that ticket didn't come out.

Q. You were present?

A. Yes. And every hundred, I observed that 17 didn't come out. And when the drawing was over, I ran to one of the managers, Mr. Denniston I think, and told him that number 17 had not been called.

Q. Well, what did they do?

A. It was then called.

Q. After the drawing had been closed?

A. Yes. The number was called by the man at the number wheel, and the man at the other wheel said, *blank*.

Q. And what did the man who sat in the middle say?

A. He repeated, '17, blank.'

Q. Then, in fact, number 17 was never drawn?

A. No, it was not—Mr. Sickles made up the numbers for this lottery.

Q. What is the meaning of tickets being said to come out first under the black mark?

A. It is that they are called near the first in the hundred.

Q. Have you seen Mr. Sickles have several tickets in his lap at a time?

A. Yes.

Q. In the 4th Class?

A. Yes.

Q. How many do you think?

A. I should say I have seen him have a hundred or more at a time.

Q. And what did he do if any remained at the end of a hundred?

A. He put the rest back into the wheel.

Q. Did some of the managers occasionally get asleep?

A. We used to laugh at Doct. Mitchell sometimes for getting drowsy.

Q. You have seen Mr. Sickles take out a handful at a time?

A. Yes. But he handed them one by one to the managers.

Q. Could Mr. Sickles, if so disposed, have taken tickets away with him, and not returned them to the wheel till the next day?

A. He might, and not return them at any time, if he pleased. When the ticket was taken out for the little boy, and the man exposed, I never observed it, nor did I know of it till afterwards.

Q. Have you attended the two last drawings? A. No.

Q. Who run on number 3865?

A. I believe Mr. Seixas.

Q. Who run on 30?

A. I believe the same man.

Q. Do you know whether he did it for Judah?

A. No.

Q. Did you ever see Mr. Sickles and Mr. Seixas together?

A. Yes; I have seen them at Mr. Judah's office together.

Cross examined by Mr. Jay.

Q. Have you seen the boy get ahead of the manager at the blank and prize wheel?

A. Yes; two or three tickets ahead. The boy then cut and opened, at present he cuts, but don't open the tickets.

Jackson Haines sworn.

Said he had sold tickets a number of years, but had nothing to do with the present lottery, except having sold a few tickets.

Q. By Mr. *D. B. Ogden.* Have you ever bought tickets of Mr. Sickles?

A. Yes.

Q. Did you ever lend him money?

A. He called on me last winter and wished to borrow $400, which he said he could get of Mrs. Bates, if I would recommend him to her.

Q. What inducement did he hold out for you to assist him?

A. He said he was likely to have some connexion with the next lottery, and that he might then aid us, (meaning my partner and me) in our business.

Q. By the *Court.* He told you he should be a manager in the next lottery, and could then do something for you?

A. He said he could do something for us.

Q. In what way did you think he meant to say he could serve you ?

A. I never thought of it till after these reports were raised.

Q. Did you promise to recommend him to Mrs. Bates ?

A. Yes. But on making enquiry about his responsibility, I determined not to recommend him to her.

Cross examined.

Q. What is the practice respecting the purchase of tickets from the managers ?

A. The practice formerly was to give notes for them, and leave the tickets for the security of the managers.

Conrad Brooks sworn. Examined by Mr. Ogden.

Q. Are you a dealer in tickets ?

A. I have bought and sold some, but don't follow the business.

Q. What business do you follow ?

A. I keep a shoe-store.

Q. What conversation have you had with Mr. Sickles ?

A. Eleven or twelve months ago, Mr. Gilchrist called to get a note discounted for Mr. Sickles, at Barkers' bank. After it became due, Mr. Sickles came and told me, that where one gets one good thing done, it is common to ask for another, and requested me to assist him in discounting another note. I undertook to get it done at the same bank. It was done, and Mr. Sickles received the money.

Q. And what did he say to you then ?

A. He told me that perhaps he could be of some service to me ; that he was going to be a manager in the next lottery, and perhaps we might then play into each others hands.

Q. What did he mean by that ?

A. I didn't know then what he meant.

Q. By the *Court*. You were a lottery dealer ?

A. No, I keep a shoe-store ; I bought once 100 tickets at auction and sold them out.

Q. In what lottery ?

A. In No. 4 of the Medical Science.

Q. By Mr. *Ogden*. Do you know whether any insurance was effected on No. 15463 ?

A. I have heard of it.

Being cross examined, he said neither Mr. Sickles nor Mr. Gilchrist ever endorsed his note—Mr. Gilchrist was his friend.

William Smith, sworn.

Says he was a dealer in tickets when the Owego lottery was drawn, and was at the drawing when the prize of $35,000 came out.

Q. Was there any thing peculiar in the manner of drawing that prize ?

A. I will state.

Q. It was drawn out by Mr. Sickles ?

A. Yes. I stood very near Mr. Sickles at the time. He stood facing me.

Q. Did he show his hand ?

A. He did not. He had told me before that the managers had come to the conclusion not to show their hands. He said they considered it degrading.

Q. How was that prize drawn, in fact, by Mr. Sickles.

[The witness here represented the manner of drawing the ticket by gestures, showing that Mr. Sickles, when he took his hand out of the wheel, turned partly round and dropped his hand partly under the skirt of his coat, and then held up the number to the spectators.]

Q. By the *Court*. Mr. Sickles told you the managers thought it degrading to show their hands ?

A. Yes.

Q. Did you see the number in his hand as his hand came out of the wheel ?

A. I did not see any number as he took his hand out; but after he put it under the skirt of his coat he held up the ticket ?

Q. The Owego was the last drawn lottery before the present?

A. Yes.

Q. Have you seen more than one ticket open at a time in Mr. Sickles' lap ?

A. I have—and also in the manger's lap. The boy was frequently four or five ahead.

Q. At the blank and prize wheels ?

A. Yes, that was conducted in the same manner. The boy would cut and open a number and throw it down, and then take out another.

Q. Did you attend the drawing this morning ?

A. Yes.

Q. Did the boy show his hand ?

A. Yes, very fairly.

Q. Did you examine the soiled tickets ?

A. No.

Q. Did you sign the certificate ?

A. Yes, Mr. Judah brought it to me.

Q. Were you present at the investigation between Mr. Judah and the other insurers ?

A. No.

Q. Why did you sign the certificate ?

A. I signed it because others who had contributed to raise the

reports that have been circulated, had previously signed.

Q. This was the reason?

A. Yes, I thought if they were satisfied, I might safely sign the paper.

Cross examined, by Mr. Wells.

Q. Was there any thing struck you as being unfair in the manner of drawing the prize in the Owego lottery?

A. Nothing at the time.

Q. You had no doubt at that time that the ticket was fairly drawn?

A. None. If I had any suspicions of Mr. Sickles' honesty, I should not, however, have been satisfied with the manner in which he drew the prize.

Q. By Mr. *Ogden*. What do you now think on that subject

Mr. Wells objected to the question as improper.

Q. By the *Court*. Mr. Smith, what did you mean to say, that you then considered it fairly drawn?

A. Yes, sir.

Q. And now? A. And now.

Q. By Mr. *Ogden*. Did you know at the time to whom that prize was drawn?

A. No.

Q. Did you hear Mr. Denniston say he was the owner?

A. I once expressed to him my opinion that the bad reports abroad respecting lotteries originated in the drawing of the Owego lottery and not in the present one; and I told him if he could do away the suspicion as to the $35,000 prize, it would go far towards removing any impressions on the subject of lottery management.

Q. What did he say?

A. He said if he were asked in a proper manner, he might perhaps give an answer.

Q. You had asked him before whether he was the proprietor of the $35,000 prize?

A. I had told him I understood he owned half, and Mr. Sickles the rest.

Q. And this had given rise to your impression concerning the origin of those reports?

A. Yes. I told Mr. Denniston so, and he therefore refused to answer.

John L. Cuygier, sworn.

Says he examined the number 15468 the day it was drawn, and said at once on seeing it, that it was soiled; afterwards all who were present agreed that it was soiled. Witness went again the next day to examine the tickets. Mr. Gilchrist pointed out one which he said was the number 15468; but witness told him,

without seeing the face of it, that he did not think it was the number; and it proved to be a blank. Witness then proceeded to examine and presently found the ticket himself, by looking merely at the back of it. He did not examine number 30; has not particularly observed the manner in which the drawing has been conducted; was present when 15468 came out, but saw nothing remarkable in the drawing.

Being cross-examined by the District Attorney,

He says that he understood from Mr. Gilchrist that the ticket he pointed out to the witness was a blank; but witness did not see the face of it, and cannot say positively.

Samuel J. Bernard, sworn.

Says he has attended the drawing twice or thrice, and has seen the boy pick up tickets from the floor, and cut and open them as if taken directly from the wheel.

Q. Have you seen the boy take out several at a time from the wheel?

A. Yes, a handful; and cut them one after another, and hand them to Mr. Sickles.

Q. Did Mr. Sickles appear to have the principle part of the management?

A. Yes, at one of the wheels he did.

Q. Have you ever seen a manager asleep during the drawing?

A. I have seen one of them apparently asleep, or dozing, so as to excite laughter in the room.

Q. And that while Mr. Sickles was at work at the wheel?

A. Yes.

Q. The lottery is drawn after dinner, isn't it? A. Yes.

Q. How many tickets have you seen lying on a manager's knee before any of them were called?

A. As many as three.

Q. Have you seen Mr. Sickles draw many at a time from the wheel?

A. Yes, a handful, and lay them on his lap.

Q. By Mr. *Jay*. This was when the boy was absent?

A. Yes.

Q. At which wheel have yon seen two or three lying on a manager's knee at a time?

A. At the blank and prize wheel.

Doctor Isaac Kip sworn.

Says he has occasionally attended the drawing. Has seen the boy take out several numbers at a time, and lay them down promiscuously in Mr. Sickles' lap.

Q. Did you think that a proper mode of drawing?

A. No, I have thought it improper, and told the bystanders to watch.

Q. Did you ever know the numbers improperly called?

A. Yes, I have known them called so as not to correspond with the order in which they were opened?

Q. Have you known tickets to fall from the handkerchief of Mr. Sickles?

A. Yes, and he picked them up.

Q. What lottery do you now speak of?

A. Medical Science, No. 4.

Cross examined.

Q. Do you say you saw any thing improper?

A. I only saw the numbers called otherwise than they were opened—that is, they were not called as they were opened.

Q. By the *Court*. Did you ever know any number or tickets left over at the close of drawing a hundred?

A. I never did.

Robert Gilchrist called again.

Q. By Mr. *Hoffman*. Have you seen numbers left over at the close of drawing a hundred?

A. Yes. Sometimes, I suppose, as many as ten.

Q. Did you ever see this at the blank and prize wheel?

A. Don't recollect that I have.

Q. How long were the rests that have been mentioned at the ends of the hundreds?

A. A bout 10 minutes—a very short time.

Q. Did you ever see the boy keep tickets in his hand during the rest?

A. Don't recollect that I have.

Q. Have you ever seen him put surplus tickets into the wheel at the end of a hundred?

A. Yes. But if the ticket had been opened, then it was kept to begin the next hundred with.

Q. How do they know when they have reached the end of a hundred?

A. The person keeping tally calls out, when they get to 99, that the boy may draw one more.

Mr. Ogden now informed the Court that there was only one witness more, Mr. Burtus, whom it was intended to examine on the part of the defence; that this witness was said to be sick, but might be expected to attend court in the morning; that all parties were willing to have the jury retire for the night, to their own homes, under the charge of the court, that they should suffer no person to speak to them in relation to the trial.

His Honour, the Mayor, therefore gave such charge to the jury—and the court adjourned at about 9 o'clock, P. M. until 11 A.M. of the next day.

[*November 11th—The Jury were called at* 11 *A. M. and the trial proceeded.*]

John Smith sworn, on the part of the defendant.

Says he lives with his brother, Daniel D. Smith, who sells lottery tickets. Has lived so better than 7 years. Was present at the 9th day's drawing when number 15468 came out.

Q. By Mr. *Hoffman.* Was there any thing peculiar at the drawing?

[The witness stands mute.]

Q. By Mr. *Hoffman.* What is your answer?

Q. By the *Court.* What does he say?

A. By Mr. *Hoffman.* Nothing, Sir.

Court. Mr. Smith, it will be disagreeable to the court to take any harsh measures with you; but you stand here as a witness, bound to speak the truth and the whole truth, so far as it may not criminate yourself. You must answer the question.

A. I was keeping slips and taking down the numbers as they came out. I thought that as the numbers were thrown into Mr. Sickles' lap—[Here the witness stands mute for sometime.] At the time that number came out, I thought that the numbers thrown into Mr. Sickles' lap, didn't accord with the numbers that come out of his lap. My opportunity of seeing was not very great; and since the drawing I have been inclined to think I was mistaken.

Q. Has not Mr. Judah endeavored to prevent or dissuade you from being a witness in this cause?

A. I can't say that he has.

Q. By the *Court.* Have you had any conversation with him on the subject?

A. I told him I was to be a witness here.

Q. By Mr. *Hoffman.* What was the conversation you had with Mr. Judah?

A. I did not charge my memory. I did not think it of any consequence.

Q. By the *Court.* Do you mean to say upon your oath that you have forgotten it? What is your answer?

[He stands mute.]

Q. By the *Court.* Mr. Smith you must answer, at your peril. Cannot you give us the substance of that conversation?

A. I believe he asked me what my evidence would be.

Q. What answer did you make?

A. I did not tell him what I should say.

Q. By Mr. *Hoffman.* Have you not said that you have had a quarrel or dispute with Mr. Judah on account of your being a witness?

A. I do not recollect,

Q. Did you examine the files? A. Yes.

Q. Did you find 15468 soiled?

A. It appeared to be.

Q. By the *Court*. What do you mean by what you said about the numbers thrown into Mr. Sickles' lap not corresponding with those that were called?

A. They did not appear to me to correspond.

Q. How?

A. It appeared that there was one number more than the boy threw in.

Q. To what extent was the difference?

A. There appeared to be one more.

Q. How did you ascertain how many the boy took out?

A. I was writing—I thought I observed how many he took out—I thought he took out one less than there really were. It appeared that when he had thrown three into Mr. Sickles' lap in succession, Mr. Sickles, in calling the numbers off, made one more.

Q. How many did he call off?

A. I think it was four. I thought so then, and until the statement of the managers came out.

Q. Did you mention it at the time?

A. I mentioned it I believe to a number present, but not at that moment, I believe it was next day at the Hall when the examination took place.

Q. Did you think at the time that you saw distinctly how many the boy drew out?

A. It appeared so to me.

Cross-examined by Mr. Jay.

Q. Did you see the numbers in the boy's hand?

A. Yes.

Q. Was your face towards the boy?

A. I was nearly in front.

Q. Might not the boy take out a number while you were looking at your book.

A. He might.

Q. Of those four tickets that Mr. Sickles called off, was 15468 the first?

A. No.

Q. Second?

A. No. Either the third or fourth.

Q. Was this number insured at your brother's office?

[Witness does not answer. The counsel however admit that his brother has been indicted for insuring that number for Judah.]

Q. Does the boy commonly wait for Mr. Sickles to clear his lap?

A. Sometimes—and sometimes not.

Q. By the *Court.* How was it in the present instance? Had Mr. Sickles got through?

A. It appeared to me not.

Q. Was it a common thing for that boy to draw more than one at a time?

A. Sometimes he would get one or two and throw one back.

Q. When Mr. Sickles called off the fourth number, as you have mentioned, did he read a number, or call it merely?

A. He read a number.

Q. By the *Dist. Attorney.* Has Mr. Baldwin called on you on this subject?

A. Yes; he enquired what I had seen.

Q. What did you say?

A. I told him what I have stated here.

Q. By the *Court.* Did you attend court yesterday?

A. Not till evening, when the marshal came after me.

Q. Why did you not attend?

A. I did not know that it was necessary; I calculated they would send for me.

Q. Did any body tell or hint to you that you need not come?

A. No, sir.

Benjamin Crane, sworn.

Says he examined the soiled tickets on the morning after the drawing, and found them unequally soiled. Number 3865 was most soiled. It was drawn on the fifth day; 30 was drawn on the seventh, and 15468 on the ninth.

Q. By Mr. *Hoffman.* At what time did the low numbers in the Fourth Class come out?

A. Number three came out on the 44th day's drawing; six came out after three; and five was a late number also—I don't remember whether it was after three or six.

Q. How many days drawing in all? A. Fifty-two.

Q. When did number ten come out?

A. I don't know as to that number.

Q. Had you any conversation with Mr. Judah after the blow-up?

A. Yes, he called on me.

Q. Did he say any thing about the anonymous letter?

A. No, nor the dream. He called to know why we would not pay. He called again in the evening to learn the result. And on Monday morning afterwards, he produced the letter which I saw.

Q. This was at the meeting of the insurers?

A. Yes. At that meeting he agreed to give up the policies.

Q. The certificate was signed afterwards? A. Yes.

Q. Did you sign that? A. Yes, and I drew it.

Being *Cross-examined*, he says, that the intent of the certificate was merely to exonerate the managers; that the latter clause of the certificate was dictated by Mr. Judah; and that witness signed it more to accommodate Mr. Judah than any thing else.

Q. By the *District Attorney*. Did you believe that certificate at the time?

A. I cannot say positively as to the clause dictated by Mr. Judah. I do not believe *now* that it is true.

James A. Burtus, sworn.

Says that in his jugdment the tickets said to be soiled were so.

Q. By. Mr. *Hoffman*. Did Mr. Sickles give you any information relative to low numbers?

A. Yes. He told me, or intimated that there were some numbers not in the wheel.

Q. Towards the latter part of the drawing?

A. Yes, about the middle, or towards the latter part.

Q. What numbers were they?

A. They were low numbers. I do not remember what numbers.

Q. Did he intimate at the same time that Mr. Judah was acquainted with that fact?

A. Yes.

Q. Have you any knowledge of Mr. Judah's hitting the underwriters on low numbers?

A. No.

Q. Did he hit often in that wheel?

A. I can't recollect.

Q. Did you ever, during the drawing, see four or five tickets in Mr. Sickle's possession?

A. No.

Cross-examined by the District Attorney.

Q. Where was this? A. In my store.

Q. Who was present? A. Nobody.

Q. What did you tell Mr. Sickles?

A. I told him it was very wrong, and that he ought not to do such a thing. He said he would never do such a thing again.

Q. Have you not reason to believe that he was jesting?

A. He has since said he was joking.

Q. Since the disturbance about number 15468? A. Yes.

Q. What was his inducement for giving you such information?

A. I know nothing about it. I asked him no questions.

Q. Have you any connexion with Mr. Sickles in business?

A. None.

Q. What did you think of the communication?

A. I was surprised—I thought it was very incorrect.

Q. Did you ever mention it to the managers? A. No.

Q. Why ?
A. Because Mr. Sickles said he would never do so again.
Q. Did you ever converse with Mr. Judah about this ?
A. No. Mr. Sickles told me Mr. Judah knew it.
Q. Knew what ?
A. Of the tickets being out of the wheel.
Q. Was the communication a voluntary one ?
A. I never attempted to draw it out.
Q. Did you mention the thing to any body ?
A. I did to Mr. Bloodgood, soon after.
Q. Did you make any use of the information ?
A. No, I went on as before.
Q. To whom else did you mention it ?
A. I mentioned it to a young man in the store, and afterwards, since this disturbance, to Mr. Crane.
Q. By the *District Attorney*. Didn't yon think Mr. Sickles a great fool ?
A. I can't answer that. I had always had such an opinion of him that I hadn't thought him capable of such a thing.
Q. How long ago was this ?
A. About a year ago.
Q. By Mr. *Hoffman*. Didn't you tell Mr. Sickles you were sorry the communication had been made ?
A. I have since told him I was very sorry, for that it was information I did not want.
Q. Didn't you at the time ?
A. Not the very day, but I did some days afterwards.
Q. You have been long acquainted with Mr. Sickles.
A. Yes.
Q. And in the habit of lending him money ?
A. I have often lent him small sums, and never charged him any interest.
Q. Didn't Mr. Sickles name any of the numbers he spoke of ?
A. I think he did name number three as one of them.
Q. By the *Court*. Did he ask you to keep the thing a secret ?
A. I do not recollect.
Q. Had you any idea, at the time, that he was joking ?
A. I didn't know what to think, I was so surprised.
Q. Did you consider it a confidential communication ?
A. I don't know that I did.
Q. By the *District Attorney*. Don't the old man frequently joke about the lotteries ?
A. Yes, he frequently jokes.
Q. By Mr *Collins*, (Juror) Do you believe Mr. Sickles told you the truth ?
A. I don't know what to think of it.

John Bloodgood, (one of the grand jurors) sworn.

Q. Did Mr. Burtus communicate to you what Mr. Sickles had told him of some tickets being out of the wheel?

A. He did.

Q. When?

A. The drawing was then nearly done.

Q. Are you in habits of intimacy with Mr. Burtus? A. Yes.

Q. Have you ever seen tickets in Mr. Sickles' possession during the drawing of a lottery?

A. Yes, in the third class of the Medical Science Lottery.

Q. How many?

A. Three or four in number.

Q. Were any of those numbers insured?

A. In that lottery number 14236 was insured to a large amount, fifteen or sixteen hundred dollars; and it came out.—Mr. Burtus, now deceased, had insured; and he thought there was something wrong.

Q. It came out?

A. Yes. And 14265, 14279, 14234, all came out the last day's drawing.

Q. Were all these insured?

A. Mr. Burtus had been applied to, to insure them all.

Q. And were these three, those which you saw in Mr. Sickles' possession?

A. Yes. I had a memorandum of the numbers before he showed them, for I suspected them. Mr. Sickles told Mr. Burtus that he had found them on the floor under the wheel.

