

The trial of Reuben Crandall, M.D., charged with publishing seditious libels

THE TRIAL OF REUBEN CRANDALL, M. D. CHARGED WITH PUBLISHING SEDITIOUS LIBELS, BY CIRCULATING THE PUBLICATIONS OF THE AMERICAN ANTI-SLAVERY SOCIETY.

BEFORE THE CIRCUIT COURT FOR THE DISTRICT OF COLUMBIA, HELD AT WASHINGTON, IN APRIL, 1836, OCCUPYING THE COURT THE PERIOD OF TEN DAYS.

NEW-YORK: H. R. PIERCY, 7, THEATRE ALLEY.

1836.

Entered according to act of Congress, in the year 1836, By Reuben Crandall, M. D., in the Clerk's Office of the District Court of the Southern District of New York.

TRIAL OF REUBEN CRANDALL.

As the Clerk was proceeding to empanel the jury in this case, and called James Owen,

Mr. Bradley asked if he had formed or expressed any opinion of the guilt or innocence of the defendant.

Mr. Key said the question ought to be put by the court.

Mr. Coxe said there were two grounds of challenge: one was, that the juror had formed and expressed an opinion; the other was, that he had so strong prejudices that he was unfit to try the case.

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The Court then put the question, "Have you formed and expressed an opinion as to the guilt or innocence of the prisoner upon this indictment?" to each juror called upon the panel.

John H. King, Nicholas Callan, James Kennedy, Walter Clarke, George Crandall, William Waters, Thomas Hyde, Thomas Fenwick, Samuel P. Law, George Symmes, Wesley Stephenson, and Jacob Gideon, Jr., answered that they had formed no opinion, and were sworn.

James Owen, Edward Tolson, Peter Cazenave, and Samuel Baker, had formed an opinion, and were accordingly excused from serving, or challenged by the defendant's counsel.

This was an indictment charging, in five counts and in various forms, the offence under the common law of libel, of publishing malicious and wicked libels, with the intent to excite sedition and insurrection among the slaves and free colored people of this District. The three first counts only having been relied upon, and no evidence having been offered under the others, an abstract, omitting the mere formal part, will be sufficient to show the nature of the libels charged.

1st. The first count charged the defendant with publishing a libel, containing in one part thereof these words: "Then we are not to meddle with the subject of slavery in any manner; neither by appeals to the patriotism, by exhortation to humanity, by application of truth to the conscience. No; even to propose, in Congress, that the seat of our republican Government may be purified from this crying abomination, under penalty of a dissolution of the Union."

And in another part thereof, in an article entitled "Reply to Mr. Gurley's letter, addressed to the Rev. R. R. Gurley, Secretary of the American Colonization Society, Washington city," signed by Arthur Tappan and others, the following words: "We will not insult your

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understanding, sir, with any labored attempt to prove to you that the descendants of African parents, born in this country, have as good a claim to a residence in it, as the descendants of English, German, Danish, Scotch, or Irish parents. You will not attempt to prove that every native colored person you meet in the streets, has not the same right to remain in this his native land, that you and we have. Assuming this as an incontrovertible truth, we hold it self-evident that they have as good right to deport us to Europe, under the pretext that there we shall be prosperous and happy, as we have to deport them to Africa on a similar plea.”

And in another part thereof, in the said reply, the following words: “In what language could the unrighteous principles of denying freedom to colored people in this country, (which amounts to the same thing as demanding the expulsion of those already free,) be more effectually and yet more plausibly inculcated than in those very words of Gen. Harper you have, with so much approbation, quoted to us.”

And in another part thereof, in the said reply, the following words: “Against this doctrine of suspending emancipation upon the contingency or condition of expatriation we feel bound to protest; because we believe that every man has a right to reside in his native country if he chooses, and that every man's native country is the country in which he was born—that no man's right to freedom is suspended upon, or taken away by his desire to remain in his native country, that to make a removal from one's own native country a *sine qua non* of setting him free when held in involuntary bondage, is the climax of moral absurdity.”

And in another part thereof, in a certain other article, entitled “Three months' residence, or seven weeks on a sugar plantation, by Henry Whitby,” containing the most shocking and disgusting details of cruel, inhuman, and immoral treatment of slaves by the owners and overseers, and attorneys or agents of proprietors, according to the tenor and effect following—that is to say: “On this and other occasions, I thought it my duty to acquaint the attorney with my observations and feelings in regard to the cruel floggings and severe treatment generally which I have witnessed at New Ground. He admitted the facts, but

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said that plantation work could not be carried on without the cart-whip. He moreover labored hard to convince me that the flogging did not injure the health of the negroes. I also told him of the exceeding immorality and licentiousness which I had witnessed; mentioning, in substance, the facts previously detailed. He replied that “that was a thing which they must wink at.” “If a man in manners so much the gentleman, and in other respects so estimable, was necessarily led to countenance or wink at the enormities I have feebly attempted to describe, what, I ask, is to be expected from its subordinate administrators who are continually exposed to the demoralizing influences of slavery? what, indeed, but the frightful wickedness and cruelty which are its actual fruits?”—in contempt of the laws, to the disturbance of the public peace, to the evil example of all others, and against the peace and government of the United States.

