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TRIAL

OF

MARSHALL AND ROSS

FOR

BARN-BURNING.

A BRIEF EXPOSURE

OF A SYSTEMATIC ATTEMPT

TO MISLEAD THE PUBLIC MIND,

AND TO

CREATE A FALSE SYMPATHY

IN

BEHALF OF CONVICTED INCENDIARIES.

BY

"A LOOKER-ON IN VIENNA."

1859.

[On the night of the 11th of February, 1858, between the hours of 10 1-2 and 12, P. M., (the exact time was a disputed point,) two barns were consumed by fire, at the Eastern Point Farm, in Gloucester, Essex Co.,—an estate owned and occupied by Thomas Niles, Esq. The barns were half a mile apart, one being within a few rods of the dwelling house of Mr. Niles, the other down by the Light House. Mr. Niles was absent from home at the time. In the house were his wife, an infant child, an aged aunt, one female domestic, and three farm laborers. The burning of the two barns was simultaneous, and no question was ever raised but that the fires were incendiary. The buildings, with all their contents,—two yoke of oxen, three cows, two valuable horses, several carriages, sleighs, harnesses, &c., twenty tons of hay, a large quantity of grain, and other valuable property, were burned to ashes. At first, it seemed certain that the dwelling house would also be consumed, but a sudden change of the wind turned the current of the flames, and the house was saved. The night in question was one of the coldest of the year, and the buildings burned were several miles distant from any point from which aid could come.]

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In the Gloucester Telegraph, Boston Traveller and Journal, and the Salem Advocate, articles in relation to the late trial of Marshall and Ross for barn-burning, have recently appeared, purporting to be *expressions* of public sentiment, but which look very much like so many attempts to manufacture this somewhat equivocal commodity, and this too, in vulgar phrase, out of the "whole cloth." Having been present, during almost the whole of this protracted investigation, and having, both before and since the rendering of the verict, conversed with many persons whose judgment in the premises is entitled to respect, I have thought it worth while to compare the impressions I had received and the opinions I had formed, with some of the statements contained in the aforesaid articles. The result of this comparison I propose to submit, as briefly as I may, to the readers of the following pages, premising that never having had, professionally, any connection whatever with the case, either as counsel, witness, adviser or otherwise, I watched the proceedings, so far as I am aware, with no other interest in the result than is common to all who have any claim to the character of good citizens.

The principal points of comparison, suggested by a perusal of the articles referred to, are—the verdict, and the surprise occasioned by its rendition—the character, especially as witnesses, of Payne and Mary Mansfield—and the impression made by the evidence as given on the stand, and also, as collated and reviewed in the closing argument of the District Attorney.

I. THE VERDICT, AND THE SURPRISE OCCASIONED BY ITS RENDITION. And here, I would apprize the reader that the citations which I may have occasion to make, will, for the sake of

brevity, for the most part, at least, be unaccompanied by a specification of the paper or papers in which they are found ; and the *italicizing* may all be taken to be mine.

Of the verdict, and the suprise it occasioned, these writers say—"The verdict was wholly unlooked for. The jury were out thirty-six hours, and they are denounced for their verdict. The verdict was against *all* the evidence, astonished the prosecuting attorney, and amazed the whole bar present." "The verdict has outraged every sense of justice in the community. The jury cannot escape suspicions which every honorable man ought to be eager to avoid." "Everybody—the friends as well as the opponents of Mr. Niles—are perfectly astonished that such a verdict should have been rendered *on so slight a chain of evidence.*" "After a discussion of thirty-six hours the jury returned a verdict of GUILTY, much to the surprise of all who listened to the trial. The verdict created intense excitement here, and, whether it was just or unjust, your readers may judge from the fact that the case has been carried up for a new trial on exceptions." (A pretty glaring *non-sequitur*, even had the fact been as alleged, as it was not, for no hearing on the exceptions was had until several days after the publication of the article last cited, when they were "all disallowed because not conformable to truth.")