Q. Did he say when he had found them?

A. He told Mr. Burtus he had found them that day. It was a day or two before the close of the drawing.

Q. Did one of those tickets draw a prize?

A. Yes, the second of them drew $10,000.

Q. Who bought that one?

A. I believe Capt. Wiswall, of one of the steamboats, bought it for a gentleman up the river, a Mr. Livingston.

Being *cross-examined*, he says, he saw Mr. Sickles come with the numbers to Mr. Burtus before the tickets were drawn, and he showed the numbers which he said he had found. Application had been made to Mr. Burtus to insure those numbers to stay in till the last day. The witness supposes that Mr. Sickles came to Mr. Burtus with good motives; though witness thought it was very incorrect to do as Mr. Sickles had done.

Q. By *Mr. Jay*. Was your confidence in Mr. Sickels shaken by what he did?

A. It was. And I told Mr. Burtus at the time that I did not wonder that Mr. Judah run so high on the low numbers.

Q. Are not the low numbers generally run upon more than others?

A. Yes.

Q. Why?

A. I don't know how to account for it; but such is the practice?

Q. What do you call low numbers?

A. From one to a hundred, are more insured on than those which are higher.

Q. Did Mr. Judah insure much on the low numbers of that lottery?

A. Yes, he had four or five thousand dollars on them.

Q. By the *Court*. The insurance is made, I understand, that the ticket will not come out?

A. Yes.

Q. And if it does come out the insurer loses? A. Yes.

Q. Did Mr. Judah insure so high that he might lose two or three thousand dollars on one of the low numbers?

A. Yes, He might, I suppose, if it had come out.

[The defendant,s counsel here rested his defence—Other witsses were thereupon called for the prosecution.]

General Johnson, sworn in behalf of the People.

He says he has been a manager in all these lotteries. The general mode of conducting the drawing is for one manager to sit at each wheel and one in the centre between them; at least this ought to be the case, three ought to attend; though it has frequently happened that only two managers were present. Mr. Sickles has generally officiated at the number wheel; and witness has understood that he so officiates in the place of the Albany managers. He was never appointed by the witness; he is not sworn, and gives no bond. He has served in the former lotteries without bond and without oath. Witness has always had the highest confidence in him till lately, and never doubted his honesty until after the present clamors were raised; has since been doubtful on the subject. Witness has attended every drawing of the present lottery. Believes the stationary prizes to have been all fairly drawn in this lottery. Witness drew in Mr. Kent's stead in the Fourth Class; knows nothing about the drawing of the Owego lottery. Mr. M'Lean has been absent a great deal from the drawing. Doctor Mitchell and the witness have attended more than the other managers. Witness never sat at the number wheel; has observed more than one number out of the wheel at a time, and particularly at the blank and prize wheel; has seen this happen when Doctor Mitchell was at the wheel. Recollects the accident that occurred to Mr. Kent, who went to Morrissania, after the close of the day's draw-

ing, to see the late Mr. Morris and there found a ticket in his clothes. The ticket was afterwards put into the wheel. Tickets that have been found out of the wheel have always been put back when the managers knew any thing about it.

Q. By Mr. *Jay*. How are the tickets prepared for the wheel?

A. Mr. Sickles has generally brought the numbers done up in bundles of a thousand. They are afterwards counted and put into a tub.

Q. The managers assist in counting? A. Yes.

Q. Have there been instances of tickets being found on the floor?

A. Yes, several. We always take care, however, to get every thing into the wheel before drawing.

Q. Who prepares the tickets at first?

A. The managers had a meeting before the Medical Science Lotteries were drawn, and they then agreed with Mr, Sickles to prepare the lotteries for them by contract, at $36 a thousand. After the first class was drawn, other persons applied, but Mr. Sickles was still retained by the managers, at the instance of Doct. Mitchell, and has been continued in their employ ever since.

Q. Did the contract with Mr. Sickles authorize him to sit at the wheel?

A. No.

Q. You have been constantly present at the drawing?

A. I have been absent a few days by reason of sickness, and then my brother attended in my place.

Q. How has the boy appeared to conduct himself?

A. Well, always. I have had the fullest confidence in him, and never knew any reason to discharge him.

Q. Were there any complaints made against Mr. Sickles before this buzz was raised?

A. Never.

Q. Were you present when 15468 was drawn?

A. Yes. I saw nothing unusual. I was sitting at the table.

Q. Did you attend to the drawing?

A. It was utterly impossible for me to examine constantly the mode of drawing at the wheel. I sat at the files, and had quite enough to do to repeat the numbers and stick them on the files.

Q. Was there any other manager present?

A. I am not quite sure, but believe there were three present in all, Doct. Mitchell, Mr, M'Lean and myself.

Q. Did Mr. Sickles then officiate?

A. Yes, though there were three managers present?

Q. Was there any complaint respecting that number at the time?

A. None at all. The next drawing, however, there being then some noise about it, the files were examined.

Q. General Johnson, was 15468 soiled ?

A. It did not appear to be soiled as if worn in the pocket. That is what the managers have declared, and I wish to confine myself to that.

Cross-examined, by Mr. Hoffman.

Q. You wish to confine yourself to the managers' certificate ?

A. Yes. It was their opinion that it had not been soiled in the pocket. It was soiled, but they thought, not in the pocket.

Q. General Johnson, did you ever consider it derogatory to expose your hand in drawing the stationary prizes ?

A. Never; and I never heard of the agreement mentioned here on that subject, till to-day.

Q. Do you recollect several numbers having been picked up by the boys under the platform ?

A. Yes, it was the day, or day but one, before the last day's drawing.

Q. Was there ever any explanation about the tickets given you by Mr. Sickles as having been found by the boys ?

A. No.

Q When the tickets are counted for the wheel, does Mr. Sickels count also with the managers ?

A. Yes, he counts also.

Q. And the managers do not count after him ?

A. No, they trust to his counting.

Q. The three numbers before mentioned—were they put into the wheel?

A. Yes, they were put in previous to the last day's drawing.

Q. Did Mr. Sickels ever inform the managers that he had found ten tickets in a crack ?

A. No ; I never heard of it till the defendant's publications were made.

Q. But did not they find ten tickets on the floor ?

A. There were ten found, which were afterwards put into the wheel.

Q. Were they in a bundle ?

A. They were.

Q. What did the managers think of it ?

A. It was thought a mere accident.

Q. The tickets are put up in thousands ?

A. Yes, in thousands, hundreds and tens.

Q. And those bundles which Mr. Sickles hands to the managers as counted, they don't count after him ?

A. No.

Q. Suppose three tickets were to drop on the floor, would no

it be extraordinary for them all to be nearly of the same number.

A. I can't say.

Q. Did you ever authorize the publication made by Tunis Wortman on this subject?

A. No, never—The witness then endeavoured to explain how tickets may have been soiled. He said the boys' knives were often dull, and they frequently drew the ticket two or three times through their fingers to strip the thread off; and witness supposes the soiling may have arisen in that way. As to the examination made by Mr. Fay and others, at the Hall, witness said it was made towards evening, when the sun was shining, however, on the opposite buildings. He says, also, that it has never been in Mr. Sickels' power to get tickets out of the wheels, except at the drawings, without breaking locks and seals. Witness kept the key, and carried it regularly with him to Brooklyn every night but one.

Q. How long did the examination of Mr. Fay and others continue?

A. From ten to twenty minutes.

Moss Kent sworn.

Says he has attended the present drawings five or six weeks past, but not till after the ninth day. He attended the drawing in 1816, and one day after the day's drawing was over, he went to Morrisania, where, on going out of doors, a number, to his great surprise, dropped from among his clothes. This number was afterwards restored to the wheel. No suspicion existed at the time that it was any thing more than a mere accident. There was no secrecy about the thing among the managers. It was thought fortunate that the ticket was found and not utterly lost. As to Mr. Sickles being employed as a substitute for the witness, he says that wanting to go to Washington, in 1816, to attend the session of Congress, Mr. Sickles was recommended as a proper person to assist in his absence; and witness heard on his return in the spring, that Mr. Sickles had been occasionally employed in his place. Witness gave Mr. Sickles $50 which he received with reluctance, for his services thus rendered. Never supposed there was any fraud in relation to the conduct of the lottery; nor ever heard of any thing of the kind till the publications lately made. Says Mr. Sickles has retired of his own accord, from the drawing of the present lottery. The boys now strip their arms. Never heard of any agreement among the managers, about its being derogatory for them to show their hands. And never heard of ten tickets being found in a crack, till it was mentioned in the newspapers.

Doct. Samuel L. Mitchell sworn.

Says he has not attended the drawing every day ; but believes he was there on the 9th day ; and thinks he was at the blank and prize wheel. Matters went on as usual. Nothing remarkable occurred to witness. There were no complaints at the time. He says tickets have sometimes fallen on the floor, and several have sometimes been drawn out of the wheel together ; but he considers these accidents as natural and unavoidable in drawing so many tickets in quick succession. He says the tickets are tied up like ballots. Boys are selected to draw them, as being of an age old enough to obey what they are directed to do, and yet too young to be guilty of the tricks and wickedness of manhood. Accidents occur unavoidably. A man will sometimes take out of his pocket two bank notes, or two pieces of money, when he means to take but one. Witness has done that on shipboard and lost his money by dropping it over, when he certainly didn't intend it. Witness never suspected the boy, Tenbrook, who has recently been withdrawn from the wheel, by his grand-father, Mr. Sickles, and who is still deemed an exemplary boy. Witness relates the story respecting the man having offered him a bribe, and that Mr. Denniston gave the boy a ticket to carry to him, and the next day the man was detected and publicly exposed. The boy acted magnanimously in detecting him. Witness says there were no complaints about the sleeves used at the wheels till lately. The sleeve had been long in use ; but has recently been thrown aside, out of regard to what has seemed to be the wish of some people. Witness recollects some conversation about altering the practice of drawing the stationary prizes—but no rule was ever made upon the subject.

Q. By the *Court*. Had Mr. Sickles any authority to sit at the wheel.

A. He was allowed to sit in behalf of certain absent managers. He only performed that function. He was not otherwise entrusted than for that purpose. He did not keep the keys.

Q. By *Mr. Jay*. Did you examine the soiled ticket?

A. I did.

Q. And what is your account of it?

A. The result was that it was not soiled in such a way as to be the basis for a charge of fraud, and that is my opinion now.

Q. How did the soiling arise then?

A. It might have arisen from the fingers of a dozen men who got hold of it before I did. The tickets, also, have many of them been long printed. [The witness went into the particulars as to the manner of printing and keeping the ticket-sheets at the warehouse where they are obtained.] They may have been

soiled from lying on the shelf, or from the fingers of the persons who roll them up, or it may be by the handling of the boys at the wheels. They undergo a variety of manipulations.

Q. By the *Court*. But all the tickets undergo the same number of manipulations, Doct. do they not ?

A. Yes, sir. But then one person may take snuff (I sometimes take a pinch myself,) and one may chew tobacco ; and so some may get more soiled.

Isaac Denniston, sworn.

Says he is a manager, and has been in former lotteries ; but has not attended the present drawing till after the ninth day's drawing. He says Mr. Sickles has served as an assistant manager by consent of the managers. Witness arrived in New-York on the 18th of Sept from Albany, and was then informed about the dream of Mr. Judah &c. Witness examined the number 15468 on the file ; it was somewhat soiled ; it had not any mark of the thread about it. Witness has usually done his proportion of the drawing ; and he commonly sits at the number wheel. The management about having the stationary prizes drawn by the managers themselves, was made without witnesses' knowledge, and before he arrived in town, during the drawing of the Fourth Class of the Medical Science Lottery. Witness after such arrival was going to prepare the boy's arm as formerly, when Mr. M Lean prevented him and told him of the new arrangement. Says he had no concern in the Owego Lottery, except that he had purchased ten tickets ; that one of these tickets drew the $35,000 prize ; that he bought the tickets of Mr. Ogden ; has no knowledge of that prize being unfairly drawn ; never communicated with Mr. Sickles about it till afterwards ; that Mr. Sickles had no interest in the ticket in any way whatsoever. Witness lent Mr. Sickles $2000 of the prize money, and that was all the interest Mr. Sickles ever had in it.

Cross-examined by Mr. Hoffman.

Q. Did you lend Mr. Sickles no more than $2000 of that money? A. No.

Q. Who paid the prize ?

A. It was sold to Mr. Ogden, deducting the interest of fifteen per cent. from the amount ?

Q. Did not Messrs. Allen's pay the money ?

A. I received Mr. Allen's check from Mr. Ogden in payment. I received two checks, one for $9250 and the other for $10,000.

Q. Did not Mr. Sickles receive part of this money ?

A. He had $2000 out of it, by way of loan.

Q. Has that been repaid ? A. No ; the time is not yet out.

Q. Did he receive no more ?

A. He collected one of the checks for me.

Q. How did that happen ?

A. The check did not fall due till I left town, and I requested Mr. Sickles to receive it for me.

Q. When were the checks payable ?

A. One of them, being for the $9250, was at twenty days, and the other at twenty days after the conclusion of the drawing, which was on the 20th of September. The first check was left with Mr. Sickles.

Q. Has he accounted to you for the money ?

A. Yes, except the loan of $2000, which is not yet due.

Q. By the *Court*. When did he pay you the balance ?

A. He paid me, sir, at three different periods.

Q. When did he make the first payment ?

A. About the first of August.

Q. When was the second ?

A. About the 26th of September—and the last was about the first of October.

Q. What amount did he pay you first ?

A. $2000, the second was 3000.

Q. By Mr. *Hoffman*. Mr. Denniston, was not Mr. Sickles the half-owner of that prize ? A. No, sir, he was not.

Q. Had he no interest in it ? A. None whatever.

Q. Mr. Denniston, have you never declared that you were only half-interested in that ticket ? A. Yes, I have.

Q. Who, sir, was interested in the other half ?

Witness. Mr. Hoffman, I have answered you fairly and fully in every thing you have asked—but that is a question which I do not think I am bound to answer.

Mr. *Hoffman*. Yes, Mr. Denniston, you must answer it.

[Mr. Wells here addressed the court, in several remarks, alleging that the question was one of mere idle curiosity, that it was aside from the merits of the case, and that if such liberties might be taken, in examining a witness, it was impossible to say by what limits the counsel were to be confined. Mr. Ogden rose to reply to Mr. Wells—but his Honor, the Mayor, declined hearing any argument on that side.]

Court. Counsel are not always to be confined to questions that are precisely in point as to the merits ; but you may ask other questions in order to try the credit of a witness. Mr. Denniston stands here like any other witness, and subject to the same treatment. The question, however, is not, in my judgment, irrelevant. If it is a matter worthy of enquiry, whether Mr. Sickles was interested in that prize then we are not bound to take a witness's mere *ipse dixit* in the negative. A witness has no right to say, I will conceal a part of the testimony, because I have a caprice to do so. [And his Honor here cited the fa-

mous case of Dr. Hawkins, and dwelt at length on the spirit of that case.] In England they have carried it so far that a confession made to a catholic priest shall not be held entitled to any privilege in the course of legal investigations. We do not go so far; but we only allow of the suppression of matters of professional confidence.

[Mr. Wells here rose to explain; but the court stopped him by saying that the point was decided, and that the witness must answer the question.]

The witness then proceeded to answer. He said that it had been a mere matter of delicacy that he had not answered at first. And he explained this as follows: That Capt. Roorbach was the person who brought him the news of his good fortune in the drawing of the prize; that after the news was received, the witness walked the floor for sometime, and at length took the resolution of concealing the fact that he was the sole owner of the prize; and he resolved upon this for the sake of his family, upon the ground that he had a number of poor relations, who, he apprehended, would apply to him for the money if they should know he had it, and would borrow, or otherwise get it from him. And having formed this resolution, the witness informed Capt. Roorbach that only half the prize belonged to him. Witness said that he had been afterwards obliged to go in public and declare that he owned only half, and that he had made such declaration frequently, though he was sensible that in doing so he had said what was not correct.

Q. By Mr. *Hoffman*. You told Mr. Gilchrist that you owned but half, did you not?

A. Yes, and hundreds of others.

Q. What did you do with the $10,000 check?

A. I put it into the Mechanic's Bank of Albany.

Q. By the *Court*. Did you ever mention to any body the explanation you have now given of your conduct respecting the prize ticket?

A. I mentioned it to Capt. Roorbach, and told him the reasons why I had acted as I did.

Q. When was that?

A. It was long before there was any of this noise about lotteries.

Q. Why did you mention it to him?

A. Because he was charged with owning one half of the prize. The witness further said that he had never heard of any agreement about its being derogatory to the managers to show their hands in taking out the stationary prizes; that he was the manager who gave a ticket to the boy to whom the bribe was offered, in order that he might show it to the man who had offered the bribe;

that he followed the boy when he went to show the ticket; that the number of the ticket was taken down when given to the boy; that when the villain was detected, witness gave him the option to be voluntarily searched, or to go to Bridewel; that the man submitted to be searched; that two or three policies were found upon him; that he was exposed and discharged; and that every body at the time approved of the proceeding.—The witness also stated that he was a perfect stranger to the managers of the Owego Lottery; and he repeated that his only motive for concealing the fact of his being the sole owner of the prize, was to keep the knowledge of it from his needy relations who might otherwise importune him for the money.

Stephen Price, sworn.

Says he was foreman of the grand jury who found the indictment; that Mr. Denniston told him privately that he was sole owner of the prize in the Owego lottery, and had kept the fact concealed for the purpose of making good the amount of a legacy which had been given him or his family, a part of which had been squandered.

Q. By Mr. *Hoffman.* What did Mr. Sickles say before the grand jury?

[Here Mr. Wells objected that Mr. Sickles was himself to be examined as a witness in the cause, and that this kind of inquiry was improper. Mr. Ogden replied.

Court. This is a libel which charges fraud against Mr. Sickles and others. The defendant says there is fraud. We are now enquiring into that fact. We have, on this principle enquired into the conduct of the managers themselves.—Suppose one of them had confessed what would be sufficient to justify the allegations of the defendant. The circumstance of its being said before a grand jury makes no difference.]

Q. What did Mr. Sickles say about his having found tickets in a crack of the floor?

A. He said that in a former class of this lottery, on the day or day but one before the last of the drawing, under the place where the wheel was, he saw something, which, on picking it up, was found to be a ticket, and that on further investigation there were found to be ten secreted there.

Q. He said he had been present at this discovery?

A. He said so, and that the tickets were found near where the wheel stood, in a crack.

Q. How did he pretend to account for it?

A. His account of it was, that some person must have taken away a bundle from his house when the lottery was making up, and that finding he could make no use of them, he had put them in that crack.

Q. Did he say they belonged to the wheel?

A. It was understood that they did, and that they were in fact put into the wheel.

Captain Arthur H. Roorbach, sworn.

Says Mr. Denniston never told him in terms the reason of his concealing that he was the sole owner of the prize in the Owego lottery, but said what the witness understood to be the reason as stated in Mr. Denniston's testimony; that the witness carried the information to Mr. Denniston from Mr. Allen respecting his having drawn the prize; that Mr. Denniston paced the floor two or three minutes, appearing to be agitated and in deep thought, and then said it was strange that since fortune did smile, she smiled by halves. The ticket was produced; Mr. Denniston came down the next trip with witness to New York. Witness afterwards asked him how he came by the ticket; and Mr. Denniston said he came by them in consequence of having favoured Mr. Ogden of New-York in some concerns, and that Mr. Ogden had forced the tickets upon him at something less than they were selling at. From Mr. Denniston's manner, the witness believed at the time that he owned the whole ticket; and the conversation between Mr. Denniston and the witness on the subject took place before the late rumours about lottery management arose.

James Heard, sworn.

Says Mr. Sickles asked two or three months ago if he had any use for money, and said he had two or three thousand dollars of Mr. Denniston's money in hand which would not be called for in some time. Witness at first declined receiving any, but afterwards accepted the offer. And after Mr. Denniston came into town, Mr. Sickles called on witness for the money, and it was paid to Mr. Denniston.

The *Court* here adjourned for one hour—and at half past 5 P. M. the jury were again called, and the trial proceeded.

George Waite sworn.

Says he has printed the tickets for seven, eight or nine lotteries past. The practice is to print an entire set, and then afterwards, as any parts become deficient, to reprint those parts; so that the tickets of a lottery are sometimes partly taken from the fresh sheets and partly from old ones.

[A specimen of old sheets was exhibited in court.]

Q. How long should you say these have been printed?

A. Seven or eight years.

Q. How long have the tickets of the present lottery been printed?

A. A great while.

Q. By Mr. *Collins*, (Juror) Do you make use of any sheets that have been damaged or stained?

A. Those are commonly thrown out.

Q. By Mr. *Jay*. When have you printed any deficient sheets?

A. There were some imperfections printed five or six years ago.

Q. How long since you printed an entire set?

A. Not for many years.

Q. Are the sheets put up in drawers or kept upon shelves?

A. Kept on shelves.

Cross examined by Mr. Hoffman.

Q. Who brought these sheets here?

A. I don't know.

Q. Do you know whether number 15468 or 30 was in the outside sheets?

A. I don't know.

Jeremiah I. Drake sworn.

Says he was one of those gentlemen who examined the soiled tickets. Mr. Fay and Mr. Allen were the others. Witness went to the room; Mr. Fay was then examining; witness staid and saw Mr. Fay examine; Mr. Fay didn't succeed in finding the ticket; Mr. Woodruff then offered to make a bet that he could pick it out; and while he was examining, another gentleman took up the ticket and threw it near where Mr. Woodruff was.

Q. By Mr. *Jay*. Then Woodruff's examination was a mere finesse?

A. Yes, so I considered it at the time.

Q. And this was 15468?

A. Yes. I didn't examine the others till afterwards.

Q. What time of day was it?

A. About sunset.

Q. Were the tickets soiled?

A. I could distinguish that there was a difference between them and the other tickets. I turned up several of the $30 prizes, however, and found them more soiled or dark than the others.

Q. Did Mr. Fay then complain that the light was insufficient?

A. He said it was not a fair test.

Cross examined by Mr. Hoffman.