2d. The second count charges the publication of another libel, containing among other things, in one part thereof, the following words, viz: “Our plan of emancipation is simply this—to promulgate the doctrine of human rights in high places and low places, and all places where there are human beings—to whisper it in chimney corners, and to proclaim it from the housetops, yea, from the mountain tops—to pour it out like water from the pulpit and the press—to raise it up with all the force of the inner man from infancy to gray hairs—to give line upon line, precept upon precept, till it forms one of the foundation principles and parts indestructible of the public soul.”

And in another part thereof, the following, viz: “I (meaning the said Crandall) am not unaware that my remarks may be regarded by many as dangerous and exceptionable; that I may be regarded as a fanatic for quoting the language of eternal truth; and denounced as an incendiary for maintaining in the spirit, as well as the letter, the doctrines of American Independence. But if such are the consequences of a simple performance of duty, I shall not regard them. If my feeble appeal but reaches the hearts of any who are now slumbering in iniquity; if it shall have power given it to shake down one stone from that foul temple where the blood of human victims is offered to the Moloch of slavery; if, under

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Providence, it can break one fetter from off the image of God, and enable one suffering African—

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—To feel The weight of human misery less, and glide Ungroaning to the tomb— I shall not have written in vain; my conscience will be satisfied. Far be it from me to cast new bitters in the gall and wormwood waters of sectional prejudice. No, I desire peace—the peace of universal love; of catholic sympathy—the peace of common interest—a common feeling—a common humanity. But so long as slavery is tolerated, no such peace can exist. Liberty and slavery cannot dwell in harmony together. There will be a perpetual war in the members of the political *Mezentius*—between the living and the dead. God and man have placed between them an everlasting barrier—an eternal separation. No matter under what law or compact their union is attempted, the ordination of Providence has forbidden it—and it cannot stand. Peace! there can be no peace between justice and oppression—between robbery and righteousness—truth and falsehood—freedom and slavery. The slaveholding States are not free. The name of Liberty is there, but the spirit is wanting. They do not partake of its invaluable blessings.

“Wherever slavery exists to any considerable extent, with the exception of some recently settled portions of the country, and which have not yet felt, in a great degree, the baneful and deteriorating influence of slave labor—we hear, at this moment, the cry of suffering. We are told of grass-grown streets—of crumbling mansions—of beggared planters, and barren plantations—of fear from without—of terror within. The once fertile fields are wasted and tenantless: for the curse of slavery—the improvidence of that laborer whose hire has been kept back by fraud—has been there, poisoning the very earth, beyond the reviving influence of the early and the later rain. A moral mildew mingles with, and blasts the economy of nature. It is as if the finger of the everlasting God had written upon the soil of the slave holder the language of his displeasure.

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“Let then the slave holding States consult their present interest by beginning, without delay, the work of emancipation. If they fear not, and mock at the fiery indignation of Him to whom vengeance belongeth, let temporal interest persuade them. They know, they must know, that the present state of things cannot long continue. Mind is the same everywhere; no matter what may be the complexion of the frame which it animates, there is a love of liberty which the scourge cannot eradicate—a hatred of oppression, which centuries of degradation cannot extinguish. The slave will become conscious, sooner or later, of his strength—his physical superiority—and will exert it. His torch will be at the threshold, and his knife at the throat of the planter. Horrible and indiscriminate will be the vengeance. Where then will be the pride, the beauty, and the chivalry of the South? The smoke of her torment will rise upward, like a thick cloud, visible over the whole earth.”

3d. The third count charged the defendant with publishing twelve other libels, in which are represented and exhibited “several disgusting prints and pictures of white men in the act of inflicting, with whips, cruel and inhuman beatings and stripes upon young and helpless and unresisting black children; and inflicting with other instruments, cruel and inhuman violence upon slaves, and in a manner not fit and proper to be seen and represented; calculated and intended to excite the good people of the United States in said county to violence against the holder of slaves in said county as aforesaid, and calculated and intended to excite the said slaves in said county, to violence and rebellion against their said masters in said county; in contempt of the laws, to the disturbance of the public peace, to the evil example of all others, and against the peace and government of the United States.”

All these counts contained averments that at the time of the publication of these libels, the citizens of the United States residing in the county of Washington, in the District of Columbia, were lawfully authorized to hold slaves as property, and many of them did so hold them—and that many free persons of color also reside in the District; and that the defendant, unlawfully, maliciously, and seditiously, contriving and intending to traduce, vilify, and bring into hatred and contempt, among the citizens of the United

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States, the laws and government of the United States in the county of Washington as duly established and in force, and to inflame and excite the people of the United States to resist and oppose and disregard the laws and Government aforesaid, and the rights of the proprietors of slaves in the said county, and to inflame and excite to violence, against the said proprietors of the said slaves, not only the ignorant and ill-disposed among the free people of the United States and the free persons of color in the said county, but also the slaves; and to produce among the said slaves and free persons of color, insubordination, violence, and rebellion, and to stir up war and insurrection between the said slaves and their said masters, published the said libels, containing among other things divers false, malicious and seditious matters, of and concerning the laws and Government of the United States in the said District, and of and concerning the citizens of the United States holding slaves in the said District, and of and concerning the said slaves and free persons of color, and their labor, services, and treatment, and the state of slavery in the said District.