To enable the reader to appreciate more fully the correctness of these representations of the writers just cited, it should be stated that, *as was perfectly well known to them*, the late trial at Salem was not the first judicial investigation of the subject. Immediately after the burning of the barns, a fire inquest was held, composed of a jury of intelligent, honest and capable men, presided over by a magistrate of the sternest integrity, of great intellectual ability and high legal attainment. The verdict of that jury *charged Marshall and Ross.* Complaints were made before a police court, presided over by a justice of large experience, and they made a full defence before him, and that intelligent magistrate *held them to answer.* The case then went before the grand jury, who thoroughly investigated it, and returned *a true bill* against these parties. The cause then came on to be tried by a jury, sworn to try the issue according to the evidence, and, in less than three hours after retiring to their room, ten of that jury desired to return a verdict of guilty, one for a while hesitated, but eventually was ready to agree with his ten fellow jurors,

while the other, who was a townsman of Marshall, and, it is reported, had worked for or with him for some time between the fire and the trial, stood out for an acquittal. The cause was committed to them late on Saturday, and the jury were early discharged to avoid encroachment on the Sabbath. Such had been the history of this case up to the time of empanelling the jury for still another trial of these defendants. All these stages had been passed, and with the results above indicated, and yet the authors of the extracts above cited would have us believe, that they only reflect the universal public sentiment, when they represent that all this had been done, and the second jury had tried the case through more than a week's time, returning a verdict of guilty—and all without evidence enough against the accused to justify *even a suspicion of their guilt!* But I have now to do with only the last trial, and the verdict in which it resulted.

And had these professed reflectors of public opinion asserted only, that the first emotion excited by the rendition of the verdict, and by the report of it, as it went forth on the wings of the wind, was, on the part of those cognizant of the facts in the case, to a very great extent, that of surprise, and had they then proceeded to unfold the real cause of that surprise, (which "lack of service" I propose presently to supply,) there would have been no occasion for correcting the utterly false impressions, which their misrepresentations on this point are adapted—not to say intended—to make. Why, if these writers are to be believed, "the verdict" was not only "unlooked for," but such as to cause "the jury," to be "denounced." It not only "astonished the prosecuting attorney, and amazed the whole bar present," but "outraged every sense of justice in the community," and "everybody is astonished that such a verdict should be rendered on so slight a chain of evidence."

Now I beg leave to commend to the authors of these sufficiently harsh and severe utterances of an alleged public sentiment, and to their readers, a commentary on their *truthfulness*, furnished by certain proceedings recently had in that same temple of justice, which, as these writers would have us believe, had been, in the opinion of everybody, so basely desecrated by the rendering of the verdict in question. At an adjourned session of the court, on the 14th of March, the convicted defendants, Marshall and Ross, appeared, and by their counsel moved that this astounding verdict be set

aside, and a new trial granted. Two of the reasons offered in support of the motion, and enforced at length by all the learning and eloquence of the distinguished counsel for the defence, were—" First : Because the verdict was against the evidence, and the weight of the evidence." And—" Second : Because the jury did not render a true verdict, according to the law and the evidence given them, but rendered a false verdict." What an opportunity is now afforded the District Attorney, who was so " astonished " at the verdict, to relieve himself at once and effectually, from any share in that damning reproach, with which public opinion was already visiting all who had any agency in procuring the conviction of two defendants, who, as their counsel affirmed " the Government having wholly failed of proving them guilty, had," as a work of supererogation, " proved, to a moral certainty, that they were innocent." And who, of all those present on this occasion, and sympathizing with the universal public sentiment, but must have been, not astonished merely, but confounded and horror-struck, when, instead of virtually seconding the pending motion, or, at least, withholding all opposition, as, in consideration of that astonishment at the verdict, from which he could hardly yet have recovered, and his proverbial kindness of heart, he might have been expected to do, the District Attorney not only replied, with great force and effect, to all that had been urged on the other side, but, departing from his usual course in such cases, calmly and emphatically said to the Court—" Because of certain statements that have been made to create public sentiment, I feel called upon to say, that I have never been engaged in a case, where I have had a more thorough and abiding conviction of the guilt of the parties accused, than in this case." More than all, when, at last, other points having been disposed of, the whole matter rested in the discretion of the Court, and when the earnest appeal to that discretion, by the defendants' counsel, had been concluded, and when, by a single word from the Bench, the loud and clamorous demand of an over-awing public sentiment could be fully met, and, at the same time, the tender mercies of the Court largely gratified, who, of those in attendance at this critical juncture, must not have been overwhelmed with disappointment, if not chagrin, as the learned, able and most upright judge, who tried the cause, and as the counsel for the defence, echoing the unanimous opinion of all attendants upon the trial, had just declared—