Q. Were you counsel for Mr. Judah at that time?

A. No, but I have been since in relation to some indictments.

Q. You saw Mr. Fay and Mr. Baldwin afterwards?

A. Yes, several times.

Q. Did you not ask Mr. Fay to sign a certificate that he was satisfied?

A. No, I talked with him about it.

Q. Did you not refuse to sign such a certificate yourself?

A. I did not wish my name made use of before the public.

Q. Have you had any particular conversation with Mr. Baldwin? A. Yes, several.

Q. Did you not object to his making the exposure, on the footing of party grounds?

A. I can't answer it in that way.

Mr. Hoffman. Yes, sir, but you must answer it as I put it to you.

Witness. Mr. Baldwin, Mr. Fay and myself, and several others went out by the Bridewel, and I told them, and particularly Mr. Baldwin, that he had made an improper charge of fraud, and that he was abusing his own political and personal friends both. He said he knew it, and was sorry he had got into it. Mr. Denniston took Mr. Fay apart, and then returned, and Mr. Fay said to Mr. Baldwin, you cannot, from your knowledge of Mr. Sickles and Mr. Judah, suppose them guilty of fraud. Mr. Baldwin said he was convinced.

Q. "These, sir, are our political friends, and we ought not to expose them before the public."—Did you not use that phrase?

A. I might.

Q. By your political friends you meant the persons attached to Mr. Clinton?

A. Yes, persons attached to the state administration.

Q. Before Mr. Baldwin made his statement, did you not state to him that the characters of Mr. Judah and Mr. Sickles were pure?

A. Yes; my confidence was great in them.

Q. Didn't you tell Mr. Baldwin that even if he knew it to be true, he ought not to print it?

A. Yes; I told him it was a foolish business for him to be abusing all his political friends; and Mr. Baldwin promised to try to get out of it, and wished me to write an article for him with that view.

Q. Did you write it?

A. I commenced but did not finish it. Mr. Baldwin said further, at the examination, that the numbers didn't look as bad as he thought, and that he had published on the ground of information he had received.

Q. By the *District Attorney.* Did Mr. Baldwin appear to be satisfied?

A. He said he had other proofs besides those connected with the ticket 15468.

Q. Was there not some dispute between him and Mr. Judah?

A. Mr. Judah complained of being attacked by him when he was his friend.

[Mr. Van Wyck then produced and read the article entitled, "Error Corrected," [See Introduction, page 6.] in the Chroni-

cle of the 17th September, and also another article in the same paper of 24th September, headed, " Lotteries." [See introduction, p. xii.]

Q. By Mr. *Hoffman.* That was after the conversation you have spoken of, Mr. Drake ?

A. I don't remember dates at all. The conversation that I alluded to was in the evening of the examination.

Q. Who was present ? A. There were several.

Q. All of the same politics ? A. Yes.

Q. You urged the thing with Mr. Baldwin ?

A. Certainly I did, on the ground of friendship. Mr. Fay asked me if I would sign a paper to the effect of that which has been read. The parties were all to have met at Mr. Fay's office for the purpose of preparing an article.

John I. Sickles, sworn.

Says the paper just read was written by Mr. Fay ; that Mess. Baldwin, Judah, Fay, and witness, met at Mr. Fay's office ; that witness then explained to Mr. Fay that his father's hand had formerly been cut, so that after some degree of fatigue in drawing tickets it sometimes drops down as it comes from the wheel, and that it probably did so, from that cause, in taking out the prize in the Owego Lottery. Says Mr. Fay then told him he was satisfied. The witness then explained how the tickets might have become soiled ; that he and his sister assist his father in rolling the tickets, in doing which it is necessary that the fingers should be wet, and they are, therefore, frequently put into the mouth ; that witness chews tobacco, and his father takes snuff ; and the soiling may have happened in this way.

Being cross-examined, by Mr. *Ogden.* He says that when the conversation took place at Mr. Fay's, there had been one examination, and was to be another ; that one of the inducements for Mr. Baldwin to come out with a publication to allay the public mind was, that the public mind ought to be calmed before such further investigation took place. He understood from all that passed, that there was to be an examination by Mr. Wells, Mr. Emmet, and Mr. Ogden. The Attorney General and the Comptroller's names were also mentioned.

Moses Allen, sworn.

Says Mr. Drake has stated the examination correctly, and relates many of the same facts before stated on the subject.—Witness thought at the examination that Mr. Baldwin was satisfied. [The soiled tickets were here exhibited to the witness.] Says the tickets appear now as they did when he first saw them. [They were also exhibited to the jury.] Witness thinks there was light enough for the examination when it commenced ; there was a candle lighted, however, for the purpose of sealing up

the wheel. Witness is a vender of tickets. He signed the certificate.

Q. By Mr. *Hoffman*. Didn't Mr. Judah find fault with a man at the examination, who said he could pick out the soiled ticket?

A. He said to him, "What business have you here?"

Q. What were the words used by Mr. Baldwin respecting the tickets not answering his expectation in their appearance?

A. He said they were not as they had been represented to be.

Abraham Herring, sworn.

Has been a manager in several lotteries, a great many years ago. Believes it often happens that some numbers are more soiled than others. And he has known some almost worn through, which he thinks arose from turning them in the wheel.

John H. Sickles, called.

[The court here declined entering, at so late an hour, on the examination of this witness; but proposed taking up the testimony of one or more less prominent witnesses; and by consent of the counsel on the defence, several persons were called to testify as to the character and credibility of Mr. Sickles, whose examination was to take place in the morning.

Herman Le Roy, Peter Schermerhorn, George Warner, Dr. Wilson, Rev. Dr. Kuypers, Augustin H. Lawrence, Elias Nexsen, John I. Brower, and James Van Antwerp, were severally sworn,

And testified generally to a very long personal acquaintance with Mr. Sickles, during all which time his character had been irreproachable and exemplary. The counsel were proceeding to call other witnesses to the same purpose, when his Honor, the Mayor, observed that it was wholly needless. And the court adjourned to meet again at 11, A. M. the next day.]

[*November 12th—The Court opened at 11 A. M. and resumed the trial.*]

Sylvanus Miller, sworn.

As to Mr. Sickles' character, says he has known and been intimate with him at his house and in his family; has known him since '94: does not know a man to whose oath he would give more credit; has always considered him pious and exemplary in an uncommon degree.

Isaac Denniston, called again.

Says he was a manager in the Union College lotteries, but never heard of the circumstance of number 17 being wanting in the third class, until he saw it lately stated in the newspapers. Witness says he used generally to go home before the close of the drawing, but in two classes was present to the last. The practice was to count the wheels before the last day's drawing,

and then to make up the deficiencies. He says positively, that what Mr. Jansen has said about number 17 is not true.

Q. By Mr. *Hoffman.* Was you never concerned with Mr. Sickles in buying tickets?

A. Yes. I once bought 50, and Mr. Sickles took 30 of them?

Q. In what lottery?

A. It was in number five of the present lottery.

Q. You bought 50 and Mr. Sickles took 30?

A. Yes; but I didn't buy them for myself.

Q. For whom, then?

A. I bought the 20 for my friends in Albany.

Q. Did you tell any body at the time, that they were for other persons?

A. I believe I told Mr. Sickles. Mr. Waite bought them for us at auction. I took 20 for several of my friends at Albany who had requested me to get some for them.

Q. Did you not just now admit that you had bought them yourself?

Witness. You put the questions, Mr. Hoffman.

Mr. *Hoffman.* I put the questions, sir, for you to answer them.

A. Mr. Waite bought them for us at auction. I didn't keep them ten days.

Q. By Mr. *Wright*, (juror) was you present at the close of the drawing of Union College Lottery number three?

A. I think I was not. Mr. Jansen is certainly mistaken.

Q. By the *Court.* What have the managers done when there were deficiencies in the wheel?

A. We have supplied them

Q. Did you do this without enquiry?

A. Yes, we couldn't enquire.

Q. Did you consider that a fair mode?

A. My dear sir, where could we enquire?

Court. I don't know, but I have no difficulty in saying that lotteries are worth nothing if that be the way.

Q. By Mr. *D. B. Ogden.* Did you not mean to say, that you said openly, at the time of purchasing those tickets, that you wanted them for a few friends?

A. No, sir; some friends had desired me to get a few tickets for them, Mr. Sickles wanted 30; and we agreed to let Mr. Waite buy them at auction. More than 50 could not by law be sold at a time.

Q. By the *District Attorney.* Did you ever communicate to Mr. Sickles that you had tickets in the Owego Lottery?

A. No. Mr. Sickles knew that I had, and that was all. It was no secret. The tickets were bought openly.

Court. If the counsel do not object, I propose to ask the witness some further questions.

Q. Mr. Denniston, did you ever know of there being a deficiency of a prize in the blank and prize wheel?

A. Yes.

Q. Did they supply that in the same manner? A. Yes.

Q. Did you learn this from either of the managers, or Mr. Sickles?

A. It strikes me that I did.

Q. What was the prize so put in?

A. $10,000, the prize drawn by Mr. Livingston.

Q. Do you not consider that if there were fourteen thousand tickets in the wheel, and one of them was missing, the chances were all altered?

A. Why, perhaps they were.

Q. Have you understood from the same source that there have been deficiencies in the number wheel?

A. Yes.

Q. How many? A. Never more than two.

Q. Do you not consider that if a man's number was out of the wheel, his chance was altered?

A. Yes, he had no chance.

Q. Have the managers ever made any enquiry about those lost numbers?

A. I never understood that they did, because there is no where to make the enquiry.

Q. Mr. Denniston, when there are floating prizes, the longer one of these keeps in the wheel, the longer the price of tickets is kept up, is it not?

A. Yes.

Q. Supposing a man ownes tickets, is it not his interest that prizes should not go into the wheel?

A. Yes.

Q. Is it your opinion that these accidents cannot be prevented?

A. I think if there is a loss of only one, it is extremely well.

John H. Sickles Sworn.

Says he has put up every lottery since 1804, except two, which were put up in Albany. Don't recollect more than one instance of accidents in putting the tickets into the wheel, and in that case it was discovered that there was one bundle which had fallen from the table, and was afterwards found and put into the wheel. Never knew an instance of the tickets falling short at the end of the lottery; the practice being to open the wheels and count and check them all off, and supply the deficiencies. This is done the day before the last. As to the extent of these

deficiencies they have in no case exceeded two. This practice of examining the wheels, he says, has existed ever since he knew any thing of lotteries. Witness was a manager in 1804, and in all the literature lotteries, which commenced in that year. Witness was present when the $10,000 prize was deficient. It was in number three of the Medical Science Lottery. It was suggested on the day previous to the last, that that prize had not come out; an examination was then made and that ticket supplied. At the same time the witness positively declares that he saw Doctor Mitchell put that prize into the wheel at witnesses' house. It was a floating prize. The high prizes are generally opened before they are put into the wheel, to prevent mistakes; the others are not opened when they are put in.

Q. By Mr. *Jay*. What do you know of the tickets that were found under the stage?

A. That wants to be explained. I stated to the grand jury that there were ten—I now think, on more mature reflection, that there were not so many. Near the close of the drawing, the boys found three or four or five tickets under the wheel. It was three or four days before the close of the drawing; I don't know exactly how many days.

Q. What was done with those tickets?

A. They were given to me, I then went and lifted up the carpet and found some more in a crack.

Q. How many?

A. I don't think there were ten.

Q. Did you show them to the managers?

A. Yes, I shewed them to the managers and they desired me to keep them till the last day's drawing.

Q. How do you account for the tickets getting there?

A. I can't tell—it was said that one of the doors of the wheels was burst open at one time. I don't know.

Q. By the *Court*. How was the bursting of the door to get the tickets under the carpet?

A. The wheel might have fallen off from the stage.

Q. Did you ever know that happen?

A. Yes, but I don't know that the wheel was ever burst open.

Q. What did you think about it at the time?

A. I suspected that there was something improper. The witness further states, that he has conversed frequently with Mr. Burtns on the subject, and that Mr. Burtus said he had been often hit, and that there was foul play—Witness found that two or three of these tickets were in the 14,000, and he went and told Mr. Burtus, who he believes suffered pretty severely at that time; and witness told him on the same day of the discovery. These numbers were not those on which Burtus was hit. The witness

says he showed the tickets to the managers at the time, or before he went to Burtus. Don't think he explained to Mr. Burtus what the managers had resolved to do with them, that is, to keep them out—He says the wheel was kept locked up in a closet, which had two locks, of which one of the keys was kept by him, and the other by a manager. Says it was the practice after the drawings to sweep or examine the carpet; but he does not know that the sweeper ever found any tickets—says that in one or two cases, one or two tickets have been found out, and put the next day into the wheel. Don't recollect that more than one ticket was ever found at a time; which would be sometimes at the number wheel, and sometimes at the blank and prize wheel. The tickets when found were not opened but reserved and put in the wheel without opening—says it was not usual to examine under the carpet.—Witness never examined between the stage and the floor. The tickets he found were in the stage under the carpet, and those found by the boy were on the floor under the stage. Witness found the tickets about eighteen inches from the edge of the carpet, between the two wheels. Don't know of any tickets having been found since the drawing has been in the hall. Has known of two attempts to bribe the boys, but don't know of any of them having been bribed in fact; and has no reason to believe that any of them were ever corrupted.—Witness says it sometimes happens and is unavoidable, that the boy draws more than one ticket from the wheel at a time.

Q. By the *Court*. Do you mean to say the boy cannot take out one at a time?

A. The ends of the threads with which they are tied up, are about half an inch long, and by turning in the wheel they get entwined together.

Q. By Mr. *Jay*. Do you commonly see the tickets when they fall?

A. I don't think there was ever a ticket fell, without my seeing it at the time.

Q. The tickets are very rapidly drawn, are they not?

A. The practice is to draw 100 in about eight or nine minutes.

Q. Does the boy sometimes get ahead of the manager?

A. Frequently. When they are two or three ahead they are laid on the knee of the manager or on a handkerchief.

Q. Is there any thing peculiar in your mode of doing it?

A. Nothing at all.

Q. Did you always call them off in the order in which they were thrown down by the boy?

A. Yes, as nearly as I could.

Q. Did you ever call any numbers that were not drawn from the wheel?

A. Never.

Q. Have you any reason to believe that 15468 was not fairly drawn?

A. None at all; I have every reason to believe it was drawn from the wheel like the others.

Q. Have you ever seen that ticket since?

A. Never since it passed through my hands.

Q. Did you ever see it before it was drawn?

A. Never after it was put into the wheel.

Q. Have you any doubt that it was put in? A. None.

Q. Or any idea that it was ever out of the wheel afterwards, till it was drawn? A. Not at all.

Q. Did you know at that time that any insurance had been made upon it? A. No.

Q. Had you any connexion with Mr. Judah respecting that number?

A. No, nor with any body else.

Q. And had no interest with him, or any body else in it?

A. No.

Q. Do you believe there was any fraud in relation to that number? A. I do not.

Q. Did you ever keep out any tickets whatever? A. No.

Q. Did you ever tell any body you had done so?

A. No; I believe I told Mr Burtus there was no prospect of the low numbers coming out till the latter part of the drawing; and I told the same thing to Mr. Brower.

Q. And what was your reason for thinking so?

A. From the manner in which the tickets are put into the wheel. The low numbers are put in first, as the wheel lies flat; and when the wheel is turned up, the low numbers remain in the back side. And I have always observed, too, that the low numbers do not come out till towards the last.

Q. Did you tell Mr. Burtus that any of the numbers were out of the wheel?

A. I told him he need not be afraid of the low numbers, and I may have mentioned 3 or 5 or 7; but I dont recollect.

Q. Were you in the habit of going to the lottery offices and of joking with the brokers on this subject?

A. Yes, and the brokers were often quizzing each other about the time when this or that ticket would probably come out.

Q. Have you known a low number come out early?

A. Yes, but generally not.

Q. Did you tell Mr. Burtus that Judah knew what you had mentioned to him about the low numbers?

A. No; I told him that Mr. Judah did *not* know it.

Q. You mentioned the thing to Mr. Brower?

A. Yes, after I had told Mr. Burtus, I made it my business to tell Mr. Brower.

Q. By the *Court*. Did you think the information would be of any service to them?

A. Why, I know they were in the habit of insuring.

Q. Would you have made the same communication to Judah?

A. I don't think I would.

Q. Why?

A. Why, after I had made the first communication, I thought I had been imprudent.

Q. By Mr. *Jay*. Did they ask you first about those numbers?

A. Yes; and I told them they needn't be afraid of them.

Q. By the *Court*. Do you mean to say that this was said in jest?

A. Yes; so far, that from my knowledge of the putting up the wheels, I knew those numbers would not come out.

Q. And do you mean to say that you told them this for their advantage?

A. No.

Q. By Mr. *Jay*. Was you in earnest when you told them?

A. Why yes; so far, as that I believed it would be so.

Q. Did you ever tell those gentlemen you had left any numbers out of the wheel?

Q. No.

Q. Did you ever tell them you were sorry you had told them that you had left tickets out?

A. No; I believe I told Mr. Burtus I was sorry for saying they wouldn't come out.

Q. And that you would never do so again? A. Yes.

Q. By the *Court*. Did you ever tell Mr. Burtus that you were in jest? A. Yes.

Q. When? Was it before or since this noise has taken place?

A. It was since.

Q. What was your motive for telling them so?

A. I did it in order to stop the clamor on the subject.

Q. By Mr. *Jay*. Could you derive any advantage from this?

A. No.

Q. Did you ever borrow money of these gentlemen?

A. Never, except some small sums I have several times received from them in uncurrent money, which I had an opportunity of exchanging; and it was a benefit to them.

Q. Did you ever ask Mr. Haines to apply to Mrs. Bates for you?

A. I did once, to get him to make favorable representation to her for me.

Q. And what did you tell him?

A. I told him that as I was to be a manager, I would recommend him to the managers, and would, if necessary, endorse his note, and would favor him in the purchase of tickets.

Q. You have sold him tickets before?

A. Yes, a great many, formerly.

Q. Did he promise to recommend you to Mrs. Bates?

A. He promised to speak to her in my favor; but he took the precaution of enquiring of other persons about me, and did not do the favor.

Q. You only meant, in what you said to Haines, that you would serve him, as you had done before?

A. Yes.

Q. Have you much acquaintance with Mr. Brooks?

A. Very little.

Q. Did you ever have any dealings with him?

A. I once got him to discount a note for me at Barker's bank, and that is all the transaction I ever had with him.

Q. Did you tell him you could assist him?

A. I believe I told him I was going to be a manager, and might aid him.

Q. How did you expect to aid him? Was it in the purchase of tickets?

A. Yes.

Q. Did you ever use the expression that you could "play into each other's hands?"

A. Never.

Q. In what manner did you draw out the prize in the Owego Lottery?

A. I first held up my hand thus, and then dropped it and took out the ticket; and as I drew it out my hand dropped, owing to an injury it had received; but it did not go under my coat, nor fall behind me; I then brought it up and cut the ticket and opened it. My arm is weak in consequence of a cut which it formerly received.

Q. Did you ever tell Mr. Smith that the managers ought not to show their hands?

A. I did tell him that they ought not to draw out the tickets in the same way as the boys did; but not that they ought not to show their hands.

Q. Did you always show your hand?

A. Yes. I only expressed my opinion that the managers ought not to hold up their hands as the boys did. They were men, under oath, and were appointed by the legislature.

Q. When the $70,000 prize was to be drawn, did you refuse to draw it?

A. I declined, and asked one of the managers from New-Jersey to draw it.

Q. Did you own any tickets it that lottery?

A. I had some, but sold them as soon as I knew I was to be a manager.

Q. Did you ever hold tickets when you was a manager?

A. Never, when I was either manager or sub-manager.

Q. Was you ever concerned in any lottery insurance?

A. Never, I have always been opposed to it.

Q. Did you know the number of Mr. Denniston's ticket before the prize was drawn?

A. No.

Q. Did you receive a check from Mr. Denniston to collect?

A. Yes, a check for $9000 and odd, and collected the money from Mr. Allen.

Q. Have you accounted to Mr. Denniston for the money?

A. Yes, excepting $2000, which Mr. Denniston lent to me for one year.

Q. When was the Owego prize drawn?

A. On the 24th of June.

Q. What was the occasion of your having several times to borrow money?

A. I was brought into my difficulties by the failure of some of my friends in New-York; by reason of which I have had to pay upwards of $10,000.

Q. Have you not been obliged to mortgage your property?

A. Yes, I have borrowed about $6000 on two mortgages, still unpaid.

Q. How many tickets do you believe you ever took out of the wheel at a time?

A. I don't think I ever took more than twenty at a time.

Q. This was when the boy was out?

A. Yes.

Q. And what did you do when the boy came in?

A. I threw those that remained back into the wheel.

Q. Was there ever any objection made to this at the time?

A. Never.

Q. Did the managers see this?

A. It is probable they did; they must have been present; they must have seen it.

Q. Did they ever object to it?

A. No.

Q. The law does not compel them to draw 500 in an hour?

A. No.

Q. By the *Court*. Do you think the managers must have seen you throw the numbers back?

A. Why, I think they might.

Q. Then when a man's number was once out of the wheel and put back, it might not come out in a week.

A. Yes.

Cross-examined by D. B. Ogden.

Q. What did you state before the grand jury about those ten tickets?

A. I told them I found those ten tickets in a crack of the floor; but it is some time since, and I wish to correct the statement.

Q. You told them you took out the tickets with the point of a knife?

A. Yes.

Q. Did you say any thing to them about the boys having found some of the tickets?

A. No.

Q. You now say there were not ten?

A. On reflection I have become satisfied that I was wrong.

Q. How could they get under the carpet?

A. I suppose the carpet might have been shoved up.

Q. Did you look, when the boys found their tickets, for more?

A. No.

Q. The first thing you did was to go and lift up the carpet?

A. Yes.

Q. How many do you now say that you found?

A. I think I found three or four.

Q, There must have been in all six or seven, then?