Mr. Key then opened the case. He said he did not mean to read the indictment at present. It was necessary to be very particular in the charges, so as to embrace a description of the offence, which had of course rendered the indictment very long. If any difference should arise between him and the counsel for the defence, it would be necessary to take a more particular view of the counts. There were five counts, setting out the offence in various ways, in order to meet the evidence, but substantially charging the same thing. The first count, for instance, charged him with publishing papers calculated and intended to excite insurrection and rebellion. Another charged him with having such papers in his possession, knowing their character, with the end of distributing them; and endorsed in his own handwriting, with the words "read and circulate," for the purpose of having them read and circulated.

It would not be necessary, he said, to go into a detail of the evidence touching the case, to disturb the calm consideration necessary for a just decision of the case. It was his wish that the jury should look calmly at the evidence, and if the facts which he supposed true were proved, they would find the defendant guilty. It was a case, in which the defendant

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was charged with being the composer and publisher of libellous, seditious, inflammatory publications. Such publications were always indictable; but the particular tendency of these was, to produce excitement, tumult, and insurrection among slaves, and among the free colored people; and among those white men who differ with most of us in this section of country, upon the question of slavery. There was nothing more calculated to excite sedition and insurrection in a community situated as ours is, than publications of such a character. It would be his duty to read some of these publications; and there could be but one opinion about their character. It would be unnecessary to state their tendency or nature at present. It would, however, be necessary to state the law applicable to the case. It would be necessary for the government to prove the publication of these papers. It might not always be possible to prove such publications by direct testimony; but he would show by strong circumstantial evidence, and by some direct evidence, that the defendant had been guilty of the publication. He could state that Crandall had been found with a large collection of these most abominable publications, calculated to excite the most atrocious outrages. They were found in his possession, and when he found it necessary to state how he came by them, he gave different and contradictory accounts. Many of them were endorsed with the words, "please to read and circulate this," and when he was about to show that they were in the prisoner's handwriting, that fact was admitted by him. The prisoner also undertook to state how he came to be here with these obnoxious and inflammatory papers; but he would prove the facts, and show very different and contradictory accounts. He would show that some of these inflammatory publications were sent to a great many persons in the District—that clerks found them on their tables in the morning without knowing how they came there; and that those papers were identical with the papers found in possession of the prisoner. He would show that the prisoner had been about here during the same time, doing nothing of advantage to himself or any body else; but saying that he was about to do something; that he was about to go into some business—and that he was a frequent declaimer upon the subject of abolition, going about by himself, talking to the colored people. He should not be able to show the nature of these conversations, as such persons were not witnesses. He would

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show further, that the prisoner opened a doctor's shop in Georgetown, with his name over the door, to invite people in; and that some of these publications were found there; and that he did actually give one of the most obnoxious to a gentleman of the District. These facts would be distinctly proved and then the papers would be laid before the jury, for them to judge of the character and tendency of such publications; for it would be for them to decide what they would amount to. He should submit, whether the party could have had any proper or innocent motive in possessing and circulating papers of so obnoxious and incendiary a character. He thought no man could read them, without being sensible of their dangerous tendency and design.

Mr. Coxe wished to make a few observations upon the several principles of law involved in the case; not so much to ask the opinion of the court now, as to apprise the District Attorney of the ground that would be taken by the counsel for the prisoner. It was apparent that it was a question of grave and serious importance, and the principles of law should be distinctly apprehended by the jury. If he understood the Attorney, the indictment was for the publication of papers of a seditious character. It was not for a libel upon any individual or upon the government; but the whole charge was upon the ground, that the publications were calculated to excite sedition and rebellion. There could be no more grave or serious crime charged against any man, or contained in any indictment. He differed from the Attorney, in supposing that the fact, that the prisoner had such papers in his possession was conclusive or even competent evidence of a criminal intent. They may be as bad and dangerous as possible, and yet the individual may have them in his possession with perfect innocence; because he is criminal only according to the use he makes of them; and if he keeps them entirely under his own control, or if he only places them in the hands of people not likely to be affected, or through whom the community is not likely to be affected, by them, he is not to be charged with a criminal intent. He illustrated this point by allusion to poisons, such as arsenic, which might be dangerous in the hands of some persons, but in others, such as apothecaries, physicians and discreet heads of families, it would be, harmless and innocent. He alluded also to gunpowder, which might, in improper

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hands, destroy a whole city; but which, properly kept, under necessary restrictions, may be perfectly harmless and innocent. His object, principally, was to announce to the gentleman (Mr. Key) that evidence to show merely that the prisoner had such papers as he describes in his possession, was not competent evidence of the malicious intent charged in the indictment, and that he should oppose the admission of any such testimony. There were three principles the counsel for the defence meant to maintain. *First*, that evidence of possession was not competent to show the fact of publication. *Second*, that the publication to individuals, by whom and through whom others would not be affected injuriously, is not evidence of the malicious intent, charged in the indictment; and, *Third*, that until the production of facts to show a malicious publication, it was not competent to bring evidence of the nature of the papers.