"*with entire impartiality*," and who must be supposed to have understood its merits—promptly and laconically thus disposed of the matter submitted to his discretion :—"I see no cause for interfering with the verdict in this case, and it is unnecessary for me to say more than that the motion is overruled!" And yet, being present, and somewhat observant of those around me, I did not discover, at the moment of this announcement from the Court, any indications, even in the countenances of the learned counsel whose motion had been thus summarily denied, that confident expectations had thus been "cut off," and sanguine hopes blasted. On the contrary, from what I observed at the time and have since heard, I infer that the result of the hearing in this case, was just what was almost universally expected, as I know it is most extensively believed to be, in perfect accordance with the imperative claims of impartial justice. And how clearly and unmistakably does this whole procedure give the lie direct, to those representations of public sentiment, which the writers above cited have had the effrontery to fabricate and publish to the world!

But enough, and more than enough, as to public sentiment respecting the *character* of the verdict in this case. That its rendition excited general surprise, in which the District Attorney may have shared, is most true. Equally true is it, that for this surprise there was an obvious and all-sufficient cause, as will appear from the following statement of facts. We have already seen, that, on the former trial of this cause, at Lawrence, a verdict of guilty would have been reached, and this after only about three hours of deliberation, but for the opposition of a single juror—a neighbor and acquaintance of one of the defendants. And as, at the late trial, the jury was about to be empanelled, one of their number residing at Eastern Point, and very near to a brother of one of the defendants, who, it was supposed, must, of necessity, be more or less biased, and who was believed to have expressed an opinion as to the merits of the case, to sundry persons, and, among others, to some of his fellow jurors, was challenged by the District Attorney. The usual oath having been administered, and the Court having propounded the interrogatories prescribed by the Statute, the Attorney for the Government questioned the juror still further, and somewhat closely, as to conversation with others, and the expression of an opinion in relation to the case about to be tried. Having

negatived every idea of partiality, bias, unfairness, or of opinion expressed or formed, presupposed by the inquiries propounded in this examination, and this *in a manner* clearly indicative of a settled purpose to retain a position from whose responsibilities any fair-minded man, similarly situated, would, it might well be supposed, of his own motion, have, most earnestly, prayed to be excused, this juror was allowed to retain his seat upon the panel. From this moment it was generally believed that the defendants were quite secure against conviction by this jury, however clear, and absolutely conclusive, might be the proof of their guilt. When, therefore, on the morning of the third day of their deliberations, the jury came into court, not—as was well known—of their own motion, but in obedience to a message from the presiding judge, and, especially, as they were known to have returned from breakfast only half an hour previously, in the care of the officer who had them in charge, and, of course, without having agreed, it was natural to conclude that the *eleven* refractory and obstinate jurors, who, it is now well understood, within twelve hours after retiring to their room, saw "eye to eye," in the matter committed to them, were still holding out against their unprejudiced associate, who had sworn, as no one of them, in the same circumstances, would have dared to do, to his perfect competency to judge and decide, impartially and truly, between the Commonwealth and the prisoners at the bar! When, therefore, in answer to the inquiry of the Clerk, propounded with more than his accustomed impressiveness of tone and manner, "Mr. Foreman, have the jury agreed upon a verdict?" the foreman, with unfaltering voice, replied—"THEY HAVE,"—while, undoubtedly, almost all present were *surprised* by this announcement,—not an individual among them, from the judge on the bench to the prisoners at the bar, doubted, for a moment, that that verdict would be, as it was,—GUILTY. I will only add, on this point, that "all the members of the bar present" on this occasion, were very few in number, and the oldest of these is believed to have expressed the sentiment of all his associates, who had heard the testimony, when, immediately on the retirement of the Judge, he exclaimed,—"A signal triumph of law and justice!"