A. Yes.

Q. Did any body else look under the stage?

A. I don't know that they did.

Q. Who was present when you found those in the crack?

A. Mr. Gilchrist and Mr. Gilbert were both in the room.

Q. Did they see you find the tickets?

A. I don't know.

Q. By the *Court*. Did you mention it to them?

A. It is natural that I should, and I think I did.

Q. Did you call the attention of any body to the discovery?

A. I don't know that I did.

Q. By Mr. *Ogden*. Which of the mangers attended there that day?

A. I can't recollect.

Q. The managers were the same then as now?

A. Yes.

Q. When the managers came, did you mention it to them?

A. I think I did.

Q. At what time of the drawing was it?

A. I think there was one or two day's drawing afterwards before the close. There was at least one drawing day afterwards before the tickets were put in.

Q. What did you do with them in the mean time?

A. The managers told me to keep them till the last day.

Q. And left them in your possession?

A. Yes.

Q. Did you show any of these tickets while they were in your possession?

A. Yes, two or three of them.

Q. What numbers were they?

A. They were in the 14,000.

Q. To whom did you show them?

A. To Mr. Burtus.

Q. Why?

A. Because he had been particularly injured.

Q. This was in the third class?

A. Yes.

Q. In which the $10,000 prize was put into the wheel on the last day?

A. Yes.

Q. Did more than one of the managers tell you to keep those numbers out till the last day?

A. I think two.

Q. Which two?

A. I don't know.

Q. Was any thing said by them about it at the time of the discovery?

A. There was some conversation.

Q. What was it?

A. I don't know what it was—I don't believe there was a great deal said.

Q. You are in the habit of stopping in at the lottery offices?

A. Yes.

Q. At Judah's among the rest?

A. Yes.

Q. Were you not there the evening before the drawing of 15468? You and Judah together?

A. I don't believe I was.

Q. Had you no communication with him respecting that number?

A. I don't recollect that I had any.

Q. Do you know the hand writing of Mr. Judah's letter?

A. No.

Q. Why did you decline drawing the $70,000 prize in the Owego lottery?

A. I thought it a proper compliment to the other manager.

Q. Have you not heard of a rumour that the $35,000 prize had not been fairly drawn?

A. I believe I had; but that was not the reason I refused to draw the other, and had no influence on me.

Q. Mr. Sickles, did you never hold a ticket in a lottery in which you were a manager, while that lottery was drawing?

A. I don't remember that I ever did.

Q. By the *Court*. You said you never had an interest in any ticket in such lottery while it was drawing.

A. As far as I recollect—except that I have now and then given a ticket to my children—but not to hold them myself—I never would—I made it a practice, if I held any tickets, to get rid of them before the drawing commenced.

Q. By Mr. *Ogden*. Mr. Sickles, I am under the necessity of putting to you another question on this subject, however unpleasant it may be to you—Was you not a secret contractor to purchase all the tickets in one of the lotteries of which you was a manager?

A. Yes, I was; that circumstance had entirely escaped me; I remember it now—It was one of the Literature Lotteries—It was not to contract for all, but for 20,000.

Q. Was'nt Mr. Gilbert a manager in that lottery?

. No.

Q. By the *Court*, Did you continue to retain your interest in those tickets during the drawing?

A. Yes, during the whole of it.

Q. By Mr. *Ogden*. Did not those contractors draw the highest prize in that lottery.

A. Yes.

Q. By the *Court*. Did you have a share in that prize?

A. I did.

Q. Who were the managers in that lottery?

Witness names them.

Q. Did you forget all these things when you testified before?

A. Yes.

Q. By Mr. *Ogden*. Was there not a law-suit about that business?

A. Yes.

Q. By the *Court*. Was you a party to that suit?

A. I was.

Q. How long since is it?

A. About ten or twelve years.

Q. How long since it was settled?

A. About two years afterwards. There was no law-suit; it was settled by reference.

Q. By Mr. *Ogden*. You said you became embarrassed in behalf of some friends—was you not embarrassed in consequence of what happened to you as treasurer of the Dutch church?

A. No; I was always able to pay them. There was some difficulty about it; but I gave up my whole salary rather than have any litigation.

Q. How long were you in that office?

A. I was clerk of their board for thirteen years, and treasurer 25 years. The only items in dispute were, a question of interest and my charges for wages.

Q. Was there not some mistake in the accounts kept by you?

A. There was some difficulty about the footing of the accounts; there was an error discovered in accounting for revenue; but it was explained, and they were satisfied.

Q. By the *Court*. Did you ever hold any ticket for any body else in lotteries when you have been a manager?

A. Never.

Q. By Mr. *Ogden*. You have said you had your suspicions of fraud in regard to the ten tickets. Did you ever tell the managers of these suspicions?

A. I can't say—quite likely I did—I had my suspicions that the tickets might have been opened.

Benjamin Heard, sworn.

Says he was present when Mr. Denniston's prize ticket was drawn; he was then clerk; says he thinks Mr. Sickles held up his hand; don't recollect any thing peculiar. Don't think a person keeping one of the check books could accurately observe how many tickets the boy takes out at a time.

[Young Ten Brook, Mr. Sickles' grand-son, was then called to be sworn—But the counsel for the prosecution disavowed all intention of saying or pretending the boy had been corrupted; and as he was very young, he was therefore not examined.]

Isaac Moses, sworn.

Says that on the morning of the 11th, Judah called at Thorne's, and told him he wished him to take a number; it was 15,468. Judah said it was a number which had been dreamt of. Thorne got the insurance. Says there was no conversation about Judah's having dreamed a second time; and that Judah didn't say that he himself had dreamed at all.

Cross-examined by Mr. Hoffman.

Q. Did Judah make you a present of $100?

A. Yes, Mr. Judah thought it was hard that Thorne should receive his money and I receive nothing.

Q. Did Judah ever employ Mr. Thorne before to get insurance?

A. I have heard Thorne say he had.

Q. Was there no conversation about Judah's having dreamed that he heard the number called?

A. No.

Q. Did you ever see the letter?

A. Yes.

Q. When?

A. I think it was on Monday the 14th.

Q. Had you seen Judah before that, after the drawing.

A. Yes.

Q. When?

A. On Saturday.

Q. Did he, on either of those occasions, say any thing about the letter?

A. I think he did mention it to me.

Q. Did he on Saturday?

A. I think not.

Q. But you think he did on Monday morning?

A. I think he did.

Q. You are not positive?

A. I am pretty positive.

Q. Why did Judah give you money?

A. I have a large family.

Q. Did he ever give you money before?

A. Yes.

Samuel Healey, sworn.

Says he has conversed with the defendant about testifying in this case, and defendant told him he would publish him if he did not take care what he said. Supposes defendant alluded to what witness had said about the tickets being soiled. Has himself insured upon the strength of dreams. Believes he hit once in that way for $500.

[The counsel were proceeding to interrogate the witness as to the soiling of the tickets, when the court interfered, and said that was entirely needless, as the tickets themselves were before the jury, and it was in proof that they appeared as they had at first.]

The prosecution was here rested.

Robert Gilchrist called again, for the defence.

Testifies that he has not long known Mr. Thorne, but thinks his character very good. Never heard of tickets having been picked out of a crack of the floor till lately. Don't recollect to have heard at the time that Mr. Sickles picked up any tickets. Was informed by Mr. Gilbert of the four tickets found by the boys; and thinks they were given to Mr. Sickles to keep till the last day. Never saw the wheel fall from the stage. Has known the

door of the wheel burst open or the lock pick'd by a mechanic when the key has been lost.

Gen. Johnson, called again.

Says he never saw Mr. Sickles take out twenty or several at a time. Never heard of the tickets found by Mr. Sickles till the other day before the grand jury. Says the managers at the time thought it utterly impossible the four tickets found by the boy could have come from the wheel. Thinks those tickets were in the 14,000. Witness then thought those tickets had never been in the wheel. There was one drawing after they were found before they were put in. Says if any tickets were found in the crack of the stage, they could not have got there without fraud.

Martin Tooker, sworn.

Testifies to Mr. Thorne's good character; has known him long. Witness condemned Thorne, however, in one respect; because he had given his word not to divulge any thing about this number. Witness thought that wrong.

[The defence was now again rested.]

Court. As to the question of fraud, gentlemen, that shall be left to the jury. And if they think the supposed libel to be true, they may enquire in the motive. But if they think there is no fraud, I shall charge them, that if they believe there was no malice in the defendant, then, still it is no libel; and however pure they may think these managers or Mr. Sickles to be, yet if the matter has been so conducted as to give ground for just suspicions of fraud then they may presume there is no malice. Thus much the Court think proper to say now, to show what views they entertain of the law of the case; and if the counsel have different views, they will explain and enforce them as they deem fit in summing up.

Joseph Berjeau sworn for the prosecution.

Testifies to a conversation had with Thorne, in which Mr. T. told him Judah had said 15,468 was a number dreamed of, or something of that kind.

John W. Gilbert, sworn.

Was clerk in the lottery when the tickets were found by the boys. Believes Mr. Sickles made search as well as the boys. The numbers were found in the corner immediately under a small hole in the platform. Witness and Mr. Sickles were at opposite sides of the room when the search was made. Mr. Sickles might have found twenty, and witness know nothing of it—Never thought Mr. Sickles found, any till the last grand jury sat. Says there are iron spikes or grates before the windows of the room where the drawing takes place.

G. Waite, called again.

Says Mr. Denniston told him that the Owego prize ticket did't belong wholly to him—but made such remarks about his poor relations as induced witness to believe he owned the whole. This was before the late disturbance.

Naphtali Judah, sworn.

[Mr. Wells at this moment came into court, having been absent all the morning from the trial, in consequence of his engagement in the sittings.] Mr. Judah relates the story of his going to Thorne's and getting him to procure insurance, in many particulars as before proved. But he says he told Thorne it was a dreamed number, and not that *he* had dreamed about it.—Says he received the anonymous letter the night before. [He was proceeding to speak of its contents when Mr. Hoffman objected.]

Court. You must produce the letter.

Witness. I haven't got it with me.

Q. By the *District Attorney.* Have you not distroyed it?

A. Yes.

Q. When?

A. On the 29 of September, I think.

Q. What were the contents of this letter?

A. The letter was in these words—"Dear sir, your friendly and benevolent disposition induces me to inform you that I dreamed that 15468 will be drawn on the ninth day. I inform you, that you may benefit by my vision." (Signed) "A Friend."

Q. Was it that letter which induced you to get the insurance?

A. Yes.

Q. Had you any dream about the number?

A. No; I didn't tell Mr. Thorne that I had.

Q. By the *Court.* The letter contained nothing about the thing having been dreamed twice, or at the City Hall.

A. No, sir.

Witness then went on to state the interest which Mr. Thorne took in the insurance, and the subsequent conversations with him about the refusal of the insurers to pay. Witness says that on Saturday evening one of the insurers, Daniel D. Smith, actually settled with him and paid the amount of the insurance; and that one or two others also called at witness' house to settle with him; but that he refused to receive the money, and that on the next day (Sunday) he called on Smith and returned him what he had paid. He says he also showed Smith the anonymous letter at the same time. Witness says, that when there was the least suspicion about it, he would not have taken one dollar from the

insurers for a thousand. Witness also says, he desired Smith to call a meeting of the gentlemen interested, in the morning; that the meeting took place, and the witness took with him his friend captain Myers to see what should be done; that after some conversation, witness read the letter in the meeting, and told them that it was on the faith of that that he had caused the insurance to be effected, but that if there was the least shadow of suspicion about it, he would abandon it, as he wouldn't for a thousand dollars take a dollar wrongfully. He says the gentlemen were all perfectly satisfied, that captain Myers went out of the room, and Mr. Burtus wrote a note to witness and another to capt. Myers, expressing their satisfaction. [Witness read the notes.] The first of the notes was in these words:

"*New-York, Sept.* 17, 1818.

"The following is a copy of a letter sent to your friend capt. Myers." "JAMES A. BURTUS."

"*Captain M. Myers,*

"Dear Sir,

"The explanation made by Mr. Judah to the lottery offices, yesterday, was perfectly satisfactory, and Mr. Judah was exonerated from all censure."

"JAMES A. BURTUS."

Witness further says, he never had any understanding with any person whatever relating to the drawing of that ticket 15468, or of any other ticket in any lottery; and never challenged a ticket drawn by Mr. Sickles as being improperly drawn in any lottery. There was a case, he says, eight or ten years ago, when he was not satisfied, the boy having acted incorrectly, as he afterwards confessed, and was turned away by the managers. Don't know whether Mr. Sickles was then a manager.

Q. By Mr. *Jay*. Did Mr. Sickles ever communicate to you the circumstance of their being any numbers out of the wheel?

A. If he did I was the victim of it. Mr. Abraham P. Brower hit me for seventeen hundred dollars on number three, in the fourth class, which came out the 44th day's drawing; Mr. Burtus hit me for $100, Mr. Baldwin for $600, Benjamin Crane for $250, in all, $2650. Witness says number three was more heavily insured for that day by 50 per cent. than for any other. Witness is not in the habit of insuring for A. B. and C. but merely takes from other offices when they are over-charged; that is, he reinsures them. He says his motives for giving up the policies as he did was his connexion with the other offices.

Q. By the *Court*. This business had made a good deal of noise before you destroyed the anonymous letter?

A. Yes. It was just before the matter was laid before the grand jury. The witness says he was present at the examination by Mr. Fay, Mr. Drake, and Mr. Allen; and that he told Woodruff he was an impertinent fellow, considering him very officious. He also says that on Monday, the next day of the drawing, Mr. Fay declared himself perfectly satisfied; and so did Mr. Baldwin; and they promised to come out the next morning and make a full exoneration of the witness.

Hector O. Gregory, sworn.

Was present when Mr. Sickles drew the prize in the Owego Lottery. He says Mr. Sickles didn't hold up his hand, but raised it partly up.

Napthali Judah here rose again, of his own accord, to say, that Mr. Brower reinsured $300 at witnesses' office, on number 15468, which was paid.

The testimony here closed—and the court adjourned for one hour. At 6, P. M. the Jury were again called.

District Attorney. If the court please, I am desired to ask permission for Mr. Sickles to explain whether, in speaking of the number of tickets taken by him from the wheel at a time, he meant it to apply to the classes of the Medical Science Lottery, or whether it was in relation to other lotteries in which Mr. Sickels himself was a manager.

Court. The testimony was considered to be closed—but if the counsel for the defendant consent, let him explain.

John H. Sickles, called again.

Q. By the *District Attorney.* Mr. Sickles, did yon mean to say that you had taken out several tickets at a time in any class of the Medical Science Lottery?

A. I don't recollect that I ever did in that lottery.

Q. By the *Court.* Then all the other managers have been mistaken?

A. I think it must have been in the Owego Lottery.

Q. Why did you alter your conduct?

A. Because it was too laborious a thing.

Q. Why did you depart from the other practice?

A. Just to accommodate myself—I don't know any other particular reason.

MR. HOFFMAN *then proceeded to sum up the evidence, in behalf of the defendant, which he did to the following effect:*

GENTLEMEN OF THE JURY,

THE patience you have hitherto shown, in the progress of a trial which has already lasted three days, affords me an assurance that you will give a fair and serious attention to such observations as it has now become my duty to address to you. And, you will allow me to say, Gentlemen, that the cause is one in which you and I are interested—The character of the State is interested. It is a cause which involves directly the reputation of state officers, in regard to the manner in which they have discharged the most delicate and responsible public trusts.

I will be as brief, Gentlemen, as possible, consistently with the interests of my client and of justice. You have a duty to perform—So have I, a very important duty; and in discussing the merits of the cause I shall endeavour to fulfil it. I shall set down nought in malice—but on the other hand I shall "nothing extenuate," and I shall not flinch from what that duty requires of me, whatever individual may become the subject of my remarks.

And in the first place, gentlemen, let me call your attention to the supposed libel itself, not that I would endeavour to shield the defendant by means of any nice and critical distinctions or evasions; for we will meet every charge that arises fairly out of the publications he has made. But gentlemen, the indictment does more by its inuendos, than by the matter which it directly sets forth. In the publications charged to be libellious, we own that there is no imputation of fraud against the managers of the lottery generally, nor against those immediately concerned in the drawing of the present Class of the Medical Science Lottery; none against Mr. M'Lean, none against Mr. Kent, none against General Johnson, none against Doctor Mitchell. The indictment however charges that the characters of the gentlemen I have named are implicated in the accusation of fraud. This is a mistake, the defendant has accused them of nothing but carelessness. There can be no suspicion of the purity of these men. There are no men to whose unquestionable integrity I would sooner entrust my property or my life. But in the present case, even these gentlemen, as we think, have forgotten to observe that strict and regular correctness which ought to mark their discharge of those official duties which have been devolved upon them by the Legislature of the State.

Gentlemen, Mr. Baldwin has been presented before you by the indictment as a man influenced by malice, as being urged by motives as vindictive and malignant as any that can find an entrance into the human heart. Do you believe this? Do you believe it possible, that in opposition to the advice of his friends and against his own interests, he would have made these publications for the mere gratification of motives of this kind? What reward could he have promised himself? What conceivable inducement but a sense of his duty to the public? He was told, as you have heard, that he would offend his political friends if he proceeded. He was urged by Mr. Drake with this consideration. But he did not shrink from his duty. "You forget your political friends, Mr. Baldwin!" What is his answer? "I do. Whatever becomes of political friendships—I will fulfil my obligations to the community."

Gentlemen, the laws of the State upon the subject of Lottery management must be explained to you. They are all important to be known,

this community must know them. Yet, knowing them, even Mr. Sickles has dared to violate those laws—and knowing them, even Mr. Deniston has dared to violate those laws—the one against his oath; the other against the direct prohibition of the statute.

You will remember the disclosures of 1811. The managers, you know, were allowed to sell tickets on credit. Great injury was sustained by the state in consequence of the abuse of that power. The statute I now hold in my hand was intended to prevent the recurrence of those improprieties. When you have heard it, you will judge how Mr. Deniston could purchase tickets in the Medical Science Lottery as he has done. I am not now commenting on *his* testimony. But I do mean to say, that according to the spirit of the oath he took when he became a manager, he had no right to purchase tickets for himself. It is said he purchased for others; but in point of fact he was immediately interested.

Mr. H. here read the oath prescribed by law and the ninth section of An Act relative to Lotteries passed April 8, 1805, as follows:

"I do solemnly swear (or affirm as the case may be) that I will well and faithfully execute the trust reposed in me as one of the managers of lottery (or lotteries) established by law, without favor or partiality, and that I will not directly or indirectly authorise or permit the sale of any tickets in any such lottery in which sale or sales I, or any person at my instance, on my behalf, shall be directly or indirectly benefitted or interested, or entitled to any profit or advantage whatever thereon."

And be it further enacted, That it shall not be lawful for any person or persons, being a manager of any lottery within this state, directly or indirectly to contract for or be concerned with any company in contracting for any part or portion of the tickets of the said lottery of which he or they are managers.

The legislature, gentlemen, meant to interdict the managers of their lotteries from purchasing tickets, and from acquiring personal interest in the charms of the wheel. They meant to remove that source of corruption altogether. And they have gone further than this. [Reads from the statute the provision against selling tickets at the original price after 60 days.] How vain, then, is this excuse of Mr. Deniston! Did he never read the law? And yet he comes forward and swears, that by the law, they are not allowed to make sale of less than 50 in a parcel; and this is assigned as the reason of his having become the purchaser of 50—but the language of the act is "not exceeding 50."

Gentlemen, the managers are allowed 15 per cent. on the sum raised by the lottery. To what end is this allowance? Is it to authorize a person not under the solemnity of an oath to discharge their duty for them? The legislature meant that no person not liable to the penalty of the law, should fulfil the functions that arise under it. And yet, Mr. Sickles, contrary to the spirit and meaning of this law, becomes a manager in fact, without a manager's responsibility. He counts—the managers do not count after him. He draws also, and to all appearance is the most active man at the wheels. They put it in his power—an unsworn man—to play what tricks he pleases with their lotteries.—I am not now saying what tricks he has actually played—but I am placing before you what these managers, (and much as I love some of them, I must speak truth) by neglecting their own duty, enabled him to do, if the disposition was not wanting.

Gentlemen, this is one view of the subject. There are others that deserve your notice. Is it necessary that the drawing of the lottery should be precipitated in the manner you have heard? Is it necessary to draw

500 tickets in an hour? Did the law impose this obligation?—And when they come gravely to say that mistakes will happen do what you will—I answer, yes, they will happen indeed, when the drawing is expedited beyond all prudence for the manager's convenience.

Again, gentlemen, we are told that the ends of the strings with which the tickets are tied up are so long, that the tickets cling one to another, and thus several are unavoidably taken out of the wheel at a time! But how is this? And why? Is it to such a purpose that men are selected with great caution to execute a public duty of this nature? They may be told, and they seem to require it, that the use of a common scissors will prevent the accident by which they would justify the drawing of a handful of tickets at a time.

Gentlemen, you cannot go one step in this investigation, but the carelessness of the managers stares you in the face. They have left too much to Mr. Sickles.—He says to them, let us have bagging sleeves, and bagging sleeves are put on—he quits them, and bagging sleeves are laid aside. But, gentlemen, the arm at the wheel should be bare. In Europe no such mistakes have arisen. And with us, now that the form has been altered, there are no more such accidents; there cannot be; because the arm is now bare, and the ticket is drawn out fairly and exposed to the full view of the spectators.

Can it be possible, gentlemen, that these mistakes they talk of should happen without great carelessness? We put it not on the ground of fraud. It is enough to say, as the defendant has, that such practices as we have seen to be common, are what the legislature never meant to allow. If tickets are left in the hands of a sub-manager, remaining over after the drawing of a hundred until another hundred is commenced, what security have the owners of these tickets that their rights will not be utterly violated and defeated? We have it in evidence that several numbers are sometimes thrown into the lap before any of them are called. I care not whether it be the lap of a manager or a sub-manager.—The one is wrong; the other grossly wrong. And, indeed, no man ought ever to officiate in such a case but he to whom the law delegates the trust.