Henry King was called and sworn. He testified that he was acquainted with the defendant, and first knew him—could not say the exact time, but probably about the last of June or first of July, in Georgetown, when he came there to look out for a doctor's or botanist's office. The office had been applied as that of a botanist's.

By Mr. Key. Have you seen any such papers as that? (Holding out one; copies of which were handed to the counsel and to the Court.)

Coxe objected to the witness's answering; and wished to know the object of the question.

Key. My object is to show that the traverser gave that paper to the witness to read; and I put that question.

Coxe replied, that he understood the object of the Attorney to be, to show that he placed the paper in the hands of the witness to read, as evidence of publication. He did not know as the Court had read the indictment; but the Attorney had fairly stated its import. The object of the indictment was to charge, that he circulated these papers with incendiary designs. Now, he wanted to know if placing a single paper in the hands of a respectable individual, no matter how flagitious it might be, is such a criminal publication as is

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contemplated in the indictment? The Attorney himself has just done the same thing; he has given one to your honors and one to the counsel; and if he takes the ground that it is criminal, I ask him to-morrow to indict himself. He says the object of the prisoner was to produce insurrection and rebellion. Now the character of the individual to whom the paper was given, is essential to give a character of criminality to the act.

Cranch , Chief Judge, did not understand the point made.

Coxe. The Attorney stated that he meant to prove one single act of publication. I have not read the paper, and suppose your honors have not—and it is no matter how inflammatory and incendiary it really is. I want to know if placing one single paper in the hands of a well-known respectable individual, is such a publication as is charged in the indictment?

Key. You must wait for the evidence. Does any one suppose that if I had taken advantage of this assemblage, to distribute about the court such papers with the intent to excite commotion, insurrection, and rebellion, I should not have been liable to indictment?

Coxe. The learned Attorney has misapprehended my point; and his very remarks are satisfactory confirmation of the ground I have taken. The indictment charges a general circulation for incendiary purposes. The Attorney offers proof of one act of giving to an individual a paper, by which he could not be supposed to be excited to incendiary acts. If the Attorney (which he could not suppose possible) were on trial for the offence he has imagined, would his handing a paper to the Court and one to me, be taken as evidence of a criminal intent? In his remarks, he assumes the ground that the papers were circulated indiscriminately “with a criminal intent.” Can it be supposed that giving this paper to Mr. King was done with a criminal intent?

Cranch , C. J., asked Mr. *Coxe* to explain the particular point he made; whether it was, because the paper being given to a free man or a white man, could not be supposed to excite another class?

Coxe. I mean that the paper, whatever be its character, having been given to an intelligent white free man, would not show an intent to excite another class of people. The charge in the indictment is not a naked charge of publication—there is no such charge—there can be none such. It is a charge of publishing incendiary tracts among people calculated to be excited by them; and placing one in the hands of an intelligent white man is not such a malicious publication as the law or the indictment contemplates. He then read from the indictment the usual form of words, “being wicked, malicious,” &c.

Cranch, C. J., after consultation, delivered the opinion of the Court, that the evidence was admissible to go before the jury. It was not for the Court to say what inference was to be drawn from it. *The evidence may not show now, any criminal intent*, but in connexion with other circumstances it may.

Henry King then went on to testify, that the pamphlet handed to him was the same as the one he received from Doctor Crandall at his office in Georgetown. He thought there was something written on it, but what it was he could not say. He carried it to Linthicum's store and left it there. He did not know where it was—it was lost. He knew by looking over the one in his hands, that it was a copy of the same.

By the Court. Did Crandall say any thing at the time he gave it to you?

Answer. I was looking at some botanical specimens he was unpacking, when I saw it lying on a table, and took it up. I remarked, “This latitude is too far south—it wont do here.” I then said, “By your leave I will take one and read it.” Crandall was taking out preparations from a box. Three of these pamphlets were lying on a table; but I cannot say, whether he had taken them out, or whether they lay there before. He used newspapers, or something like them, for enclosing his plants first, and afterwards wrapped them in white paper. He said he (King) was not the owner of a slave.

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Cross-examined by Bradley. I threw it on the desk in Linthicum's store, and afterwards took it up and threw it on the counter; when the excitement was got up, I looked for it and could not find it. I had not thought any thing about it till then.

To the Court. I do not recollect what was written upon it—there was something. I might have read it—must have read it.

To Bradley. It might have been written in the store. I can't say, as the writing was on it when I took it. Crandall did not call my attention to it—he did not ask me to return it. I merely asked it as a loan to read. Crandall never asked for it afterwards.