II. THE CHARACTER—ESPECIALLY AS WITNESSES—OF PAYNE AND MARY MANSFIELD. In one of the journals above cited, they and their testimony are thus characterized. "The testimony

used by the government, is such as no honest party could use, or ought to use. I refer particularly to Mr. Payne and Miss Mansfield. Payne acknowledged himself to be a scamp, a conspirator to burning, and Miss Mansfield showed herself to be what a regard to delicacy forbids me to name. No verdict can be pure when based upon such testimony." Again—it is "testimony coming from the *vilest of the vile*, unworthy to be listened to on the trial of mad dog." To any intelligent attendant upon the late trial, it must be quite obvious that the author of these unscrupulous denunciations of these witnesses, and of the government as well, is of that class so graphically described in a good Book, (with which, I fear, he is not very familiar,) as "*desiring to be teachers of the law, understanding neither what they say, nor whereof they affirm.*" Certain it is, that he is utterly devoid of that knowledge of the facts in this case, which is indispensable to a successful effort to enlighten others, but which, it must be conceded, is unnecessary, and might be decidedly *inconvenient*, to one who, like this writer, is obviously striving, for a sinister purpose, to *manufacture* a public sentiment, which could be created only by misrepresentation, and who doubtless acts upon the maxim,—

"Where ignorance is bliss, 'twere folly to be wise."

As to Payne, the first of the witnesses "particularly" referred to in the foregoing extract, he was not, as this writer represents, an accomplice. He had been the friend of Marshall and Ross, and a joint actor with them against Mr. Niles; he was their confidant, and he and they had constantly planned and executed injuries to Mr. Niles and his property; they confided their plans to him, and he was as ready as they to enter into all the schemes; he was most forward, being but a boy of 18 or 19 years, and they older and maturer; but he left and went to his father in West Cambridge, a fortnight before the fire, and in no sense was he an accomplice. But the District Attorney, knowing him to have been a joint actor with the defendants, when he was at Eastern Point, and willing to join with them in any guilty enterprise, and possessing, what he thought was a guilty knowledge, with his characteristic liberality, said, that though he was not an accomplice, yet he was willing and desirous, that the jury should look upon him in that light; that they should treat him, in their judgment of him, precisely as if he had been an accomplice, and not believe him at all unless they found him

so corroborated, as an accomplice, in the strictest sense of the word, should be corroborated ; that they should believe him, only so far as the facts proved independently of him, and his own appearance, manner of testifying, &c., &c., fully and entirely convinced their minds of his undoubted present truthfulness.

But suppose Payne to have been, in all respects, as bad as this writer would make him, and an accomplice, as we have seen he was not, of the defendants in this case—what then ? Is the government to be charged with having " used testimony which no honest party could use, or ought to use," because such a man, having guilty knowledge of the perpetration of a crime like that of barn-burning, and who, being ready and willing to testify to what he knows, is not excluded from the witness stand, simply for the reason, that, by the perpetrators of this crime, he was believed to be, or, if you please, was, in fact, bad enough to be safely entrusted with the secret of their diabolical purposes ? Whence, ordinarily, I pray to know, but from just such sources, is the government to obtain any direct and positive proof as to the authors of such " deeds of darkness " as that of which these defendants stand convicted ? And yet, I think, I may safely challenge the records of the criminal jurisprudence of this Commonwealth, to furnish, I had almost said, a solitary case, of essentially the same character as the present, in which there was produced, on behalf of the government, *so little* evidence, for any cause, or in any degree, of a questionable character, and *so much* that was so entirely above suspicion.

But where is the proof that Payne *is* the abandoned wretch that this writer represents him to be ? I venture to affirm, that, by every candid and impartial hearer of the whole testimony affecting his character, it will be conceded that its darkest shade—its worst feature—as developed during the late trial, was that imparted to it by his acknowledged companionship with Marshall and Ross.

But it is with Payne *as a witness*, that we are specially concerned, and of him, in this capacity, I hesitate not to say, that if, in any witness, standing before the Court and Jury as an accomplice of parties on trial—these parties constantly looking him in the face—the marked appearance of childlike artlessness, entire frankness, quiet self-possession, and propriety of deportment generally, during an extended, and, in some portions of it, severe and searching examination,