Gentlemen, see to what an extent this carelessness has gone. It is not confined to the fate of a simple blank; but in one instance, a prize ticket of $10,000 has been detained out of the wheel till the very last day's drawing. I, for one, do not believe that this ticket ever found its way out of the wheel. But you are to judge whether it was ever there till its correspondent number was to come out.

Gentlemen, as far as the managers are concerned, I have for the present done. I may, hereafter, bring forward one of them as the subject of further remark. At any rate, the general facts I have mentioned are sufficient to justify the defendant. His allegation is, that there is fraud *in the management*, not in the managers, of the lottery. It is in the general management, and not in the individuals having the right to control it. Mr. Baldwin begins with No. 17 in the former lottery, and he comes down to the present time.

Gentlemen, the first question now is, not whether the charge of fraud lies against Mr. Deniston or Mr. Sickles; but whether fraud has not been completely established to exist somewhere. The defendant concludes his publications with saying, that there is fraud somewhere; and you are to judge whether this be true or not. I mean not to say that Mr. Judah has perjured himself; still less, that Sickles has; nor do I criminate the boy. But, if from the general course of circumstances you believe that fraud does exist, and exists any where, this publication is not a libel.

But, gentlemen, I will go farther, I will locate this fraud.—And I will not shrink from probing it to the bottom wherever it shall be found.

And in the first place, I remark that it is seldom by direct proof that such a charge can be fixed upon any man. In nine cases out of ten the proof depends on circumstantial evidence. Take any ordinary case, forgery or counterfeiting for example. How seldom can you bring directly home to the culprit, the fact in which his guilt consists! Fraud is commonly a thing so artful and deceptive, that it makes no communication of its designs to persons whose character might endanger its security. And it is a thing so odious in its nature, that no man who seeks to practise it, will declare it to one more honest than himself.

Expect not, therefore, that direct and positive proof of which the subject is scarcely ever capable. But expect evidence not less worthy of your credence—expect circumstances which cannot speak false—circumstances which never could have existed but in a case of fraud.

Gentlemen, I shall in the first place contend, that Mr. Judah knew beforehand, that ticket number 15,468 would come out on the 9th day's drawing. If he did, you must pronounce, however painful the duty, that the ticket had been fraudulently drawn from the wheel He must have had a companion; and no person could have made him succeed on that ticket but Mr. Sickles, who knew the facts in relation to it. At present, I put Judah's oath on that point out of the question. Let us go on regularly.

Early in the morning of the 11th, (you will go on with me, gentlemen, though the facts are numerous and complicated,) he calls at Mr. Thorne's. I take Thorne's testimony to be the truth, and I will establish it before I have done. He meets with Moses first.—But he employs not him. And why? For the very reason stated by Mr. Thorne.—And why? for fear the insurers would come back. If he should take Moses for his purpose, the offices would know his agent, and come back on him for reinsurance. He tells Thorne that he has dreamed a dream; that he thought he was in the City-Hall and heard this number called; and that he fell asleep and dreamed the same thing again. Gentlemen, either this is true, or Mr. Thorne is deliberately perjured. Mr. Thorn has told the particulars; Mr. Thorne has fixed the place where Judah was in his pretended dream; Mr. Thorne has given us the whole in its details. And this particularity must either convict him of wilful perjury, or establish in your minds the truth of his statement.

Judah employs Mr. Thorne.—The insurance is effected.—The ticket comes out.—But doubts arise.—Mr. Smith observed that Mr. Sickles called off four tickets when he had received but three from the boy. An examination takes place.—The tickets are found soiled.—Suspicions get abroad, and Judah is informed of them. What is his conduct? "The damn'd rascals! I'll make them pay." He calls on Mr. Thorne.—And what does he do? The bullying and blustering Judah—what does he do? He laughs at the idea of defeat, and stalks about in pretended innocence; threatens to blow out the brains of any man who dares to doubt his purity. Yes, and you will see presently how all this ends!

This Mr. Judah calls on Mr. Crane.—A further examination is had on the evening of Saturday, or before the interview of the Monday following—and that is sufficient for my purpose. The soiling of the ticket is established; it no longer rests on suspicion that four tickets had been called when only three were drawn; and the fourth of these is soiled as if worn in the pocket. What now? Mr. Judah's courage begins to subside.—The charge is likely to come home to him.—The mystery is cleared up. What is he to do? Gentlemen, a man versed in the wiles of this world, a man whose interest led him to hold fast the advantage he had imagined to be secure: the bold, the dauntless Mr. Judah comes calmly forward and surrenders up

his policies to the men whom he had just now called rascals! Yes, and by way of concilation, he tells them of the services he has rendered them in the grand jury! And what is this? Instead of bullying, he coaxes—instead of threatening, he sues. He takes back his dream; he resigns his policies; his whole conduct is entirely changed.

But let us go further into the facts which belong to this affair. He dreamed, indeed; and he dreamed twice—and yet we are told that he did not insure on his own dream, but on an anonymous letter; a letter written by some good spirit presiding over his destiny—some kind friend that remembered his benevolences and his charities to the poor!—Gentlemen, it is too ridiculous to dwell on—a letter mentioned—when? not when he applied to Mr. Thorne to get the insurance for him—a letter mentioned—when? not in any of the conversations which took place before the drawing, nor on the Saturday afterwards, when the fraud was publicly proclaimed—a letter mentioned—when? not till he met those gentlemen the insurers on the Monday following!—where is that letter? If we had it here we might perhaps detect the hand. Gentlemen, it is in vain that Mr. Judah tells us he has destroyed it. If it had been genuine, he never would have destroyed it. When? after the dispute with Mr. Fay and Mr. Baldwin? yes, and after he had given the explanation, with which they were not satisfied? and yet we are told he has destroyed it. When? Let me say, it was not when the public were satisfied, and at the very moment when he himself was dissatisfied.

Gentlemen, is it possible there is a man who believes that if Mr. Judah had fairly received such a letter, he would ever have destroyed it? He keeps, we see, an insignificant letter written to himself; and a letter to his friend Capt. Myers, he retains and exhibits, and yet this anonymous letter, on which so much depended, is destroyed.

To proceed still further, what a singular friend is this writer of the anonymous letter! a letter addressed to him in charity and kindness! a friend, wishing to put a few dollars into his pocket! and yet that friend, who must have seen this publication, has not candour enough to come forward and swear that he wrote the letter. Would kindness have dictated this letter, and then neglect to avow it, when the avowal would deliver Judah from a load of suspicion and reproach? It is incredible.

But perhaps the writer was a female, and we are told that female names ought seldom to appear before the public! There is a repugnance in the female mind to such notoriety! We must believe all this, because a counsel at the bar has said it.

Gentlemen, if a fair lady wrote that letter, one would think—for that sex is influenced by the benevolent affections infinitely more than ours—one would think, although there might be some delicate reluctance to the publicity of the proceeding,—yet that, to save a friend, a female would not refuse to acknowledge a letter written from the pure motives of benevolence!

Or perhaps, Gentlemen, it might have been some child that wrote this kindly epistle to Mr. Judah. At any rate, would you not have been gratified to see the thing before your eyes? You might then distinguish whether it was in a female, or a feigned and counterfeit hand.

Gentlemen, I did intend to trace the testimony of this man further. I believe, however, that there is no man here who believes that he has destroyed the letter in question. And if not, his testimony is altogether good for nothing. He is in fact a party interested in the result of the trial; and though the forms of law permit him to come here and testify in the cause, you will bear in mind that the cause is still his own.

Whether, Gentlemen, Mr. Judah or his friend was the author of the

dream, we find the publication true. There is the fact. The ticket came out according to the prophecy. And connecting this fact with that of his getting insurance as he did, and with the other circumstances of the case, who can hesitate in forming his conclusion that Mr. Judah knew when the ticket was to come out?

And, Gentlemen, another part of his conduct leads us necessarily to this conclusion. It is the hush money given to Moses. Mr. Thorne could not be tempted. And Moses' testimony was all that could be found to discredit that which was to be given by Mr. Thorne. Judah made him a present of one hundred dollars. What was the motive? Preposterous! Because the underwriters will not do an act of justice, I will do one of uncommon benevolence! No; there was another motive. Mr. Thorne had shown that he was not to be Judah's tool; he had been told of the dream and knew all the particulars; Thorne was likely to speak the truth when called on. And his statement was to be contradicted; Moses was to do the work; and he has redeemed the pledge which three hundred dollars purchased.

Mr. Judah then knew that this number was to come out? How? He must have had an associate. Then establish the criminality of Judah, and that of Mr. Sickles can never be avoided. If Judah had the knowledge, Sickles had it; if Judah knew it, Sickles must have been a party. There is no escape.—Judah must have known the number. Mr. Sickles drew it. Conclude, then, confidently, that all this dreaming and this anonymous letter is a falsehood, and that Judah insured on the knowledge he derived from Mr. Sickles.

Gentlemen, we have never accused that boy. We never meant to accuse him. I should be sorry to say any thing against a child like that. But when we pass from him, even the evidence of Mr. Sickles himself confirms our accusations. The guilt of Mr. Judah involves that of Mr. Sickles.

Let us be a little more particular. In the first place, had Mr. Sickles the ability to practise the fraud? I shall not detain you for an answer. Every body sees—he had it from the mode of counting; he had it from the manner of resting; he had it from the usual circumstances in which the drawing was conducted.

It is immaterial whether this ticket 15,468 was ever in the wheel or not. We never put our cause on the ground that the ticket was never in the wheel. It may have been taken out on the 8th day. Perhaps it was.

And, Gentlemen, let me remark, this is not a question of blanks and prizes. It requires no concert between the persons at the wheels. If Mr. Sickles was disposed, he alone could commit the fraud. No concert was necessary. It is a question about a number, whether the number will come out; Mr. Sickles draws it out.

Gentlemen, let us go a little into the instances of Mr. Sickles' general conduct in this business. It is in testimony before you, and testimony most reluctantly given, that according to the judgment of the witness, the boy drew out three numbers, and Mr. Sickles called off four. I admit most frankly, that if this was all, it ought not to be presumed that Mr. Sickles is guilty. But this is only the starting point.

Gentlemen, Mr. Sickles' testimony has struck you with astonishment. I will go farther; it has filled you with regret. Whatever his character may have been, from this day it ceases to be any thing which you can respect. He expressly denied in the first instance, that he had ever been concerned as owner in the tickets of any lottery in which he was a manager, during the drawing of such lottery. Facts were in the knowledge of

the parties by which the truth of this assertion might be tried. He was then asked this question: pray, Mr. Sickles was not you a secret contractor in conjunction with a few others, for the purchase of nearly all the tickets of one lottery in which you were a manager at the time? And finding this put from a quarter where it was known, he was compelled to answer yes. And he was not only one of those contractors, but he was a manager acting at the wheel, and the highest prize in that lottery was drawn in part to him.

I go further. He a manager, and yet a contractor! He a manager, and yet drawing the highest prize! He a manager, and yet daring to come forward here and say, "I did dare to violate the duty imposed on me by the legislature of the state!" Is this the man of piety? What man of piety or morals would dare to march along as he has done, and to violate his own knowledge of his duty? Will you presume to trust him, clothed in infamy? It is in vain that Mr. Le Roy and others appear in aid of his past character. Character is valuable; but it must stand on different ground. When I had the honour to be attorney general of the state, Noah Gardner was arraigned, a prisoner, at the bar of this court. Before that time his character was above reproach and yet he was guilty. A man of real character shrinks from no scrutiny, and suffers by none.

Was Mr. Sickles then, the man for Judah to tamper with? Was he the man for Judah?

But we will proceed a little further. The more I examine Mr. Sickles' testimony—and believe me Gentlemen, it gives me no pleasure to pursue this inquiry; I cannot but feel for the very respectable connexions of Mr. Sickles, men whom I sincerely respect, men whom I love, men whom all must look upon with interest and esteem. But since I entered into life I never yet shrunk from the discharge of a professional duty, and I will not begin now.

First however let me call your serious attention to Mr. Deniston—Mr. Deniston, as a manager, takes an oath. Mr. Deniston, as a manager, is well known to Mr. Sickles And why does he take the oath? Why do the legislature impose it? To guard against every vein of corruption. And yet he substitutes Mr. Sickles to act in his place as a manager. Was it not enough that the legislature declared their intention by imposing the same obligation of an oath? They never meant that any but sworn managers should be at those wheels; yet in defiance of the law, he selected a man for that duty who had taken no oath and was moreover a holder of tickets in the lottery.

Gentlemen, one or two remarks on Mr. Deniston's testimony. It is not for me to say whether his statement, as to who were the proprietors of the prize in the Owego lottery, be true or not. But I do mean to say that it becomes you to inquire. Why so tardy in his declaration on that point? He is told of the rumour implicating Mr. Sickles as part owner; he is Mr. Sickles' friend; he is eager, as he would have you think, to keep from the management every thing like suspicion. He is applied to in the proper manner, because he is applied to by the grand jury. Mr. Wm. Smith told him before, clear up this fact, and all will be well. The fact, however, is not cleared up, except in one or two instances, till Mr. Deniston takes his stand here as a witness. Why? He feared the applications of some of his poor relations! Gentlemen, in this I believe him. It is for you to say whether every thing is hereby accounted for. There was a time when it might have been of some service to him to inquire further into the circumstances which affect his character. I am afraid it is now too late. It can

be of no use to him now to examine further the suspicions in which his character is involved. I do not wish to establish that he has been guilty of fraud. That is not what we are bound to do in order to make out the defence. I only add, that it is strange, ' 'tis passing strange,' that he did not unfold this business before; and that he did not, is sufficient to justify Mr. Baldwin in the suspicion and the charge of unfairness, in respect to the drawing of the $35,000 prize.

Let us now, gentlemen, return to Mr. Sickles. I shall be very brief. I have mentioned the testimony of Mr. Smith, I make that the ground of all. Let us now turn to the testimony of Mr. Haines. Mr. Sickles told Mr. Haines that he was to be a manager and could do something for him. Mr. Sickles, however, declares he made no such declaration. Gentlemen, what could he do for Mr. Haines? What is the interpretation of this? One interpretation is, that he could get tickets for him on better terms and credit than he might otherwise obtain. Could he? He could not. He was not allowed by law to do so, and you are left to imagine the meaning of his promise for yourselves.

Another witness is Mr. Brooks. But he says Mr. Brooks is incorrect. It is remarkable that every witness, who speaks against him, he undertakes to contradict. He told Mr. Brooks they could play into each other's hands. What does this mean?

The next witness is Mr. Burtus. Mr. Sickles told Mr. Burtus that he need not be afraid of the low numbers; they were not in the wheel. But he denies this. Gentlemen, understand the full force of the observation. If they were not in the wheel, and he knew they were not, then he was guilty of fraud for not disclosing the fact to the managers. It therefore becomes all important to him that Mr. Burtus should not be believed. Believe him, and Mr. Sickles is not to be believed. It is immaterial whether Mr. Burtus acted on the information he received from Mr. Sickles. If Sickles told him they were not in the wheel, and if number 8 did not come out till the 44th day's drawing, Mr. Sickles' character before the court stands forever lost. What is his story? Why, I told him that owing to the mode of putting the numbers into the wheel, and from my experience of the thing, I thought he need not be afraid of the low numbers coming out early. Gentlemen, if that be so, these managers have grossly neglected their duty. The very object of the revolution of the wheel is to give all an equal chance. You must be satisfied that there has been gross neglect.

Mr. Burtus told Mr. Sickles he was sorry he had given him the information. What does he answer? "I——will do this no more." "Mr. Sickles, make not me your confident in this business." "I have told it to Mr. Judah." But, gentlemen, Judah denies it. Did you expect any thing else? Is this declaration to purchase him a character with you? To Brooks he says, we will play into one another's hands. Why keep it a secret from other insurers? Do you believe that Judah cannot calculate as well as Mr. Sickles? or that Mr. Burtus cannot? They keep their books, they keep their slips. He tells you he was serious. If, then, there was no crime in it, why any secresy? He received a reprimand at the time. But when the consequences of his guilt began to threaten him, he has the assurance to go to these very gentlemen, and tell them he was in jest—yes, he deliberately told them he had been jesting—and yet in this very court, on that very stand, he has declared before you that he was serious. Gentlemen, can you listen for a moment to the statements of a witness like this? In jest—about what?—If, gentlemen, he was in jest, it was in stating that

those numbers were not then in the wheel. He did then, make that statement. His testimony confirms the testimony of the other witnesses on this subject.

Gentlemen, I might rest the cause here; I might rest it on the guilt of Judah. Let us, however, come to another part of the testimony requiring more than the oath of Mr. Sickles to explain. I allude to the 3 high numbers, 14234, 14265 and 14279.—Burtus had insured on one number in the 14000, and was severely hit. Burtus is applied to for insurance on these; he is pressed; he declines. First, then, is it not singular that Mr. Seely should press him on these three numbers? Why? He knew they were out of the wheel; and a day or two before the end of the drawing they are actually found in the possession of Mr. Sickles!

If the facts rested there, you could have no doubt; reasoning would be useless; but Mr. Sickles accounts for this—how? That about this time a boy found three or four tickets under the stage, and that he at the same time picked three tickets out of a crack! Now, then, it is certain these numbers were not in the wheel when Mr. Seely first applied to Mr. Burtus. But, gentlemen, before the grand jury, Mr. Sickles testified that he had picked out ten tickets from the crack! It won't do for a witness soberly to mistake two or three for ten; besides, every other witness testifies that it is impossible these three or four tickets should have got into that crack without assistance. And what is still more extraordinary, this discovery of the tickets in the crack was never divulged to any manager of the lottery! The four that were found by the boys were made known, the others never. And supposing Mr. Sickles found only three tickets in the crack, has he accounted for their being there? Three tickets out of the wheel! and in a crack under the carpet! Mr. Sickles found with the tickets in his possession, and he can give no rational account! Mr. Gilchrist and Mr. Bloodgood were present when they are said to have been found, and neither of them ever before now, heard of the tickets found by Mr. Sickles!—Now, what shall we say? Can there be a doubt? And yet you are called upon to say that my client is guilty of a wicked and malicious libel for calling the attention of the public to such a scene as this which I have exhibited before you.

One word, gentlemen, as to the soiled tickets. We have been told by a witness, and he a gentleman of the profession, that these parties were satisfied. He waited on Mr. Fay for his certificate. And we are told, in the same breath, gentlemen, "Mr. Drake, will you sign that certificate?" "No." Why not? "I don't like to have my name appear." Yet he desires Mr. Fay to sign. And why not sign with him? Because he durst not say the tickets were not soiled. But the managers tell us they were not soiled *as if worn in the pocket*. How did Mr. Drake think they were soiled? 'Tis in vain to tell us of gentlemen's delicacy. The very next newspaper informs us that Mr. Drake is one of the satisfied persons.

Some fanciful accounts have been given us on this subject. You have examined for yourselves, I will not detain you with the discussion of what you are best qualified to decide by your own inspection. We are told of the tickets having undergone a great many manipulations, and of other equally weighty conjectures; 'tis all nothing. You will consider the facts of the insurance, the mode of drawing the tickets, the soiling, and other circumstances together, and judge for yourselves.

Gentlemen, I have taken a very cursory view. I have not put the cause on the question of malice in the defendant, though he must appear to you to have been malicious and to have written in malice, before you can con-

vict him. He stands before you as having brought to light a course of as nefarious proceedings as were ever exposed to the eyes or ears of a jury. Nothing, indeed, but a judicial investigation could bring this business of lottery management fully before the public. Our characters are interested in the result, the character of the whole community is interested. If the facts had come out differently, no man would have been more gratified than I to place this cause on the mere ground of inattention on the part of the managers of the lottery. Mr. Baldwin had no motive but the love of truth, fairness, and the public interests. He has even sacrificed his own political attachments and connexions. He stands before you elevated in character. I knew him not until I knew him here. And if there ever was a man that deserved praise, he is the man. If managers can become contractors, if managers can be guilty of carelessness like that which has been disclosed, it is time to seek a remedy for such evils.

Gentlemen, I deceive myself if the result of this trial does not effect the remedy which is required. We are told that one of these men, who are now making the most conspicuous figures before you, is to be a manager by and by. He says so himself, but I cannot doubt that the executive of this state knows his duty, and the legislature know their duty, too well to realize his expectations

As to the law, gentlemen, I leave it to be explained by the court; the facts are what I request you to consider. You ought to require only circumstantial evidence. If you ask positive, direct proof, I think you do wrong. Take the case with all the circumstances that belong to it. I have done my duty, not, I am afraid, with the ability you may have expected. But if you reflect upon the plain facts as I have set them before you, the result will show, I am persuaded, that fraud has been practised, that the managers have been guilty of carelessness, and that Mr. Baldwin deserves at once your acquittal and your commendation.

MR. OGDEN *succeeded* MR. HOFFMAN *on the same side, and spoke to the following effect:*

GENTLEMEN OF THE JURY,

Fatigued as I am, and as you must be, with the length of the trial, I shall detain you as short a time as I possibly can, without failing in the duty which I owe to my client.

That it is a strange world, gentlemen, in which we live, is an old observation; and if any man ever doubted it, let him doubt no longer. The proceedings in this cause have proved it true beyond all contradiction. Here is an indictment found by our grand jury, not against the men whom in my soul I believe to have been guilty of dark and corrupt villany, but against an innocent individual, who has had the boldness to come here, and in despite of obstacles and difficulties that would damp the courage of most men, to expose a series of transactions equally injurious to the community at large, and to the managers whose characters have been implicated. Contrary to the usual course in criminal proceedings, the unoffending man is the person accused, while those who are really guilty are called upon to give evidence against him:—And it is on them that you are in fact to pronounce your verdict. Where is the man who hears me that does not know that it is not on Mr. Baldwin, but on others, that the decision is to be made? Why is this room filled with spectators, if they do not know that it is not to inquire whether Mr. Baldwin is a libeller, but whether a number of persons, some of them of high standing, have violated the trusts reposed in

them by public authority, that this trial is proceeding? It is well for the interest of this community; it is well for those charged with fraud in this pretended libel, that they have been themselves heard and under their own oaths. And if after all, they are convicted, it is not because they have not had a fair trial.