To Key. I can't say when the writing was put on it. I am pretty certain I saw something on it. I saw some like it in the Mayor's office with writing on them. I don't recollect that he admitted the writing to be his. I saw they were the same as I saw in Crandall's shop—two or three there—not more than three. The plants were on large newspapers. I did not see any on pamphlets like this. Crandall might have been in Georgetown two or three weeks, perhaps a month.

To Bradley. I was frequently in his shop. His business was gathering plants. I never saw any of these papers there before.

Key. I consider that I am now authorized to read the paper to the jury.

Coxe objected to the reading, because there was no evidence of such a malicious publication as was charged in the indictment.

The Court asked King if Crandall asked him to take and circulate the paper. 2

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Answer. No.

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Key. The best evidence of intent is to be found in the character of the paper. The objection is made to prevent the jury from seeing the paper. The charge is, that the prisoner published a particular paper with a bad intent. The paper itself and the matter it contains are certainly essential to ascertain the intent.

Coxe read from a recent case in 3d Campbell 323; that where a man had a libellous print and another person came and asked to see it, and it was shown to him, and the persons caricatured were pointed out, it was ruled by Lord Ellenborough, that the evidence of publication was not sufficient to support the action.

Key said that case was going very far. Suppose the person had not sent to the house to see the print, but it had been placed before his eyes; that he was asked into a room where it was lying on a table—that would be a publication in the eye of the law. Your honor will see, if these pretexts prevail, how the whole law will be evaded. I say, that a man who keeps a doctor's shop, and lays such libels on his counter, before the eyes of every body, and in the face of day, has published the libel to every individual who comes into the shop, just as much as if he should pull it out of his pocket and offer it to them. Suppose in the case referred to, the picture had been hanging on the wall when the party came in, would any body say it was not an offensive publication? The jury must determine what the motive was; whether the papers were on the table for bad purposes, or whether they were to be used for botanical preparations. Will the Court say, that the evidence of the publication is not sufficient to permit the paper to be read?

King was again called by the Court, and to the question, "Did Crandall present you the paper to take away?" replied, He did not present it to me. I asked leave to take it away. It might have been thrown down on the table in the confusion of unpacking. It was a private office, and was kept locked. Doctor Crandall was mostly out of doors, collecting herbs, which he packed in cases. I never saw but three persons there, Doctor King, Mr. Cruikshank, and Mr. Oyster. There was no name over the door—nothing to indicate a doctor's shop—nothing ordinarily in a doctor's shop, except books. There was nothing in

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the windows or in the shop for public sale. I think he had given out, that he intended to teach botany, and suppose that was the reason Mr. Cruikshank and Dr. King were there. Doctor Crandall was describing some plants to them.

Considerable argument here occurred between the counsel on both sides and the Court, upon the admissibility of the pamphlet. Without giving the conversation in detail the points will be stated.

It was contended in behalf of the prisoner, that the charge was for malicious publication; and that the fact of such malicious publication must be first proved, before the libel could be read to the jury. In this case, the alleged libel was found laying in a private office, where only two or three persons were admitted. It was not offered to the witness; but having been accidentally thrown out, was discovered by him, and at his request he was allowed to take it for the purpose of reading, and with the implied understanding, certainly, that he was to return it. This evidence, it was urged, was not sufficient proof, as required by law, of a malicious publication with an incendiary intent, as would allow the government to show the character of the pamphlet. The person was not charged with publication merely, but with bad designs; and certainly it could not be inferred that the fact that he had reluctantly allowed the witness to take it—a man of equal respectability with 11 himself—for the purpose of reading, was evidence of any malicious publication. And upon the ground of insufficiency of proof of such publication as the defendant was charged with, the reading of the libel was opposed.

To this it was replied, that by the authorities, possession of a libel known to have been published was *primâ facie* evidence of publication, sufficient to put the defendant to his proof to account for the possession; but here was proved a distinct act of publication. The motive would be inferred from the character of the libel, and from other circumstances connected with it. The evidence would be that the prisoner had published this libel, that he was found with numerous copies of this and other similar libels in his possession, and that similar libels to those found in his possession were distributed, extensively, but secretly,

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all over the District. All this was urged to be competent evidence to go to the jury, and it would be necessary to show the character of the libel, that the jury might judge what was the motive; why it was laid on the table to attract attention, and why it was given to the witness. These were urged to have been *primâ facie* evidence of malicious publication, and conclusive proof was not necessary; but it must be left for the jury to infer the motive. If the course contended for by the counsel for the prisoner were adopted, the whole law of libellous and inflammatory publications might be easily and effectually evaded. A man would only have to avoid offering them to be clear of all charge; but he might expose them to public notice—go round and say that he had them in his possession—advertise that he had them, from one end of the country to the other—and when he was put on trial, it would be sufficient for him to say, “I did not offer them, but people came and asked for them.”

The prisoner's counsel again urged, that the delivery to King, confidentially, amounted to no more than simple possession; and that possession of a libel was not an offence, and was not *primâ facie* evidence of publication. The dictum cited by the Attorney was said to be unsound, and to have crept into the books by error. The fact that other libels had been published, by persons unknown, was no evidence against the prisoner, any more than against any other person; and before such publications could be brought as evidence of malicious intent, they must be brought home to the prisoner himself.