demanded a decidedly favorable judgment of his truthfulness, then was such a judgment in regard to Payne, which I heard uttered and reiterated, simultaneously and repeatedly, while he was on the stand, and affirmed by almost every one with whom I have since conversed on the matter,—a righteous judgment. But, in addition to the personal appearance of the witness, and in strong confirmation of the favorable impression thus made, we have such *corroboration* of his testimony, in several important particulars, as to satisfy any unprejudiced mind that, whatever else Payne may have been,—or may be now, he was, on this trial, anything rather than a false and perjured witness. Two examples of this corroboration must suffice. Payne swore to a conversation with Ross, some three weeks before the fire, in which the latter disclosed to him the fiendish purpose of burning the very barns that were consumed on the night of February 11th, and also, somewhat in detail, the plan of operations ; he also swore that shortly after this Marshall inquired of him if Ross had told him anything about burning the old hay ricks, and that at first he said he had not ; but that, after a moment's reflection on the implication, necessarily involved in this inquiry, of the privity of Marshall to the whole matter, he thought it safe to repeat the conversation, and did so. Mr. Kimball the jailer—an unwilling witness for the government—testified, that in conversation with Ross on a certain occasion, and in consequence of what the latter had said to him, he remarked, " If I were in your place, and innocent of the crime,—I would not suffer for another's wrong doing ; " to which Ross replied,—" Mr. Kimball, *I didn't do it, but I know about it.*" Another witness—Dougherty, wholly unimpeached, whose occupation at the time brought him, for a moment only, very near the parties engaged in this conversation,—swore that he distinctly heard Ross say,—" *I didn't set the fire, but I know all about it.*"

A second, and, as I think, still more striking example of corroboration of Payne, is all that time and space will permit me to recite. Payne swore that, on being summoned before the fire inquest, being then friendly to Marshall and Ross, and, with them, hostile to Mr. Niles, he went to Gloucester the day before he was required to ; that he immediately sought out Marshall and Ross ; spent the evening with them ; that, the next morning, he and Ross, having seen Mary Mansfield go towards the place of examination, agreed

together, to go across the harbor on the ice, and thus get ahead of her, to complain of her before a magistrate, that she might be arrested, and thus prevented from appearing as a witness before the inquest. And further, that while crossing the ice together they talked of the fire, and Ross told him that the thing was done in the manner he had previously communicated to him. Ross, too, was a witness before the inquest, and though he at first denied, yet he afterwards admitted that he and Payne did go across the ice for the purpose of getting the woman arrested, to prevent her being a witness, and that, on the ice, *they did talk about the fire*, but, though examined immediately after, on the same day, he *could not remember what was said about it;* and the magistrate confirmed them both, in the statement that they attempted to get the woman arrested, but he refused to issue a warrant. It may, perhaps, be said of this, as was said of similar testimony in another case, that it is but "*circumstantial stuff*," and now, too, as then, it may be replied—"it is not such *stuff* as dreams are made of."

Another of "*the vilest of the vile*," according to the writer last cited, is Mary Mansfield, of whom he says, that she "*showed herself to be what a regard to decency forbids me to name.*" To any one capable of discerning and appreciating true dignity of character, self-respect, and high moral excellence in woman, and who either has the honor of a personal acquaintance with Mrs. Niles, or saw and heard her on the witness-stand during the late trial—to such an one, it were enough to say, in refutation of this vile slander, that this same Mary Mansfield has been, for nearly two years, and is still, an inmate of that lady's family; and I venture to add, that, so long as she continues such, she will need no other, as she certainly could have no better, protection against such foul-mouthed imputations, as, by this writer, are *covertly*, and therefore the more basely, attempted to be fastened on her.

Undoubtedly, this woman has peculiarities and eccentricities of character, which, for aught I know, may have exhibited themselves, occasionally, in an unbecoming and improper use of that "little member," which we have high authority for saying, "*no man*," and, *à fortiori*, no WOMAN, "hath tamed," or "can tame." Nor will she, perhaps, be likely to be very soon accounted "better than the mighty," on the ground that she "*is slow to anger*"—or "better than he that taketh a city," because she "*ruleth her spirit.*" But to

question the *intentional* truth of her statements, under oath, during a protracted examination of several hours, in the face of the general consistency of those statements, as a whole—the *character* of the discrepancies, when any could be detected—the abundant corroboration of her testimony, in its more important particulars, which almost no witness ever needed less, and, more than all, against those most reliable indications of truthfulness in a witness, so strikingly manifest in her, as to be "known and read of all men"—the open, frank and honest face, the natural posture, promptness in replying to inquiries adapted to "entangle" her, and her whole deportment on the stand,—I say, against all this, be her eccentricities what they may, to call *the witness*, Mary Mansfield, *false, perjured*, is not only to do her gross injustice, and to stultify one's self, but to insult the understanding of every man, who, having seen and heard her on the stand, is asked to give credit, for a moment, to the monstrous absurdity.