The defendant, gentlemen, is a stranger to me. I never knew him till after the indictment was found against him. I never heard of him or of his paper until this prosecution brought him to my acquaintance. He has thought proper to confide to me a part in his defence; and I do trust in God he will not find his confidence misplaced.

The truth, however, is, that never in the course of my long practice, did I rise under more unpleasant feelings to address a jury. I am sorry that I must injure the character of Mr. Sickles; and especially, for the sake of his connexions, whom I have long respected. But I am under an imperious sense of duty, which leaves me no choice. I stand here as a minister of public justice, and I should be wanting to myself, my country, and the profession to which I belong, if I did not proceed according to my convictions and the facts of the case.

Gentlemen, the question for you to determine is, whether there has or has not been fraud somewhere in the management of our lotteries. I mean to put my client's case on that broad ground. If you are of opinion with me here, you will, without retiring from that box, declare your verdict for the defendant.

Has there been fraud? This number 15,468 does not stand alone. Be it remembered, that when they went to examine and found it soiled, they told Mr. Gilchrist to look also for 3865 and 30;—and why? They had all been insured. They told Mr. Gilchrist to look at these two other numbers and see if they were not soiled. (Mr. Wells.) There is no proof of that insurance. (Mr. Ogden.) Sir, why should they have hit on those numbers if they were not insured? And they were all soiled. At any rate, although witnesses have been examined to prove that 15,468 was not soiled, there is no proof offered to show that the other numbers were not.

This soiling of the tickets is one circumstance of fraud. What other evidence have we? Mr. Judah goes to Mr. Thorne, and tells him this number 15,468 has been dreamed about. Did he tell him at that time that he had received an anonymous letter? No. Did he tell him there was his authority? No. Afterwards, at 9 or 10 o'clock, he calls again, and is told the insurers won't pay. What is his reply? Does he produce the letter? No. But he says he is sorry for it if there has been fraud. Mr. Thorne swears he never did tell him of the letter; and Judah himself does not pretend that he did say any thing of it to him.

But why did he apply to Thorne? Had he ever done so before? Mr. Thorne says no. He has got this creature, Moses, to say he had. But he never did till that time;—and why tell Thorne to keep his name a secret? Mr. Thorne swears he did tell him so. Why? If Judah meant no fraud, where is the reason? Honesty does not seek concealment; honesty does not seek to hide its face. There is no better evidence of fraud than this kind of secresy. And remember that Mr. Thorne's testimony is, in this, uncontradicted by either Moses or Judah.

But, gentlemen, Mr. Judah swore that he received an anonymous letter. Where is it?—He destroyed it. When? After this controversy had arisen, after these publications of the defendant had been made in the face of the world, Mr. Judah destroyed the very document by which he might otherwise, perhaps, have sustained his defence against the charges brought upon his conduct. If he had a genuine letter of that description, do you

believe he would have destroyed it? Would he have parted with the only means of defence he had?—Impossible.

Again, why is it not produced? Because he feared the handwriting might be traced. He was afraid some unfortunate witness for him might have been found who might say that *such* a person wrote it. It was therefore safest to destroy this evidence which would probably have shown that he had been guilty of forgery too.

But gentlemen, who wrote this letter? If it was Judah's friend, why does not that friend come forward now to clear up his reputation? If a friend wrote it, it must have been from friendship. And yet if Mr. Judah is to be believed, that friend suffers him to be dragged before this jury, and his reputation destroyed, without taking the trouble to appear in his behalf in such an extremity.

Again, Did Mr. Judah think this letter unimportant? Was he not convinced that every writing of defence would be necessary to him? But he preserves this letter of the insurers to him. And why? Because he knew it was necessary to show his innocence before the jury. Why did not the same caution make him keep the other?

Again—what is Mr. Judah's conduct when first informed that the insurers refuse to pay? He calls them rascals. He says he will knock down any man who shall suspect his honesty—and yet, the moment he finds the business is going to be developed, he changes his tone, he gives up his policies, and like a guilty coward he yields every point. Would this have been the conduct of an upright man? Such a man would have set the threatened investigation at defiance.

Again—He tells those gentlemen, as an inducement for giving up the policies, I have been your friend, I have tried to prevent you from being indicted by the grand juries in which I have served. What is the language of this? I have had it in my power to have you indicted, but I neglected my own duty to screen you. Only do me now the favour to take back the policies and hush the matter up.

But Mr. Judah says he was actuated by different motives. He says he settled with Mr. Smith, and yet afterwards gave back the money. Gentlemen, where is this Daniel Smith, that he has not been sworn to this? How happens it that this Mr. Smith has not appeared here in court to corroborate Mr. Judah in that important fact? His absence speaks louder than any thing he could say if he were here. Judah knew that Smith would not support him if he were to be present, and therefore he is absent.

Gentlemen, whether those tickets were or were not soiled, I do not mean to discuss before you. Mr. Gilchrist swears that before 15468 was examined by any body he found that it was soiled. He still continues of the same opinion.

But you are told, and will be again, on the other side, that the course Mr. Baldwin has taken is most extraordinary, because the insurers all were satisfied, and avowed their satisfaction. Why satisfied? Because they had gotten their money back! They had no further purpose to answer: and they were willing that the subject should be put at rest. Did these gentlemen even pretend they were satisfied respecting Judah's innocence?

But gentlemen, are you satisfied? You have a view of the whole ground; they had not. The question is whether *you* are satisfied, and not whether they were at the time.

Gentlemen, have you now any doubt that there has been fraud in regard to these numbers? If there has, Mr. Judah could not commit it

alone. And I think you will say that his confederate in that fraud has been Mr. Sickles. The managers are acquitted. The boys are acquitted. Who then had access to those wheels, besides the boys, the managers, and Mr. Sickles? Nobody. It is then utterly impossible that Mr. Sickles was not guilty.

Gentlemen, in considering the conduct of Mr. Sickles, I repeat that it is one of the most unpleasant duties that ever occurred in my professional life. I am aware that his character has heretofore been good and irreproachable. And his family connexions are some of the most estimable citizens to be found among us. Added to this, he is a man far in years, he is a member of the Dutch church; and he ought on every account to have avoided putting himself in the way of reproach or even of suspicion. You will naturally ask, what motive could he have had for conduct like that with which he is now charged. Gentlemen, it is impossible for us to enter into his bosom and search out the motives which may have had existence there. It is an inquiry between himself and his God. From the bottom of my heart I am sorry for him. But sorry or not, it is my duty to say that the evidence in this case fixes indelibly upon him, the brand of misconduct and of fraud.

Gentlemen, if these numbers that were lost and picked up had ever been put into the wheel, who put them in? Mr. Sickles was the only man who assisted the managers in putting in the tickets. The managers are acquitted. Mr. Sickles then was guilty of withholding them from the wheel, if they were withheld.

Again, if the numbers had been originally in the wheel, and were fraudulently taken out afterwards, it was either the manager, the boys, or Mr. Sickles, that did it. The two former are acquitted on all hands; and therefore Mr. Sickles alone remains subject to the imputation of the fraud.

But you will be asked why should the charge be laid on Mr. Sickles? Has not the evidence justified this? He has himself sworn to you this day, that never, while he was a manager of a lottery, was he the owner of a ticket in that lottery. He said this over and over again. And yet, in his cross examination, he confessed that he had been one of the secret contractors who became the owners of nearly all the tickets in a lottery of which he was a manager.

Again he has sworn before you, (although he had before sworn as I have stated) that these very contractors drew the highest prize in that lottery. Gentlemen, could he have forgotten this circumstance? Is it possible he should have forgotten that he had shared one sixth of that very prize? Gentlemen, I must say that he hoped it was not known, and that he might thus pass undetected.

Is this the only thing? Mr. Sickles told Mr. Burtus and Mr. Brower that they need not be afraid of the low numbers. Mr. Burtus says he told him those numbers were not in the wheel. Gentlemen, I do not know Mr. Burtus. You saw him. He will probably not live long, he is sick, perhaps on the brink of his grave, and yet he swears that Mr. Sickles did make to him such a communication. Mr. Sickles tells us that having made it to Mr. Burtus, he thought it his duty to communicate the same thing to Mr. Brower. Why? They were both his friends; he did not wish to give one an advantage which he withheld from the other.

But after these charges have been brought against Mr. Sickles, and his character becomes involved in the question of fact respecting them, we find him going to those gentlemen and telling them not to mention what he had said to them. And yet we are now told that he was then in jest, and can you believe him? (Court.) No, Mr. Ogden; Mr. Sickles' own tes-

timony is, that he was serious in what he said to them; but he has since told them that he *had been in jest*. (Mr. Ogden.) So much the worse.

Yes; Mr. Sickles does say that he afterwards told them he had been in jest, and that he did this to prevent the thing from being made public. That is, he told those gentlemen a palpable falsehood—or else he has prevaricated—the counsel may have it which they will.

Is there any other fact? Mr. Sickles goes before the grand jury and testifies that he picked out of a crack ten tickets. What does he say now? why, that he did say so before the grand jury, but that he now thinks he was mistaken. He says he was told by the boys that they had picked up *three* or *four*. He did not, however, go and search where those were found—but as if guided by some miraculous aid, as Judah was, he went directly and turned up the carpet on the very spot where he found *three* other tickets. And did he tell any body of his singular discovery? No. Did he say, why here are *three* more tickets! Here is a parcel of them in a crack! not a word of the kind. He says he took them up, that he told the fact to the managers, and that they told him to keep them till the last day's drawing. Gentlemen, Mr. Gilchrist has been sworn, Mr. Gilbert has been sworn, and several others have been sworn, who all have said that they never heard of these tickets till this unfortunate old gentleman disclosed the information here! Now, if Mr. Sickles did find more than three, he must have destroyed some of those which the boys found and substituted others. Gentlemen, they were all in the fourteen thousand. Mr. Sickles had been told before by Mr. Burtus that a man had urged him to take a policy on those numbers that they would not come out till the last day. And I ask, Gentlemen, if this was not Mr. Sickles' motive at that time? What business had he to go and show those to Mr. Burtus, to a man who might take advantage of the disclosure? If they were entrusted to him as he swears they were, it was under as great a moral obligation of confidence as it is possible to conceive. And he violated the trust. He went and disclosed the numbers of the tickets—Gentlemen, he must have had some motive—he did not say here what was the motive. When therefore you find him violating his trust and unwilling to assign the motive, you must assign one for him.

Gentlemen, these THREE numbers were not only kept out of the wheel, but after they were put in, one of them drew a ten thousand dollar prize. The prize belonged to a gentleman up the North River against whom I do not certainly mean to bring any accusation. And whether there was any fraud in the drawing of that prize is now unknown.

Well, do we stop here? Is there not other ground to suspect Mr. Sickles? He goes to Mr. Brooks, and Brooks informs you that he told him that if he would get a note discounted for him in Mr. Barker's Bank, he was going to be a manager, and "*they could play into one another's hands.*" Gentlemen, you will be told the meaning of this was, that he was to sell tickets to Mr. Brooks. But he would be bound to sell tickets to any body that should apply. It was *foul* play that was intended.

Gentlemen, he tells Mr. Haines, I want a sum of money—and then offers, as an inducement for him to ask an old woman of his acquaintance for it, that he is going to be a manager, and "*may be able to serve him in turn!*" He used, therefore, this circumstance of his being likely to become a manager, for his private convenience, as a consideration on which he was to purchase favours and accommodations!

We come now to the Owego Lottery. How was that prize ticket drawn? Mr. Sickles says he held up his hand—and he produced a boy to confirm

his testimony, and the boy says he did not hold up his hand in the manner he has sworn that he did. And again, we have a witness on the part of the defendant, who swore positively that he put his hand in the wheel without holding it up. I do not care whether it went under his coat or not. No matter. He says his arm has been hurt with a knife, and that it is apt to get weary with the exercise of drawing, and occasionally slips down by reason of the injury and the fatigue together. Gentlemen, this was the very first ticket drawn out of the wheel that day. Of course there was no fatigue.

He was not a manager of that lottery. The managers were all of New-Jersey, and they did not know how these things were done. Mr Sickles has taught them by his example. But he said it had been considered by other managers derogatory to hold up the hand.

But, then, what motive could Mr. Sickles have for practising a fraud in the drawing of that prize? Gentlemen, Mr. Deniston, from Albany, has been produced as a witness before you. Mr. Deniston himself says, that he has hitherto told and persevered in a direct falsehood on the subject of the ownership of the prize. Nay, infinitely worse, he tells you that he prevaricated before the grand jury, so as to leave them to believe that he did not own the whole ticket; and yet he says, the fact was, that he did own it! And, now I leave it to you to say, whether you are, under these circumstances, bound to give any faith to Mr. Deniston's statement, and to graduate the difference between such conduct and perjury itself. It is evident what the grand jury thought.—They did not know that they had a right to ask who was the owner of the other half of the ticket. Mr. Deniston then knew that he was giving them a false impression, that he was prevaricating, and I may say, jesting under oath before the grand jury!

If then there is ground to suspect Mr. Deniston in one part, why not in all? What confidence can you have in a man who admits that he has been in the habit of uttering falsehoods, no matter from what motive, and who has been guilty of such conduct as I have described when under the solemn obligation of an oath? Gentlemen, he has even prevaricated before this jury. He has used here the same kind of language when on his direct examination that he did before the grand jury. (Mr. Wells here interrupted the speaker by some contradiction of his statement respecting Mr. Deniston's testimony. Some conversation ensued between the counsel and the court. And at length his honour the mayor expressed his opinion that Mr. Ogden was correct.) At any rate, gentlemen, it was such as induced me to believe, that Mr. Deniston owned but half of the prize, which on his cross examination he declared to be *all* his own.

Gentlemen, is there any other ground to suspect Mr. Sickles? The ticket 15,463 was not drawn directly from the wheel, and then called off by him. It is proved before you that the boy threw THREE tickets into his lap, and he called off FOUR!

Under all these circumstances, inasmuch as this old gentleman was the only person who had access to the wheels, and tickets, besides the managers and the boys, Mr. Sickles must be guilty. Judah could not have got at the thing in any other way.

I have now, gentlemen, gone through with what I meant to say on the subject of fraud. I sincerely hope the evidence may not strike your minds as it has mine. I hope you may be able to say that Mr. Sickles is not guilty.

But, gentlemen, even if he is not this guilty man, you are still bound to acquit the defendant. If this lottery has been so conducted as to give grounds for suspicion, it is enough, and you are of course to acquit my

client of any offence in thinking and publishing as he has done; and the court will tell you that the law is so. In order to convict him at all, you must convict him of malice.—Malice in what? Malice in calling up a subject of this kind for public investigation! It was his duty—it was his duty to spread it out before the public and the world; and if there has been an error in the management of our lotteries, to take care that the evil be corrected.

I have gone through.—I hope it may be possible for you to say that there has not been fraud. You must indeed determine on that point. But I shall be gratified, if there has been none, to have the jury find the fact to be so.

After Mr. OGDEN *sat down*, Mr. JAY *proceeded to the summing up of the evidence on the side of the prosecution—and spoke substantially as follows:*

GENTLEMEN OF THE JURY,

Feeling as I do very sensibly for the interests of my clients, I cannot but be also sensible of the very disadvantageous circumstances in which I rise to address you. The jury have been listening for a day and a half to the other side, before they came to hear the witnesses that have been sworn in behalf of the prosecution. It is scarcely possible they should have come at last to hear the testimony of those witnesses without a considerable bias upon their minds. In addition to that, they have now heard eloquent speeches made by some of the most able men at the bar. It is as much as is expected, gentlemen, that you will give us a fair attention—an attention arising from your sense of duty to yourselves and to society.

The allegation of the defendant is, gentlemen, that there has been a deep laid scene of villany in the management of our lotteries. One of the counsel on the other side has said that this will be sufficiently made out, if it appears that any fraud has existed in connexion with the subject. I do not understand it so. It is an old saying, that the difference is great between cheating and being cheated. Suppose I should take upon me to say, there has been villany and swindling in the management of your mercantile affairs. Would you be satisfied with my conduct, if it merely appeared that one of your correspondents had committed a fraud on you? It does not follow, that because a fraud has been commited of which you have no knowledge, therefore you are guilty.

It has been said that there has been fraud practised. By whom? Not by the managers. Yet they still impute to the managers carelessness in permitting these things of which you have heard. It is admitted on all hands, that no suspicion of fraud attaches to him who found the ticket in his clothes. If it had been found on my unfortunate client, Mr. Sickles, what would not then have been said, what accusations would not have been heaped upon him?—Another manager nodded while the drawing was going forward. What then? It was not a fraud—it was only negligence.—Another manager, General Johnson, had the tickets laid too fast upon his knee. Against Mr. M'Lean, indeed, nothing has been said.

Gentlemen, when these managers were appointed, were they not authorized to employ clerks, and other persons necessary to the convenient discharge of their duties, as they thought proper? If then, they were authorized to appoint a person to Mr. Sickles' office, could they, on the whole have made a better selection? They chose a man whose character

stood as fair in every point of view as any other which they could have found in the community. Where was the impropriety of this? The office required integrity—and Mr. Sickles' integrity was unimpeached.

Again, they employed a boy to draw with a sleeve, instead of having it done with the naked arm. Now, gentlemen, this is the manner of drawing which has prevailed for many years. The boys are not convicted of fraud in any case, however far back they go. Yet this is culpable negligence to appoint boys in this business.—Is this fair? And even an improvement in the article of the sleeve is thrown in the teeth of the managers.—Is this fair? But it is said that in England no mistakes occur. How do we know this? A gentleman informs me that he has seen a case of a a suit respecting a ticket which had never been drawn.

Gentlemen, would it not be a miracle if in that immense number of tickets which have been put into the wheel and drawn from it, in the short space of time allotted to the drawing of a lottery, no single accident should have occurred? It would have been a greater wonder than that a few mistakes should have arisen.

Before we leave the managers, gentlemen, let us consider the case of Mr. Deniston. He is charged with perjury—what is the proof? He held a ticket in the Owego lottery, and it was a prize! It is said that Mr. Sickles drew it,and that he corrupted him to draw it—Why, there is a witness who says, that when Mr. Sickles drew that ticket, he let his hand drop partly under his coat? Were was the use, then, of his holding up his hand? The fraud might have been committed in this way as well as if he had not held up his hand. Gentlemen, the boy, Gregory, is either to be believed, or he is not. In the one case Mr. Sickles did hold up his hand—in the other, you must contradict another witness who confirms the boy's testimony. Doubt not that the boy speaks the truth. In fact, his statement is sufficient to reconcile all three of the witnesses who have testified on this point.

But Mr. Deniston has said that he had a part owner with him in that prize. Mr. Deniston never swore to that. In saying it he certainly did wrong. But are you therefore to disbelieve him when he comes to swear before you? He told Capt. Roorbach and Mr. Waite that he was the sole owner. Those gentlemen came here and tell you he did. Before he went before the grand jury, he took their foreman Mr. Price aside, and begged that he might not be pressed on that point. But the gentlemen say he prevaricated. He did not. He was not bound to answer to every thing that might be asked, but only to material questions.—But it is said that he prevaricated here. On that point I have not a doubt. Mr. Deniston denied that any of his connections, or friends, or that Mr. Sickles had any interest with him in the prize. This was on his direct examination. But when the court obliged him to answer the question put by the other side, he then admitted fully that he was himself the sole owner.

And these two facts are the basis of the serious charges that are brought against Mr. Deniston.

If Mr. Deniston, gentlemen, had been pondering a fraudulent concealment, would he have ever proclaimed to the public that he had a private part owner with him in that ticket? He used no secresy in buying the ticket; he was understood to be the owner; Mr. Allen wrote him a letter to inform him that the prize was his. No rogue would ever have done as he did; there is no possible motive for it.

But immediately after this transaction, we find Mr. Sickles to be in want of money. He is pressed; he is obliged to borrow, to borrow in various places; and he is even brought to the necessity of putting his house and

home under mortgage to get money. Would these difficulties have occured, if he was in truth the sharer of that prize?

One other charge is made against Mr. Deniston, gentlemen. It relates to the present lottery. It is said that he was concerned in buying tickets with Mr. Sickles. Do you believe that? There was a number of the friends of Mr. Deniston at Albany, who wished him to get some tickets for them, if possible at first cost. Mr. Sickles wanted thirty. Mr. Deniston for them, twenty. The fifty are bought. Mr. Deniston takes the twenty to Albany, and delivers them over to the persons for whom he bought them. This is the whole extent of his offending in that point.

I do trust, gentlemen, that in relation to Mr. Deniston, there is no longer a suspicion.

We come now to Mr. Sickles. A great deal of pains has been taken to show that it was in the power of Mr. Sickles to cheat. Every man may do so, gentlemen, if he have the disposition; the treasurer of this state may cheat the state; the treasurer of this city may cheat the city; the president of the United States may cheat; every man may do so. The managers had the power, the boys had this power, the clerks had this power—and yet to conclude that they all did what their ability permitted would be harsh.

Gentlemen, there is nothing more harsh than suspicion. General Hamilton himself was suspected of peculating in the public funds—Mr. Dallas was also suspected. One of the secretaries of war was suspected. If a man has it in his power to do wrong, and the slightest circumstance is to give rise to foul suspicions against him, if suspicion is to get into our judicial tribunals, and to mingle its gall and its wormwood with the administration of justice, then our tribunals will be our prisons, and our halls of justice will be places of cruelty and suspicion.

Gentlemen, who are the witnesses who come here to accuse Mr. Sickles of infamy, of perjury, of having violated his trust, and of appearing now before you to overturn a reputation established by a course of years? Who are they? Those very men who make their daily bread by violating the laws of the state—the defendant himself, and those other insurers. Does it lie then in their mouths to say that Mr. Sickles has been guilty of the offences charged against him, and that he has violated those laws? There was, indeed, at the time when Mr. Sickles was the owner of those tickets, which have been mentioned, no law against it. (The court here expressed an opinion that the prohibitory law had been then in force. Some conversation took place—and Mr. Jay proceeded.) I had supposed that the law was subsequently enacted—but perhaps it may be otherwise.