Key offered to show that an endorsement was on the libel given to King, in the prisoner's handwriting, which would show the intent.

William Robinson testified that he saw writing on the pamphlet at Linthicum's shop. Mr. King said it was the one he brought from Crandall's. The words were “please read and circulate.” The witness was going on to state that he knew the handwriting, by comparison, but was stopped, as such evidence was inadmissible.

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One of the Judges asked if it had been proved, that Crandall permitted the pamphlet to be taken with the intent to circulate it. There must be some proof of that, before it can be read to the jury.

Coxe. The fact charged is of malicious publication, and the publication must be proved to have been made with an intent to do mischief. It is not a question as to the character of the publication, but is there proof of such a publication as is charged?

Key. I can prove that he was seized with a large quantity of copies of this and other similar libels. That he gave contradictory and incorrect accounts of how they came into his possession—that he admitted that he brought them here, and said they were all that he brought, except about a dozen, which I contend he distributed; and that such publications, were 12 distributed among the people, nobody knows how. Is not that evidence, that he published this one with a bad intent?

Coxe. I say it is no evidence. That he had them in his possession is no evidence of publication; and that other libels were distributed, and by nobody knows who, is no more evidence against Mr. Crandall than against Mr. Key.

Key called Wm. Robinson, to ask him if he had ever received and known of others who had received similar libels.

Coxe objected. You must prove first that they came from Crandall.

Key wanted to connect all the circumstances.

Coxe. I contend that King's evidence does not show any publication; and you must prove that publication as charged before you can introduce any other evidence.

Cranch, Chief Judge. Is it not competent to show that there was a publication, and afterwards bring evidence to fix it upon the defendant?

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Coxe. No. The first part to be proved is the publication by the prisoner, as charged in the indictment.

Without deciding whether the United States should be permitted to give evidence of the possession of other libels,

The Court, nem. con., was of opinion that there was sufficient *primâ facie* evidence of the publication of the Anti-Slavery Reporter, Vol. I. No. 2., to permit the contents to be read to the Jury.

Key was proceeding to read, Anti-Slavery Report, Vol. I. No. 2.

Bradley objected. The paper given to Mr. King was lost. That is not the paper the District Attorney is reading.

Key said it was a copy.

King called again by *Bradley*. The paper I had from Crandall was lost. I have looked everywhere that I thought it could possibly be; but cannot find it. I know this to be exactly like it, by an article on the last page, headed "*No force.*" I did not read the pamphlet through. There was another article which told of a man sixty years old being unmercifully whipped; and another of a woman, who had had several children, who was stripped naked and whipped, &c. The pamphlet was taken by me without any distinct understanding whether it should be returned. Crandall said I might take it, when I asked him, or nodded assent. I thought he did it in such a way, that he would rather I would not take it.

Coxe. The witness identifies this pamphlet, by an article which is copied, and is not original in this paper. It is from "a narrative of three months' residence in Jamaica," and may have been seen in twenty different publications; and also by another little article called "No force," which is to be found in no less than two of the others on the table; and this is

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evidence of identification of a paper of twenty pages that it is an exact copy of another, neither of which the witness has read.

C. T. Coote. I was present at the examination in the jail. I recollect that Mr. King pointed out some pamphlets with the hand writing on them, and when the District Attorney was about to offer evidence to prove that it was in Crandall's handwriting, he admitted it.

B. K. Morsell. I recollect that Mr. King distinctly stated that the writing was on the pamphlet when he got it. Crandall did not deny it, but said it was his handwriting. I do not recollect his saying it was put on a year before. If he said so, I don't recollect it. I recollect there was a large bundle of papers at the jail. I have not looked at them now, and did not then.

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Key asked witness, if he recollected any admission on the part of Dr. Crandall, that he brought them to this District.

Bradley raised the question whether it was competent to put in evidence of other libels than those of which publication was proved. Other people may have these papers, innocently. Members of Congress have them; I have had them, and have lent them. No man could show where he got them, if they came through the Post-Office, and every one upon whom they were innocently found, would be liable to indictment; and it was new law to him to suppose, that loaning a paper to an intimate friend to read, was a criminal publication.

Key contended, that when he could show a large quantity of such papers on hand, of a similar character to the one published, and could show subsequent admissions and declarations of the prisoner touching them, he could not see why he could not go on to give evidence of similar contemporaneous publications, upon the same subject, connected with the same libel.

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The Court, nem. con. , after consulting the authorities referred to, and Starkie on Evidence, Part 4, pp. 848 to 870, and the cases there cited, was of opinion, that the United States could not give in evidence to the jury for the purpose of proving the intent of the defendant in publishing the libel in the first count, any papers subsequently published by the defendant or found in his possession unpublished by him, which would be libels, and might be the substantive subject of public prosecution if published.