The character, disposition, *heart* of this woman, may be judged of, somewhat, by her conduct at the time of the fire. Roused from her sleep, by the startling cry that the barn was on fire, her first thought, as she sprung from her bed, was one of mercy and humanity—in her own language, "to try and save the poor dumb beasts." Dressed, or rather undressed, as she was, and she had even less than the ordinary night apparel of a female, she rushed out, in that terrible winter night, and endeavored to get from the barn the horses, oxen and cows. But the fire had progressed too far, and a sheet of living flame barred all ingress or egress at the doors. Thus prevented from fulfilling the dictates of kindly pity, the sense of duty to her employer prompted her to try and save some little of the property which the fire was fast devouring. From the barn she went to the carriage house adjoining. There all alone she struggled, succeeded in drawing out one valuable carriage, and was in the act of removing another, when the flames, which had been all the while raging around her, at last actually reached her person, and, blistering her almost from head to foot, drove her, despairingly, from her work of love and duty.

When Mary Mansfield described upon the stand, with a tone and in language which carried conviction to every heart, the occurrences of that night, and her own conduct, many eyes, unused to weep, were moistened with tears, and there was no man, in all that crowded court-room, who could have

stood up and dared to doubt that the witness was the personification of honesty and truth. And yet this is the woman whom the last-cited, reckless libeller calls by such foul names!

III. THE IMPRESSIONS MADE BY THE TESTIMONY AS GIVEN ON THE STAND, AND ALSO, AS COLLATED AND REVIEWED IN THE CLOSING ARGUMENT OF THE DISTRICT ATTORNEY. By one of the manufacturers of public opinion already cited, it is somewhat extravagantly said—"The verdict was against *all* the evidence;"—and by another, "Everybody is astonished, that such a verdict should have been rendered *on so slight a chain of evidence.*" Let us see what only a few of the links, constituting this "slight chain," consisted of, as presented by the government's case.

Marshall and Ross had been inmates of Mr. Niles' house for a year before the fire, the former as tenant, and the latter as *his* hired man. For months before the fire, there had been hard feelings between them and Mr. Niles, which had grown into what was shown to have been absolute malice, if not hatred. No stronger language than that in which, at various times, they expressed their malignity, could be conceived. Early in February, referees jointly, agreed upon by the parties, had determined that all the property in the barns belonged to Mr. Niles, and not to Marshall, who had claimed the whole, or part of it. On the Saturday before the fire, the defendants had removed from the premises, to a house less than a mile distant. On Tuesday, the decision of the referees was made known to Marshall, and, on Thursday night, at a time when the owner was away, (a fact of which Marshall acknowledges himself cognizant,) this deed was done!

Now join this link in the chain, to the further fact that, within a month before the fire, Ross threatened to do this precise thing, as soon as they had got away from the house, and that Marshall had given unmistakable proof of his knowledge of this threat and this purpose, by making inquiry about it, of the person to whom it had been disclosed. Add to this the fact that it was admitted, by the defendants, (both of them) that they *slept together that night*, one of them saying it was the only occasion of the kind, and the other that it was the first, but not the last, time. And the further fact that they gave different and inconsistent reasons for this remarkable occurrence, and were consistent only in averring that it was without previous concert.

Still another specimen of the evidence so cruelly set at naught by this verdict! When Ross was on trial before the magistrate, at Gloucester, Marshall was called as a witness in his favor, and made oath, as he alone could do, to a perfect and complete *alibi*. He was then cross-examined, and, as might well have been expected, this examination was at first, for the purpose of testing his credit, directed to other matters than those to which he had testified in chief. He then admitted that he had not only suspected, but had *accused* Mr. Niles of burning those barns, or of being accessory to the burning, and that he had heard the same suspicions expressed by other very respectable gentlemen whom he named. Upon being pressed, he acknowledged that, in his own heart, he did not suspect, and never had suspected, Mr. Niles, whom he knew to have been absent, and whose wife and infant child were exposed to the fury of the flames on that terrible night. The next inquiry was inevitable—WHY had he been so wicked, so cruel, as to blast, with the breath of such a foul calumny, the reputation of Mr. Niles, all the time believing him entirely innocent of the crime with which he charged him? It was a question to which there could be no answer, and the witness faltered, *fainted* and fell into the arms of a bystander, as it was pressed upon him! Recovering in a short time, the examination proceeded and was concluded. *But that question was never answered.* Was the verdict "*against* ALL *the evidence?*"

But that was not all. On a subsequent day, this same Marshall was recalled, at his own request, to correct his statement. And what was his correction? What but this—that he had been utterly and entirely *unconscious* from the time the cross-examination commenced till after he reached his home—that he had no knowledge of his former statements—that he never suspected and never accused Mr. Niles, and never heard any one else say or intimate that Mr. Niles was guilty of the crime. All these facts were shown at the trial, and it was *demonstrated*, so far as human testimony can demonstrate anything, by the evidence of several of the spectators of the scene, including the magistrate, that the whole statement was false, that the witness had not been unconscious, except at the moment of his fainting, and that, to all appearance, he had had the use of all his senses, when testifying.