Gentlemen, these witnesses come before you to testify against Mr. Sickles in regard to his concerns in the management of the lottery, after having certified under their hands before the public, that the present lottery was as fairly conducted as any other lottery in the United States. They have published their certificate to that effect in the paper of the defendant himself; and they tell the world in that certificate that they have investigated the subject. But they pretend now that the concluding Paragraph of that article was dictated by Mr. Judah—what then? Did not they sign it? Did not they put their hands to it? And do they come here to say that they have all been telling a deliberate lie? Is it no impeachment of their testimony before you, that they have lied to the public? And that they have lied thus in regard to these very frauds which they are now come to establish?

Gentlemen, after all the facts which have been disclosed on this subject

had come out, the defendant himself published in his paper on the 24th of September, that Mr. Sickles and Mr. Judah are to be believed upon their oaths as much as any other persons whomsoever. And yet he would now have it that they are guilty of both fraud and perjury.

These circumstances are intended to raise suspicion. And now, shall mere suspicion fix itself upon a man, so as to destroy a permanent good reputation? They collect not only what has happened lately, but every thing that can be found within the last half-dozen years; every accident that has happened, every dropping of a ticket on the floor, whatever trifling incidant has occurred,—they are all brought to bear on this one point as on a focus, and Mr. Sickles is to be their victim.

What are the frauds? What are the circumstances? Why, an attempt was made upon the little boy. What inference from this? Is this to became a charge upon Mr. Sickles? If not why go into proof respecting it? Why, to make an impression on your minds. The boy told his grandfather—and the grandfather detected the offender—is this a fraud?

What else? Why he told an insurer that he need not be afraid of number 3. What then! Why, if the insurer had gained by it, what would not have been said? But he insured and *lost*.

I think there has here been some misunderstanding on the part of the Court and of the opposite counsel. Mr. Sickles became composed, he had been in the habit of going to the offices, and of jesting with the brokers. Well, Mr. Sickles, when will such a number come out? O, I do not know—it will come out such a day. At least, Gentlemen, such may have been the basis of all that has been proved in this cause in relation to what was said by Mr. Sickles to the insurers respecting number 3. The Court, however, have received a different impression from Mr. Sickles' statement. The facts are for you to decide.

As to the other numbers—Mr. Sickles had been long concerned in lotteries. He had observed that the low numbers usually came out late in the drawing. This he accounts for from the manner in which the numbers are put into the wheel. In turning the wheel these get mixed; but the most of the low numbers usually come out late. This is Mr Sickles' theory. It may be right or wrong. It was called by him his motive. It cannot be called a motive; it was his theory.

Mr. Sickles says on oath that he did not tell Mr. Judah what he told to Mr. Burtus; and Mr. Judah corroborates his statement. But one of those gentlemen to whom Mr. Sickles made the communication, says he also *intimated* that the low numbers would not come out; and he inferred that they were not in the wheel. Mr. Sickles says he merely told him that those numbers would not come out yet; and so Mr. Burtus had no right to suppose that he meant to intimate that they were not in the wheel.

But gentlemen, what motive had Mr. Sickles in this business? What motive could he have? He went to Burtus—did he ask any favour? None under heaven. But he goes to Haines. Now, gentlemen, a man having controul of this wheel, able to commit any fraud against the lottery, thought it seems, that he would try to bribe Mr. Haines to speak to Mr. Bates to lend him for his son $400! and for what?—Haines refused to do the favour, we are told, after he had promised it—and yet Mr. Sickles was to violate a future duty as a bribe for such a purpose! He only meant, gentlemen, that he should have tickets and that Haines would want to buy them.

But Mr. Sickles has violated his oath? How? Why he went to the grand jury and said he had found 10 tickets; whereas, on reflection, he

says there were only 6 or 7. Now what difference does it make? None at all under heaven. What motive could he have for the mistatement before the grand jury if he did not then believe it; or for the correction here, if it be not the truth? He comes here, not to defile his conscience, but to cleanse it. When the tickets were found, he went to Burtus to show him that he was right in his supposition, for that there were three of the tickets in the fourteen thousand.

But it is said that Mr. Sickles put the tickets under the carpet, and it is said he destroyed some of them and supplied others. Do you believe this? It is impossible.

Come we now to the grand charge—Mr. John S. Smith says that while he was then with his book checking down the numbers as they came out, he saw that three tickets were thrown into Mr. Sickles' lap and four called. If this be true, I give up the point, and admit that there was fraud. But you will consider how this man Smith gave his testimony, how he hesitated, what uncertainty and doubt he betrayed, and how imperfectly it was that he could be induced to testify at all. I am persuaded that you cannot on such testimony convict a man whose good character has been long established, of such a crime as that which is attempted to be fixed upon Mr. Sickles. Gentlemen, the tickets are drawn with great rapidity,—eight or nine in a minute. And yet this witness Smith pretends that he could take them down in his book as they came out, and at the same time observe whether they were called off precisely as they proceeded from the wheel!

But the tickets were soiled? Gentlemen, I leave that question entirely to you. You have seen it, and you have heard the testimony. I imitate the conduct of the counsel on the other side—I leave it to you.

As to Mr Judah, I do not mean to make him the scapegoat in this cause. He comes here as a witness and not as a party. His testimony is confimred by two other witnesses, Mr. Moses and Mr. Burjeau, and devied by Mr. Thorne only.

Now if, on the 24th of September, after all these things had been laid open, the defendant published that Mr. Judah was to be believed, how does he come here to acuse him of fraud and perjury, as a man who is not to be believed? It is needless to bring other witnesses to support Mr. Judah's character. The defendant himself has done enough—and in addition to this, Mr. Burjeau supports the statement of Mr. Judah.

Gentlemen, the story is undoubtedly an improbable one, that a man should insure on a dream and hit. It is what might happen once in a thousand times. Yet it belongs to the doctrine of chances that improbabilities should sometimes happen. This is ever essential to the doctrine of chances.

But three of their own witnesses acknowledge that they have insured on dreams. And one of them has hit upon a dream. It is not then so unusual a thing to insure on the faith of dreams.

When there is no weight on one side, gentlemen, the smallest on the other will turn the scale. A thing is not false merely because it is extraordinary. You cannot judge in this manner.

Gentlemen, it is growing late. I shall only beg you to remember that the whole testimony in regard to Mr. Sickles is circumstantial in its nature There is no positive guilt proved. There is nothing but bare suspicion* founded on circumstantial evidence. And if in such a case as this character is of no moment to protect the accused, what is character worth? If it serve us not here, when and where can it stand us in stead? Not in the other world gentlemen; for their character is to be determined not ac-

cording to the opinions of men, for it is the result of human estimation. And not in this world, because you are to overturn it without a particle of direct proof. You are to believe that a man grown old and grey, a man to whom no single act of baseness has ever before been imputed, whose character has been supported by the unqualified testimony of many witnesses from among the most respectable members of the community; and when this man, too, has been for a series of years under public observation; you are called upon to consign this man to the grave, not only with sorrow, but with infamy; and that by convicting him of a crime for which no sufficient motive can be assigned, upon the ground of mere circumstantial evidence and suspicion. Gentlemen, I do trust in your justice that you will not destroy him in that way.

MR. WELLS *followed Mr. Jay, in behalf of the prosecution, to the following effect:*

GENTLEMEN OF THE JURY,

It is not to be expected at this late hour, fatigued as you are with the long continuance of your important duties in this cause, that I should enter minutely into the wide and complicated range of facts which a trial of three days has brought before you. I am myself unequal to the task. The fatigue has been common to us all. I fear I shall not do jnstice to myself or to the cause in which I am engaged.

You have been told, gentlemen, that it is a cause, which has excited great public attention. And it is among the misfortunes which attend public excitement, that it seldom fails to combine with it public and private prejudice. Fraud is easily charged, and we are apt to listen with an open and a greedy ear to such charges. They are charges which every man can make, and they can be propagated by every man who has a set of types at his command. He has nothing to do but to put the matter forth, and there is every where a disposition to listen and to believe. The human mind in all its purity cannot resist impressions of this kind. And thus it is often the case that the public mind is made up, and the verdict made up also, before the trial has commenced.

Gentlemen, even on this occasion, the counsel have mingled political considerations with their remarks, as if politics were to be identified with the interests of this trial and were to give character to your verdict. I trust that when you shall come to pronounce your decision in the cause, you will have laid aside any impressions which may by such considerations have been made upon your minds.

The charges, gentlemen, on which this libel is founded, are of no ordinary kind. But the well earned reputation of a man whose head has grown hoary in the presence of the public, is not to be destroyed by a research into his public conduct at this late period of his life. The defendant has undertaken to charge broadly upon the managers, upon the sub-manager, and upon the boys, a deep laid scene of villainy, of fraud, and of swindling. The defendants counsel, aware that they could not maintain this charge in its full extent, have sought to avoid part of it, and to fix the burden on a single individual. While you are told that the managers are acquitted of fraud, in the next moment you are told that they are guilty of carelessness, in a manner calculated to make on your minds the impression which they expressly disavow. Why? Because these managers cannot be successfully attacked; because you cannot be persuaded to believe them guilty of

the offences charged in the libel, the counsel seek to lay the guilt of those offences on Mr. Judah and Mr. Sickles.—They seek to turn it aside.

Now, gentlemen, with regard to the question of fraud, I do mean to put it to you that there is none on which a discreet jury can undertake to pronounce a verdict according to the terms of this libel. And secondly, I do mean to contend before you that this defendant has acted throughout from improper motives, from motives that belong to the character of a libeller.

The counsel commenced their attack by assuming first, that the managers have not committed a fraud, then that the boys have not, and then that Mr. Judah and Mr. Sickles have.

Now, where is the evidence as to Mr. Judah? He is a dealer in tickets; he insures, and takes insurance. That he should insure, or take insurance, is not strange. But it was in consequence of a dream! And here that dream is to be conjured up into something like damning reality. Mr. Judah dreamed—and therefore Mr. Judah has committed a fraud!

Why, gentlemen, it may be something peculiar; but it is constantly done. Nothing more common than to take chances on tickets in consequence of dreams. Mr. Judah does this. He does what others have done before him. Several witnesses have told you they have done the same thing. Three witness have told you, that they have either bought tickets or procured insurance on them on this principle, and that they succeeded in the result. Thorne, himself, has told you that he has done so, though he did not happen to hit. If he had hit, I do not believe he would have thought himself thereby guilty of fraud.

Mr. Judah then, not wishing to have it in his own name, employs Mr. Thorne. Is there any secresy? He assigns the reason; he points out the offices—and this is another badge of fraud! Gentlemen, he was in the habit of covering those offices. When he got insurance he wished to be insured. Was it not natural for him to point out the offices? I ask if this was not natural, that he should take his measures so as not to be called on to take back the insurance upon himself?—And yet this is an evidence of fraud!

But he told Mr. Thorne that he had dreamed this dream himself, and that he dreamed it twice! In that point Thorne is contradicted by Mr. Judah, by Mr. Moses, and by Mr. Burjeau—three against one. And who is this Mr. Thorne? A witness, gentlemen, who stands self-contradicted before you; a witness who tells you that this was a fraudulent contrivance to get money—and yet he does not hesitate to pocket his part of the fraud; but he raises a great uproar against Mr. Judah who received nothing. I put it to you, what sort of a conscience must this man have.

Gentlemen, this witness has told you moreover, that he also insured, partly with Moses, and partly on his own account, to the amount of $260, and that he received the whole from the underwriters. But in this he is entirely incorrect. He insured for Mr. Judah $2,600, in which he had only $126—and yet he says he was paid his whole $260. Now, gentlemen, this is not true. He was not paid in that manner. He was not paid his proportion of the $100 that he insured for himself and Mr. Moses together. All the witnesses on this part of the subject tell you that what he received was ten per cent. on the amount insured. He then received out of the $2,600 which he got for Mr. Judah, the entire sum of $260. And if he received the rest, it was over and above this. He is not, therefore, as correct as he would have you believe.

Mr. Thorne's testimony, gentlemen, must then be set aside. Mr. Judah tells you that he did not tell Thorne that *he* had dreamed that number.

He says that he told him that it was a dreamed number—and Mr. Moses confirms him in that.

But Mr. Judah made this insurance on the strength of an anonymous letter—and that is another very extraordinary thing, and it is evidence of fraud! Have you any doubt that such a letter did exist? He showed at the meeting of the insurers. But the writer does not appear! and therefore you are to presume there was none? If this was a fabrication, would it not have been just as easy to leave the story where Thorne left it? It would make no difference. The letter, however, has been destroyed—and still Mr. Judah has preserved another letter of no use in this cause!—Gentlemen. is it so? The different persons who insured for Mr. Judah are those who set up this plea of fraud. They met Mr. Judah; they certified their satisfaction with his conduct. What use, then, to keep the anonymous letter? It is not correct to say that this letter was destroyed after this business was in a train of investigation:—and was it not of some importance to preserve the other document? to show to persons who had not known the progress of the thing? to show to those who might still entertain suspicions? And is not this a sufficient explanation that the one letter is preserved and the other not?

Now, where is this evidence of the mighty fraud of Mr. Judah? Because he happened to get insurance on the ticket and hit? Other gentlemen have done the same thing, and no imputation of fraud is brought against them. Other gentlemen have dreamed, and no imputation of fraud is raised. But because Mr. Judah did this, it is evidence, conclusive evidence of fraud!

Gentlemen, Mr. Judah himself underwrote upon that very ticket—and lost.

Again, if Mr. Judah had intended to make money by his fraudulent practice in this affair, why did he take a partner? You may have any part you please, said he to Mr. Thorne. Now if there was a fraud, would he have let Thorne in to share with him? Upon what motive could he have acted, if there was really any fraud in his heart?

Well, the ticket came out—there was a hit--and several offices having insured upon the number, there was a buzz made about it. It was said to be soiled.—But when it was taken off the file, Mr. Fay was unable to select it; Mr. Baldwin was unable to select it; his friends tried; it could not be found. Not even Mr. Woodruff could designate it till he had taken the ticket into his own hand. Gentlemen, I believe it would be an easy thing for any person to find a ticket in those circumstances.

I ask you then, whether this soiling of the ticket affords such mighty evidence of fraud? And suppose the fact to be so—it is evident that it was not so much so as has been represented. It must be evident to you all that if it had been soiled by wearing in the pocket its appearance would have immediately indicated the fact.

Gentlemen, General Johnson told you that the soiling might have arisen from the boys pulling off the string instead of cutting it. Your attention was called to that soiling as being on the edge and running across the ticket. I ask you if it was not so? He expresses to you his own decided belief on that point.

But you are told that in the very drawing of this number there was declared to be a fraud, that it was declared in the room at the time. Where is the evidence of this? Not one person has appeared to testify to that fact directly. Mr. John S. Smith, whose stammering, hesitating, reluctant mode of giving his testimony you must have remarked, is the only person that says any thing to this purpose.—He wes employed in writing

down in a book the numbers as they were drawn from the wheel, and he is the only witness that speaks upon this point. He ventures to half-think, to scarcely believe, that there were three numbers drawn and four called which was the number in question? The first? the second? the third? We do not know. I ask if you can place the slightest reliance upon testimony of that sort?

Gentlemen, assuming as the counsel have done, that there was fraud, to what purpose was Mr. Judah to involve himself in a controversy with those men the insurers? He could not ask a jury to enforce the contract of insurance, for it was unlawful. To what purpose was it then, that he was to get into a wrangle with them? What else could he do than he did? Why should he not abandon the business where it was?

Where then is this evidence of fraud on the part of Mr. Judah? The whole amount of it is, that on turning up the chances, Mr. Judah happened to be successful. Who, then, was the operator? None, say the gentlemen, but Mr. Sickles.

The Gentlemen have travelled back to a former lottery—the Jersey lottery in which he was not a manager but in which he drew out a prize ticket owned by Mr. Deniston. And here was a fraud? The manner of drawing the ticket is evidence of the fraud! But Mr. William Smith has put the question of that fraud beyond all manner of dispute! Mr. Sickles dropped his hand a little. Mr. Smith, did that excite any doubt in your mind? Not the least. Have you any doubt at this time? I have none.

But Mr. Deniston happened to be the proprietor of the ticket—and here again is another link in the chain of this imaginary fraud. But what motive could Mr. Sickles have? You will perceive that it is necessary to find out a motive. If it should turn out to your satisfaction, that Mr. Sickles had no interest, and derived no more benefit from the court than you or I, then I ask if you are to believe that Mr. Sickles would commit a fraud like that charged upon him, for the benefit of Mr. Deniston alone, and from the mere motive and purpose of committing a fraud for fraud's sake?

Mr. Deniston, gentlemen, has explained himself to you. It is apparent that he owned tickets in that lottery. There was nothing concealed about it. Again, if Mr. Deniston had a part in that transaction, which he did not wish to disclose, I ask whether it would not have been the surer course to say that he owned the whole? It was only because Mr. Deniston said he owned but half, that Mr. Sickles was even supposed to own the other. No other person could be imagined. But if Mr. Deniston had meant to commit a fraud, and Mr. Sickles was in fact part owner, Mr. Deniston would have undoubtedly said, it is all mine.

Mr. Deniston, however, did say to several persons, that he owned the half of that ticket. In some instances he may have said that he owned but half; gentlemen, he has given you his explanation under oath. He has explained his motives. He had, some time before that, a legacy given to him; and he had squandered on his needy relations that legacy, amountihg to $20,000. He was desirous of making that legacy good to his family—and for this reason he said he was the half-proprietor of the prize, in order that the prize money might not be gotton from him and squandered in the same way. And how is this to be evidence of fraud? It was a mere sort of pious deception.

Gentlemen, on that very passage in the return steam-boat from Albany, after Mr. Deniston had received the notice of his good fortune in having drawn the prize, he told Capt. Roorbach that he was the sole proprietor, at least in so far that Capt. Roorbach had not, as he tells you, any doubt of

the fact. Do you believe Capt. Roorbach? Although Mr. Deniston had previously told this gentleman, that he owned but half, he then gave him distinctly to understand that he owned the whole. He made the same communication to Mr. Price. He is said, indeed, to have prevaricated. I appeal to the testimony of Mr. Price. Mr. Price says it was debated among the grand jury whether they should put the question. And even here, gentlemen, the question was not put to him till in his cross-examination. On the other side it was asked who owned the other half—and he then explained.

I do submit, then that in so far as relates to this Owego transaction, there is not a particular of fraud made out. Mr. Denniston did lend a part of the money to Mr. Sickles; but it was actually repaid long before any question was made about the drawing of these lotteries.

With regard to Mr. Sickles himself, you are asked to pronounce your verdict on the broad ground of fraud committed by him.—A fraud committed, when, and where? They would have you believe that he has been for years in a course of fraud. Gentlemen, where are the fruits of this? You find him in difficulty, you see him driven to the necessity of borrowing money in small sums for occasional wants. Now if he has been in the habit of frauds against the lottery for years, would he not have reaped the fruits of them in some other way? Is there any thing, or can there be any thing in this gossipping about the low numbers? He said to Mr. Burtus, as it is alleged, that there were some of those numbers out of the wheel, and that he need not be afraid of them. And we are told that he said that Mr. Judah knew it. I rejoice that he said that Judah knew it. Now this very Mr. Judah was actually hit on that ticket.—And this very defendant was one of the persons who hit him for $600 * And do you believe Mr. Judah would have made such use of this information?

Gentlemen, what motive under heaven was there for Mr. Sickles to talk to these men, Burtus and others, as he did. If he had a fraudulent purpose would he not have sounded them? Could he not, and would he not have found in this city persons who would have partaken with him, and made an interest out of his information? Mr. Sickles, it is evident, has never been the better for it.

But some tickets have been picked up? A witness was produced to swear that he saw a ticket fall from the wheel. Why, is it possible that so many thousand tickets should be drawn without one ticket falling? And yet this is evidence of fraud.

But some tickets were found out of the wheel? Is there any evidence that low numbers were ever out of the wheel? There is evidence of high ones, tickets in the fourteenth thousand, being out of the wheel—and they were put into the wheel again.

Now can you believe that Mr. Sickles would have let the tickets accumulate to three or four, in the crack, before he could have taken them out? Was it necessary? If his object was fraud, he had only to take out one ticket; he wanted but one. And when he had done with that, he had only to repeat the operation with a single ticket. The plan with which he is charged would have been the most awkward and absurd imaginable. Is it credible?

Gentlemen, Mr. Sickles has been examined before you to day. I was

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* This number had been on Judah's books all along through the lottery, and sometimes for the amount of 7000 dollars! On the forty-fourth day he refused it as *much as he dare do.* Defendant among others had taken the number a previous day for larger sums—he was not in the *secret;* others *were!*

under the necessity of being in another court, and have heard no part of his testimony. I ask you if he has not satisfied you? I ask you if you are prepared to blast his character forever? He has established a character of more than half a century's duration. I ask whether that character is not opposed to those charges of the defendant as a shield? I have shown that there was no fraud.

I come now, to show that the defendant believed there was no fraud at the time when he charged fraud to have been committed. Gentlemen, I will condemn him out of his own mouth. In the evening of the 22d of September, and before the publication which is charged here as a libel was made, this Mr. Baldwin, with the counsel who has taken the lead in his defence, met with other gentlemen, to examine into this transaction. They went to examine this ticket which the defendant had not seen; for he had previously spoken on the information of others. And he tells you, when he came to examine for himself, that he had been misinformed. It was said to him, why you have said it was black as the ground. Yes, he says, I see that I have been deceived; I have been misinformed. Mr. Baldwin, and Mr. Fay then avow themselves satisfied. Young Mr. Sickles is sent home with a cheerful heart, supposing he has effected a satisfaction of his father's enemies. Such was the language of that meeting. "I should as soon think of charging fraud on any other man in this community as on your father."