Key remarked that that would change the ground, for if the libels were never published, and possession was not publication, they could not be ground of a distinct prosecution; and was proceeding to give proof of the libels charged in the first, second, and third counts of the indictment.

The Court understood it had been decided that he could not, without evidence of publication.

Key went on to argue at length in favor of his proposition, and said he would contend upon authority that, if he has a printed libel, with the words read and publish endorsed on it, it is enough to charge him as the publisher. If a number are found in this manner, in his possession, endorsed, and if that is connected with his own acknowledgments that he had now but read, and distributed them, then, if the doctrine of presumption or of inference was to be allowed, it would certainly connect him with them, as the author, printer, or publisher; and he contended, that independent of other facts, the mere fact of having half a dozen with the endorsements, was sufficient to bring the publication home to him, and to put him to his defence to show how he came by them. He cited a number of authorities not material to mention here.

Coxe replied to the authorities cited, and contended that the possession was no offence, nor was the prisoner indicted for that; and the finding of a libel in one's possession, in his own handwriting is no offence, for every man has a right to put his thoughts on paper, if he does not exhibit them to others; but when a written libel was found in the hands of

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a third person, it was presumptive proof of publication sufficient to charge him, unless he could show how he came by it—if it was stolen, it was no offence in the writer. If one person gives a libel to another, it is presumed that it was done with bad intent. Here one libel only is shown to have been published; and the prosecutor wishes to bring other libels found in his possession as proofs of publication. The admissions referred to were not to be relied upon. The words spoken were at different times, upon different subjects, and no one witness under the excitement of the occasion could recollect what was said, or how it was said. Beside, the prisoner under such circumstances would be unable to guard his words. If such evidence was to be allowed, a respectable 14 representative from Virginia might be indicted, who told him he had reserved files of these papers and had lent them to his friends, and let them distribute them. He went on to say, that the pamphlets bore on their face the facts that they were written, printed, and published in New York; that the whole country had been flooded with them, sent through the Post-Office to thousands of respectable individuals; and because twenty copies should happen to be found in one's library, was he to be charged as the publisher? He contended, that the fact must be shown of each particular libel having been published, and the proof brought home to the traverser, before they could go to the jury, either as criminal of themselves, or to show the *quo animo* , with which the other was published.

J. Thurston said he concluded, that before the prosecutor could give evidence of other bad publications he must first show the actual publication, by the traverser, of the libels charged in the indictment. If you show that he published them, and that they have been in actual circulation, then you bring the proof up to the rule of law. This is one of these cases which has produced great excitement throughout a considerable portion of the United States: it has been one of the causes which led to a very alarming mob in this District, and is among those which put the constancy of Judges to the test. It behooves us, therefore, to deliberate well and to free our minds from all influences not derived from the pure fountains of law and justice. It is on such occasions that there is danger of the rules

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and principles of law being perverted in the minds of upright Judges, by the fear of either popular odium or violence. He then proceeded again to repeat and illustrate the law.

Some further conversation ensued, when,

Cranch, C. J., delivered the opinion of the Court, as annexed to the written statement of the District Attorney, as follows:

In the trial of this cause, the United States having proved by Henry King, a competent witness, that a certain written pamphlet, No. 2 of Anti-Slavery Reporter, Vol. I., was lent to him by the traverser, was allowed to read it to the jury.

The Attorney for the United States then offered, for the purpose of proving the malicious motive of the traverser in the said publication, that a large collection of similar printed books and pamphlets of the same tendency, and among them nine copies of the one given by the traverser to the witness, were found in his possession, many of which were endorsed in his own handwriting with the words "read and circulate;" but the Court held that they were not evidence for such purpose.

The Attorney for the United States then offered to prove the publication of the libels charged in the first, second, and third counts of the indictment, by proving that a large collection of libels, and among them several printed copies of those charged in those counts, with the words "read and circulate" thereon, in his handwriting, were found upon the traverser; that he undertook to account for their being in his possession, and gave untrue and contradictory accounts; that he acknowledged he had brought here those shown to him, being the same now in Court; and that they comprehended all he had brought here, except about a dozen, and that, prior to the traverser's arrest, sundry similar publications had been privately sent to various persons in this District, by some unknown person or persons in this District.

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Upon which proposition the Court, after hearing the arguments of counsel, delivered the following opinion:

The Court is of opinion, that the District Attorney may give evidence of 15 the publication, in this District, of any copies of the libels charged in the first and second counts of the indictment; that if he shall have given any evidence tending to show such a publication here, he will be permitted to prove that other copies of the same libels were found in possession of the defendant.

He may then give evidence that a certain number of papers and pamphlets were found in possession of the defendant, together with the copies of the libels charged, and of the publication of which in this District he shall have given evidence. But he will not be permitted to give in evidence to the jury, the contents of any of the papers other than those charged as libels in the indictment, unless such other papers have relation to the libels charged in the indictment, and would not in themselves be substantive grounds of prosecution.

He may then give evidence to the jury of any confessions or acknowledgments made by the defendant in relation to any of the matters charged in the indictment.