These are but a few of the links in the "slight chain" by which these defendants were bound, and by no means fur-

nish a just view of the strength of the government's case. They are mentioned here, in addition to the other piece of testimony, before recited as a specimen of Payne's corroboration, and that of Mr. Kimball, the jailer, to give the reader some idea of the impression likely to have been made by the whole evidence as it was given on the stand, and also to show the utter recklessness, not to say mendacity, with which these manufacturers of public opinion have performed their most unworthy labor.

And I now cheerfully submit, to every reader of these pages, that even this sketch of but a small portion of the testimony against these defendants, goes very far towards a verification of the opinion expressed, by a constant attendant on the trial, when the District Attorney announced that the testimony for the government was closed. Said the gentleman referred to—" Of all the criminal trials which I have attended, where the evidence, as here, was, for the most part, circumstantial, and where the trial resulted in the conviction of the accused, I cannot recall one, in which I think *the testimony for the government was so perfectly conclusive as in this case.*"

But when the District Attorney—whose characteristic urbanity, candor and fairness, had been so strikingly manifest during the whole progress of the trial, as to elicit commendation from all parties—after a most eloquent, vivid and thrilling description of the scenes enacted at Eastern Point, on the night of the fire—proceeded to the analysis and application of the evidence in the case ; and as, with great perspicuity, consummate skill, and constantly accumulating force, he argued the guilt of the defendants from the fact, that up to that moment, suspicion had pointed to no other known person as the author of the crime, and that every body's suspicions were at once directed to these defendants—from the *nature* of the crime, as throwing light upon the question by whom it was committed—the motives which these men had for its perpetration—their *direct threats*, so clearly proved—their opportunity for its commission—their sleeping together for the *first* and *last* time in their lives, on that night—their conduct after the fire—their own statements—the *positive* proof furnished by the confession of Ross and the testimony of Payne—and, finally, the *utter failure* of the attempt, on the part of the defence, to prove an *alibi*—as the evidence applicable to these topics respectively, was brought to the

notice of the jury, it seemed as if, at every successive step in this admirably arranged and most powerful argument, the conviction of the guilt of the defendants, produced by the testimony as given on the stand, waxed stronger and deeper to the very close of this masterly address of the District Attorney. And I believe I express the sentiment of very many others, when I affirm that, when the Attorney resumed his seat, had I been in the place of either of these defendants, and without reason to doubt the fidelity to the oath of God upon him, *of any one of the twelve jurors* who were soon to pass between me and the Commonwealth, even though consciously as innocent of the crime charged upon me, as any of their panel, I should have felt, in my inmost soul, that nothing short of miraculous interposition could procure for me, as the result of their deliberations, any other verdict than that of GUILTY.

I cannot take leave of these would-be forgers of a public sentiment, which never did and never can, coëxist with a knowledge of the facts in this case, without noticing some portions of a letter from one of their number, to the editors of the Traveller, and which I find in their issue of March 16th. The question of the guilt of these defendants, and indeed of that of any resident at Eastern Point, is, by this writer, thus summarily disposed of:—"Your article, in Thursday's paper, in reference to the incendiary case at Gloucester, is calculated to mislead the public as to the origin of the fire, as any one, unacquainted with the people residing in the neighborhood of Mr. Niles, would conclude, after reading your article, and learning that there *were difficulties of long standing between Mr. Niles and his neighbors, that the fires were set by some of them, out of revenge upon him.*" How perfectly gratuitous this attempt to guard the readers of the Traveller against a conclusion so unlikely to be drawn, even by the merest novice, from such premises! But if any of the readers of that journal were stupid enough to suffer themselves to be thus misled by such groundless conclusion—and all doubts, if doubt they had, as to the perfect innocence, not only of Marshall and Ross, but of every man, woman and child, resident at Eastern Point—must have been at once annihilated, on their perusal of the oracular announcement contained in the next brief sentence, in this most remarkable letter, viz: "THERE IS NOT THE LEAST GROUND FOR ANY SUCH SUSPICION." Alas! the sad waste of precious time, and of the money of the