Gentlemen, what follows this amicable explanation? The publisher of the very libel you are now called upon to decide on, the parties who had circulated those calumnies, professed themselves satisfied. Now I ask, where are the justifiable motives that this defendant can put before you? They even signed a certificate declaring their satisfaction not only in regard to this number of which so much has been said, but the whole lottery. —But Mr. Jadah suggested some words at the close of that statement! And one of the witnesses who have appeared here, had the hardihood to say he could not now tell whether he believed the statement.—And now, if the defendant professed himself satisfied, where is his justification? Have they come to any new lights?

Gentlemen, I do commit this cause to you in the confidence, that you will feel that you have a charge of the greatest delicacy and importance in your hands—a charge interesting, not only to the characters immediately implicated, but to the characters of the jury themselves, who are subject, like others to be assailed by the licentiousness of the newspapers. I do ask you, therefore, to pronounce this man guilty of the libel—first, because there is no fraud to justify it; and secondly, because, if there is not fraud he has not proved such carelessness on the part of the managers or their agents, as will afford him any justification for the libellous language he has published respecting them; but, he must have acted from malicious motives in making the publication.

Charge, by his Honor the Mayor.

GENTLEMEN OF THE JURY,

After three days spent in the examination of witnesses in this cause, I can easily imagine your fatigue. The court also are much fatigued. I am afraid I shall not be able properly to discharge the duty which remains to me. I shall endeavour to be as short in what I have to say, as the office I hold and as the interests involved in your decision will allow

The defendant is charged with publishing a libel. It is necessary, in the commencement, that you should comprehend the nature of the charge. A libel is a defamatory writing, published with a malicious intent against the object of it. This is not a full definition; but it embraces all the points that come under consideration at this time.

A defamatory writing is one which accuses a man of fraud, or of infidelity in any office or duty. You will observe, this does not include the consideration whether the charges are true or false. For if the charges are true, or are supported by evidence, it may yet be a libel if published with bad motives—when the charges are not supported by evidence, it is to be presumed that the intent was malicious. But this presumption may be met by proof, and rebutted.

In order to support the indictment, it is necessary for the prosecution to prove first, the publication of the libel, and then secondly, the inuendoes contained in the indictment, and which are used to set forth the meaning and intention of the publisher in regard to the person supposed to be the object of the libel. And the jury must find from the testimony in the cause, or from the libel itself, that it has the meaning imputed to it by those inuendoes. And here, formerly, the duty of the jury stopped; they had nothing to do with the question whether it was truly a libel or not; that was left for the court. But it is one of the improvements of modern law on this subject, that the jury now are to judge of the whole matter; they decide upon the law as well as the evidence, and determine whether the publication be a libel or not. And you have, therefore, a right to say whether, the charges published by the defendant are malicious towards the persons against whom they are directed, and to declare your verdict accordingly.

Let us now proceed to consider the evidence.

The fact of publication by the defendant has not been proved, but appears to have been conceded by his counsel. The indictment sets forth two libels, taken from two newspapers printed by the defendant; and it is averred that the charges contained in them were made by the defendant against the managers of the 5th class of the Medical Science lottery, and the sub-manager, Mr. Sickles, and against the boy Tenbrook; and the inuendoes are to this effect, that those persons have all been guilty of fraud. I believe you have not heard these libels read. I must, therefore, direct your attention to them, and to the question whether they do contain charges of fraud against the persons I have named. (His honour here read the first libel set forth in the indictment) I think myself this libel does not contain any charge of fraud against the managers, but merely that there has been fraud somewhere in the management; and if there has been fraud connected with the management of the lottery, it is sufficient to justify the publication, which is not directed against the managers personally, but applies to the management in so large a sense as to include the agency of other persons. [His honour having explained particularly to the jury the meaning of the special clauses, and concluded that the inuendoes of the indictment were not correct in connecting the charge of fraud with the managers themselves. The second libel was afterwards read in the same manner with full explanations, and with the same general conclusion, that there was also nothing in this which justified the inuendoes of the indictment, in so far as the managers were directly concerned] It is a rule of law, gentlemen, that a libel cannot be extended by inuendoes; its meaning cannot thereby be enlarged beyond its fair and obvious import. It is, however, for you to determine whether these libels really contain any such charge against the managers as the inuendoes of the indictment allege. The court are decidedly of opinion that they do not. In one of

the publications charged to be libellous, the defendant has expressly exonerated the managers from all imputation of fraud. If it appear that there has been fraud practised in the management *any where*, it is sufficient, and the defendant substantiates every thing he has said.

We are then to inquire whether there is a charge of fraud made out, or whether there are circumstances to warrant the inference of fraud. For it would be in vain always to expect positive testimony. We often convict in higher cases than this, on evidence which is merely presumptive, and which may be as satisfactory as any proof whatever.

I shall now direct your attention to the particular facts where fraud has been alleged to exist. It is said, in the first place, that there was a fraud in drawing the ticket 15,463. If Mr. Judah did make a fraudulent insurance on that ticket, or if there was any fraud in that transaction, Mr. Sickles must have been connected with him. Mr. Judah could not have been guilty of a fraud here without an associate, and this must have been Mr. Sickles. On this point we have the testimony of one witness, a Mr. John S. Smith, that the ticket was improperly called. He says he was acting then as a clerk. He says he saw the boy draw three tickets, and Mr. Sickles called off four; and that one of these was the number I have mentioned. We then have further testimony that this ticket was soiled as if worn in the pocket. If that be the fact, it is a strong corroborative evidence. Whether it is the fact, I shall not say one word; because the ticket is admitted to be now as it was then in appearance. You have the ticket before you; and you are certainly as capable of judging on that point as any of the witnesses. You will not only look at the soiling but the folding. You will also think of the tickets, 30 and 3,865. It is said that all these three numbers were run upon by the insurers. It has been said that other tickets were also soiled. You have to draw your own conclusions. You can judge whether the soiling can have proceeded from either the causes to which it has been ascribed by other witnesses, who do not believe it to have been soiled in the pocket.

This ticket having given rise to suspicions, the lottery offices instituted an enquiry. They find the insurances were effected by Mr. Thorne. They go to Mr. Thorne. He acted for Mr. Judah. He explains to them what Mr. Judah said to him on the subject.

Gentlemen, Mr. Thorne is very particular in giving Mr. Judah's language. He says Mr. Judah pointed out that particular number, that he had dreamed of that number, that he was in the city hall, that he slept again, and dreamed a second time. Mr. Judah contradicts this. Now whether Mr. Judah got his insurance on his own dream, or on a letter, would have been of little consequence. But when it is traced to Mr. Judah that he has told different stories respecting his inducement to insure that number, it would go far to show presumptively against him—and so far is it of any importance, whether he insured for one cause or the other. Unfortunately, Mr. Judah and Mr. Thorne here are in direct opposition. Mr. Thorne will not admit that he can be mistaken. It is not whether Mr. Thorne might or might not have been *mistaken*—Mr. Thorne does not admit that. He says Mr. Judah not only said that it was in consequence of his own dream, but told him when it was, and how it was. Mr. Judah denies all such conversation with Mr. Thorne; and his testimony is corroborated by Mr. Moses. Both these witnesses are unimpeached; but Mr. Judah stands here not less interested than the defendant in the case; aud therefore, although his testimony is admitted, yet it must be weighed with a view to the circumstances in which he appears; I do not mean to impeach him; but we must always remember that he is subject to preju-

dices like other men. Mr. Moses stands before you uninterested and unimpeached. It is said he has received money from Mr. Judah. But it would seem from other testimony that there was a particular motive for this ; he had a large family, and the money is said to have been given him as a charitable gratuity. I do not see that this circumstance is calculated to impeach Mr. Moses' testifying at all. Mr. Judah's statement is also very slightly supported by Mr. Burjeau, who conversed with Mr. Thorne in the street. He seems to have understood that it was in consequence of Mr. Judah's dream, and not the letter, that the insurance was made. There was nothing particular, in the conversation. Now, it may be, that Mr. Burjeau was mistaken as to the precise phrase. But Mr. Judah tells us that the insurance was made on an anonymous letter. Mr. Mr. Judah gives us the contents of that letter. I must say, it is very unfortunate for him that he destroyed that letter at such a time. Whatever you may think of it, I believe you would have been much better satisfied had he produced that letter to you. He says he insured on the faith of that letter ; and yet when Mr. Thorne presses him to say why he insured on that number, (I believe it was Mr. Moses that pressed him thus,) he says nothing about the letter. Again, this becomes a subject of conversation the very evening afterwards. Mr. Moses sees him again on Monday. In both these instances they dispute about the drawing of this number was agitated. And yet, certainly on Saturday, Mr. Judah never mentioned the letter—Mr. Moses thinks he did on Monday.

The dissatisfaction increases ; Mr. Judah possesses himself of this letter and retains it till after the defendaut has made his publications on the subject,—and then, a few days before the grand jury sat, he destroys it—Why ? He says it was in a female hand—he jokes about it—it explains his testimony. If you believe he did possess such a genuine letter as he pretends, you will then give the circumstance the consideration to which you may think it entitled. But if you think it all a pretence and a deception, and that he destroyed it to prevent a discovery of the fraud, it must have great weight with you in making up your minds in regard to this part of the cause.

This, gentlemen, is one of the principal charges of fraud specified in the libel ; and Mr. Judah's conduct is no otherwise connected with it than as his having made a fraudulent insurance on the number in question must impeach Mr. Sickles. It is a charge which with, all the other facts in the cause, I leave entirely to you.

It is charged as evidence of positive fraud that Mr. Sickles went to Mr. Brower about the middle of the drawing of the Fourth Class, and told him not to be afraid of the low numbers. He did not say they were not in the wheel. Mr. Burtus understood him to intimate that they were not in the wheel. Gentlemen, if you believe that Mr. Sickles did make this communication in the sense in which they understood it, all that is necessary to support the libel is made out. For if there was a fraud, a villany, and it is brought home to Mr. Sickles that he kept any numbers out of the wheel, it is enough to justify the defendant.

But it is said that Mr. Brower and Mr. Burtus are mistaken. That they may have been mistaken is undoubtedly true. They do not give his language. It may have conveyed a different meaning. But Mr. Sickles is a witness before you. He admits that he did talk of the low numbers to them ; he informed them that they would not come out, and he tells why —not because he knew that they were out of the wheel, but from what he knew of the manner of putting them into the wheel, and from what he had experienced as to their coming out. It were well if he had

stopped here. But he goes on. After the noise commenced on the subject, he went to those gentlemen and told them to keep the thing a secret. How did he know that they supposed he had told them there were numbers out of the wheel? There had been no communication. How does it happen, then, that Mr. Sickles, if he was innocent, if what he had said to them was founded on the general chances of lotteries, how does it happen that he asked them to keep *the secret*? So far their testimony is strengthened by his. But this testimony of Mr Sickles is inconsistent with other parts of his own testimony. He told them that they need not be afraid of the numbers three, five and seven. And he says he told them this from the manner in which the tickets were put into the wheel—and what was that? Why the low numbers were put in first. But they are put in by thousands and not one by one. The first thousand were all put in together. Now if this was the foundation of his opinion, why should he have fixed on those low numbers? for every number in the thousand stood the same chance.

However, Gentlemen, it is for you to decide on the testimony of Mr. Burtus and Mr. Brower. Do you think Mr. Sickles' explanation to be satisfactory? It is for you to decide. I have only to direct your attention to the testimony. You will conclude for yourselves. This, indeed, I may say, as I have already said, that if Mr. Sickles meant as they understood him, then it is direct evidence of fraud; for it was impossible he could even know that there were numbers out of the wheel, without fraud.

But another evidence is, that Mr. Sickles drew the number 15468 improperly. This is proved by Mr. John S. Smith. If you believe him it is sufficient to make out the truth of the libel. Your attention has however been sufficiently called to his manner of testifying. I think so serious a charge is not sufficiently supported by the testimony of such a witness. But this circumstance stated by him is to be connected with the other circumstance of Judah's having insured that number; and put together, they form only different features in one transaction. Still you ought to be cautions in yielding much regard to the testimony of this Mr. Smith.

Next as to the prize ticket in the Owego lottery. It is alleged by another Mr Smith that he was present at the drawing. And here there is some difference between the counsel and myself. I may be mistaken, but submit it to you. I understood that he saw Mr. Sickles' hand go into the wheel, and that when it came out it had no number in it. He goes on further, and says, that before Mr Sickles lifted up his hand, after it came from the wheel it dropped under the skirt of his coat, that he turned toward the audience, and then lifted up his hand. Mr. Smith, however, adds that he had not, and has not now any doubt that the number was fairly drawn. I believe it was because he thought Mr. Sickles, from what he knew of his character, to be incapable of such a thing. After all it is but light testimony. He does not pretend to say that Mr. Sickles took the ticket from under his coat. Mr. Sickles does not deny that his hand fell or may have fallen; his hand as he says, having been injured so as to be subject occasionally to drop after fatigue. But then Mr. Sickles at that time had undergone no fatigue. This prize was the first ticket drawn.

But really this circumstance would have been of little moment, had it not been connected with another, that of Mr Denniston's drawing the highest prize. And if Mr. Sickles had shared that prize, it would altogether be sufficient to support the libel. This has been suspected to be the fact, and the suspicion has been strengthened by some striking circumstances. Mr. Denniston has said he was not the owner of the whole of that prize. And it does appear that part of the money $9000 and upwards, was traced to

Mr. Sickles. But Mr. Denniston gives us a reason for having made an assertion that was not true. And, Gentlemen, I think his explanation not unnatural. It is unfortunate for him that he was first obliged to make that explanation here before the public. As to Mr. Sickles' being in possession of part of the money, that is satisfactorily accounted for, if you believe the witnesses, Mr. Denniston, Mr Sickles, and Mr. Heard. The allegation is that he had the whole of this nine thousand dollars. Mr. Sickles says he did make the collection of the money, and that he lent a part of it to Mr Heard, and when Mr. Denniston came down it was returned to him. If these facts be true, they are inconsistent with the allegation that Mr. Sickles had the whole of this money. And though they do not show that the whole was paid over, they do show that part of it was. And if Mr. Sickles has accounted for the money, we cannot reasonably suppose there was fraud in the drawing of the ticket. We are not allowed to presume a motive without evidence.

Another charge is in relation to Mr. Sickles' being in possession, and having shown some numbers belonging to the wheel in the fourth class of the present lottery, a short time before the conclusion of the drawing. The fact of his having possession of any tickets is a strong fact. It appears to me the most important of all the allegations against Mr. Sickles. What is it? Mr. Sickles takes down numbers belonging to that class, being in the 14000, and shows them to Mr. Burtus It turns out that there were three or four numbers found by the boys under the stage where the drawing takes place. They came into his possession. He communicated the discovery to Mr. Gilbert and to the managers. And, gentlemen, we never hear of any more tickets being found, or out of their place, until Mr. Sickles appeared before the grand jury. There he said there had been ten found—now he says six or seven in all.—How came he in possession of them? Certainly the managers never dreamed that he had more than those four which was found by the boys. It is said that if he concealed any numbers, he did not conceal those low numbers. On what grounds is this said? Because the numbers were in the 14000. But how came he to be possessed of six or seven numbers? And what numbers where they? We know not. He admits the fact And yet never communicated it to the managers by whom he was employed.

But, gentlemen, this unpleasant part of the testimony does not stop here. What is the account he gives? The boys told him when he came in that they had found the numbers. He went then himself and looked under the carpet between the wheels, and there he found three or four tickets,eighteen inches from the edge of the carpet! It is most extraordinary, and utterly unaccountable. But Mr. Gilchrist and Mr. Gilbert were both in the room with him, and one of them Mr. Gilbert was assisting in the search. Mr. Gilbert, however, never heard a syllable of the discovery! Gentlemen, can it be? Can it be that he should not have told it to Mr. Gilbert? Is it not astonishing that these managers should first learn the fact before the grand jury?

Gentlemen, I find myself led into an earnest manner. I draw no conclusions. I only wish to direct your attention to the prominent parts of the testimony.

I shall touch on only one other fact of this nature. It is the conversation of Mr. Sickles with Mr. Haines and Mr Brooks. Mr. Sickles said he should be a manager, and that they could then play into each other's hands. That, indeed, would not be proof of fraud as charged in this libel. But it shows that he contemplated such a thing. Mr. Sickles says he did not make use of such language—you are to judge. He explains—

you are to judge of the explanation. But you will recollect further, that Mr. Sickles told one of them he would endorse his notes, he would assist and befriend him. This was natural enough. You are to decide, however, upon the fact of his intention, and to gather your result from all the testimony and all the circumstances.

And here, gentlemen, I take leave of the question of fraud. If in any one of the points I have suggested for your consideration, there is sufficient proof of fraud, then the defendant, I apprehend, is entitled to your acquittal. If there has been a single instance of fraud, that is sufficient Formerly the truth of a libel could not be given in evidence, now it is a justification.

But supposing the defendant has not substantiated the charge of fraud, you are then to examine the high prerogative of deciding on both the law and the fact, and of saying whether these publications he has made and which is set forth in the indictment were made from malicious motives. And I do not hesitate to say, that if the managers, or Mr. Sickles, or any boy connected with the lottery, has countenanced a loose way of business, so as to give ground for the suspicion of fraud, you cannot ascribe these publications to malice.

With respect to the managers of this lottery, I have the honour to know some of them intimately, and others by reputation; and I know no men to whom I would sooner entrust my life or interests. And I rejoice that they are not to be charged with any thing that partakes of fraud in this business.

But I do not mean to acquit them of a dereliction of duty. And I proceed to enquire into the course of their management.

And first, I place at the head and front of their offending, their appointing Mr. Sickles where he is. How came he there? He seems to have dropped down then by accident. But what part do they let him play? Their own functions to the full extent. If it was necessary to have an oath against fraud, he is in full enjoyment of the opportunities for fraud.—What object could the legislature have had in naming managers, when they put a man there as sub-manager? And what do they do in relation to Mr. Sickles? They employ him to put up the tickets. And it is asked whether it can be supposed that they must do all the duties themselves. No. But in appointing agents, they were not to give greater liberties than they themselve enjoyed. But how far have they carried this? They meet then, to count the tickets. How? They do not recount his tickets after him. And it is admitted that they never could say whether he put in more or less than he ought—And if these suspicions have arisen in consequence of their dereliction of duty or their misconduct, the defendant shall never suffer for declaring the suspicions which they have justified.

Again, the managers allow Mr. Sickles to sit at the wheel; and they see him, time after time, drawing out tickets by the handful, and putting them into his lap—and calling them off as he pleases. They have seen this, or they have not; and in either case, they have been guilty of a dereliction of duty—And if the boy came back before Mr. Sickles had got through his tickets, he put those which remained back into the wheel. Are then the managers to find fault that suspicions are abroad.

Indeed, they have all of them suffered the boys to go a head of the wheel, and let them lay the tickets on the knee, or in the lap of the manager who sat to receive them. Mr. Sickles does not deny this; but says he always called them as they came out *as nearly as he could*. Can this be a proper mode of drawing the lottery? And if not, has it not been countenanced by the managers?—And shall Mr. Baldwin be punished as a libeller? I Say, no.

One other circumstance in relation to the three tickets shown to Mr. Bur-

tus. What is the account given by the managers themselves of this? They kept them out of the wheel till the last days drawing. Is this correct? I have no doubt of the purity of the managers' intention. But is this correct? And shall you convict this man in consequence of his having expressed his suspicions? The drawing was going on. And however this circumstance might be explained, would you call the man a libeller who should avow his dissatisfaction? What do they do with those tickets? Do they take them and lock them up? No—they commit them to this sub-manager. They committed them to Mr. Sickles, so that he might, and so that he did, go and show them about the town. And now suppose the defendant was informed of certain tickets being out of the wheel, that Mr. Sickles was actually in possession of those tickets, and what is still stronger, that Mr. Sickles did in fact communicate with certain lottery insurers in relation to those very ticket and even revealed the numbers to them; and suppose the defendant to have been acquainted with all this at the time he published these pretended libels—what shall we say? Are you prepared to condemn him? I think, myself, with the counsel who opened the cause, that rather than expose such a man to censure by your verdict, you ought to give him your decided commendation.

I will mention only one more circumstance. It does appear that there were not only numbers out of the number wheel; but it seems there were tickets out of the blank and prize wheel; and remarkable as it is, there was a prize of 10,000 dollars drawn to one of these after they were put in on the last day of the drawing—and this is one of those tickets, too, that Mr. Sickles was showing about town. Was this right? I think they ought to have stopped that lottery by all means. They had done injustice to every owner of a ticket. And supposing the defendant had heard all this, no man on earth can say that he was culpable for laying facts like these before the public—much less was he punishable.

Gentlemen, it is satisfactory to me to be able to present the cause in this light. Without convicting Mr. Sickles, or any body else, of fraud, it is in your power, if you think the evidence will warrant you in doing so, to acquit the defendant on the ground that there is no reason to believe he has been guilty of any malicious intent in making these publications. And, gentlemen, I wish that may be the case. I do not say that it ought to be the case. You are to judge of the question of fraud. You have in behalf of Mr. Sickles, his venerable appearance—an old man, whose head has grown grey with the lapse of many winters; and I am sure you must have felt as the court has done, and been disposed, when you saw his eye suffused in consequence of the touching interest of his situation, to let fall a tear with him. You will also consider the full testimony in favour, which has been given of his former character. I hope the cause may be determined without condemning any body. Whether it ought to be so is for you to judge. You have the question of fraud before you to consider. Decide according to your own opinions and your consciences, and not according to the opinions of other persons, whatever may be their stations.

As our counsel and the court united in a wish that the jury would, if possible, acquit Mr Sickles of the charge of fraud, the jury retired from the box, about two o'clock on the morning of the 13th, and in a few minutes returned with a verdict of "NOT GUILTY." In their absence it was proposed that they should add to their verdict, something expressive of their favourable opinion of Mr. Baldwin. *Eleven* agreed to recommend him to the consideration of the state, for the services rendered by his publications. ONE ONLY, dissented—and the hour being late, it was thought best not to debate the subject. When the jury returned to the box, and gave in their verdict—there was a silence—a dead silence of about a minute, as if something more was expected.