Commonwealth, in that protracted investigation, continued through sixteen days—*all on a wrong scent*—because this "Second Daniel" didn't *sooner* "come to judgment!" And, then, what work for repentance—nay, perhaps, what food for remorse, is furnished, by this—too tardy—revelation to the magistrates and counsel who had charge of the preliminary investigations—to the learned judge who tried the cause—the jury, whose verdict is now known to be *false*—and "though last, not least," to the District Attorney, by whose able conduct of the cause, the jury were led "to believe a lie!"

One more extract from this guardian of the press, and of those innocent dwellers at Eastern Point, shall suffice:—"The article in the Gloucester Telegraph, from which you have condensed your remarks, was doubtless well intended, and is in the main a correct history of the difficulties with Mr. Niles; but the editor did not perceive that it was *calculated to carry abroad a wrong impression, by connecting the burning of the barns with the previous troubles between Mr. Niles and his neighbors.*"

I am aware that—

> "Many a flower is born to blush unseen,
> And waste its sweetness on the desert air."

But if, Messrs. Editors of the Telegraph and Traveller, now that this second Solomon, hitherto perhaps "to fame unknown," but who, having given such abundant proof of his matchless ability to benefit his fellow men, should never more be suffered to "hide his talent in a napkin"—if you, gentlemen, cannot assure your readers, that you have secured the valuable services of one who has given, to you and them, ocular demonstration of his superior qualification for the office of supervisor of the press generally, and your journals in particular, then be not surprised, if your patrons, henceforth—one and all—in perusing, at least, your *editorials*—find themselves constantly tortured with misgivings, lest—for want of those services, of the value of which you and they have such convincing proof—they should again be made the victims of such erroneous conclusions—groundless suspicions and false impressions, as those into which, in this instance, your heedlessness has betrayed them!

But, jesting aside—I challenge the production of another example—in any language—in which there shall be found

—within the same compass—such an amount of unblushing impudence conjoined with so much of intensified imbecility, as characterize this most absurd and senseless attempt to pervert the truth, and deceive honest men. "*Not the least ground for any such suspicion*"—"*calculated to carry abroad a wrong impression by connecting the burning of the barns with the previous troubles between Mr. Niles and his neighbors!*"

"Oh! shame, where is thy blush?"

That any sane man, living, as this writer does, at Gloucester, and knowing, as he must know, the numberless personal annoyances suffered by Mr. Niles previously to the fire, the injuries to his property, the repeated attempts to subject him to serious, if not fatal accident, and especially the UTTERED THREATS, which created, and kept alive for weeks the harrowing apprehension of the destruction of his buildings by the incendiary's torch, and of personal violence to himself, compelling him to provide for himself, and, in his absence, for his family also, weapons of defence; and that suspicion pointed *always* and *only* to the two men now convicted of the crime of barn-burning, and such confederates as might be willing to aid in the execution of their hellish plot—I say, that any sane man, knowing all this, should be able to concoct and deliberately commit to paper, and this with a view to its publication, such arrant nonsense and flagitious perversion of the truth, as are contained in the extracts from this letter, must be deemed, and taken to be, a new and most striking exemplification of the maxim—"TRUTH IS STRANGER THAN FICTION."

It is, certainly, matter of gratulation, that all the machinations that have been employed, by these defendants and their friends, to defeat the ends of justice, by screening the guilty, and letting the "wicked go unpunished," have hitherto been defeated, through the distinguished ability and unflinching fidelity of those engaged in originating and conducting this prosecution, the wisdom, patience and firmness of the Court, and the intelligence and persistent endurance of a JURY, who will ever be honored and gratefully remembered by all, in this community, who can appreciate the blessing of a sense of security in the hours of slumber, against the horrors of a midnight conflagration, kindled by some demon in human shape, who, either for purposes of plunder, or to glut savage revenge, is willing thus to put in jeopardy the precious lives

of a whole sleeping household! And when these convicted defendants, having rejoiced, for a few weeks more, in their experience of the benefit of the "law's delay," shall have pronounced upon them the sentence of impartial justice, "all the people shall say, AMEN."

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