Thruston , J., differed with the majority and delivered the following opinion:

There are five counts in the indictment charging in various ways the publishing by the traverser of sundry libels, with intent to create sedition, and excite insurrection among the slaves and free blacks. The first count in the indictment charges the publication of a certain libel, not otherwise described or set out in the count than by selecting certain paragraphs in the supposed libellous pamphlet, and setting them out literally in the count.

To this count only, and to the libellous matter charged therein, has any evidence of publication been given. The Attorney for the United States has moved the court to be permitted to give in evidence to the jury other printed pamphlets of the same character and

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on the same subject, and which the traverser acknowledged to represent his sentiments as evidence of malice on the part of the traverser in the publication of the libel in the first count. The libel in the first count, being one of those which with the others now asked to be given in evidence, the traverser acknowledged contained his sentiments.

That is, that it is competent to prove malice in publication of one libel, by others found in the possession of the traverser on the same subject, of which no proof of publication has been offered.

The motion to admit the said alleged libellous pamphlets in evidence, has been supported by no precedent or adjudged case, but from analogies drawn from proceedings in other cases, and from the expediency or necessity of punishing the enormous crime of which the defendant stands accused—enormous we all admit the crime to be if substantiated—but which judges cannot punish but under the rules and principles of law;—enormous as the offence is, it is questionable whether from public considerations it is not better that the accused should escape punishment, than that the law should be perverted to obtain his conviction.

There being no *authority* cited, to sustain the motion of the Attorney of the United States, we have no other guide to enlighten and *direct* us, than the established principles and rules of law in criminal proceedings. I take it to be well settled, that in indictments for libels, publication is the *gist and essence* of the crime; that having in one's possession one or more seditious or libellous writings, whether written or printed, if their contents be not communicated or made known to one or more persons than the possessor, is not criminal in a legal point of law. It is *true* that Hawkins was cited to prove that having in one's possession a known published libel is *primâ facie* evidence of publication against such possessor; admitting this authority, it seems not to touch the case before us, unless, those libels were published within this district: they *purport* on the face of them to have been printed in New York, and there published so far as sending them abroad within that state from the printing office and putting them into the hands of others, amounts to a

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publication; but this is no publication within this District, and no evidence has been offered that the traverser ever distributed a single copy or imparted their contents to any person within this District, saving the one charged in the first count. Hawkins surely did not mean, that having a copy of a libel published in a foreign country in one's possession, is evidence of publication in another state or country where the possessor of such copy may be found. For example; a libel against the British government, printed and published in France would be no publication in England to charge a person found in England with one or more copies of such libel in his possession with the guilt of publishing such libel against the laws of England. It is true, in times of great excitement in England, when the rebellious principles of France were gaining ground and *endangering* the *very existence* of the government, the Scottish courts did condemn and send to Botany Bay Muir and Palmer, for having in their possession a printed copy of Thomas Paine's "Rights of Man." It is very long since I read the case, indeed shortly after we first obtained the information of their trial, and shortly indeed after the trial, but I have never heard the judgment of the court on their cases spoken of but with reprobation; I cannot remember the particulars of those cases, having never seen the book since I read it, now more than forty years ago; but I think in those cases, the evidence was, that the book had been reprinted and published in Great Britain. If so, that case is stronger than that of having a printed copy in possession of a libel published only in a foreign country, and so far, if such be the facts, it is sustained by the *dictum* in Hawkins—but this dictum, is not itself sustained, as far as I can judge from the authorities *cited* at the bar, from Hawkins himself, nor by any adjudged case. I think I may boldly assert then, that the *merely* having in possession a libel printed and published in a foreign country only, is not an indictable offence here, and no publication of the same libel here.

Let us then *examine* how far these alleged libels which although not subjects of criminal prosecution here, can be made use of to sustain the publication, or prove, or aid in proving, the criminal intent or malice in the publication of another libel charged in the first count, and of the publication of which some evidence has been offered to the jury. Now

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the libel in the first count, of which evidence of publication has been given to the jury, is of itself libellous, or is not: if it be libellous and published, the law *declares* the criminal intent from the libellous matter itself, and therefore requires no aid from other libellous writings to sustain it: if it be not libellous, it cannot be made so by showing other libellous writings of the traverser, of which he is not accused or charged in the indictment. I mean the libellous matter itself in the libel is, in the eye of the law, proof of criminal intent, if it be published, unless the traverser can rebut this inference of law by proving his innocence of any criminal intent, by some sufficient excuse, as that some person stole the copy from him and published it without his knowledge or consent. But the Attorney for the United States urged that these pamphlets, including the one charged in the first count, contained or expressed or coincided with his sentiments on the subject matter of them; and this was urged as a reason for admitting them in evidence. This in my view, amounts to nothing more than that he appropriated to himself and adopted the thoughts of others. What proof could this appropriation or adoption afford of a malicious intent in their publication? Every man has an unquestionable right to his own moral or religious sentiments: there is no crime in this: it would be criminal to restrain any man in this country in his own, or in adopting the moral or religious opinions of others, if he please: it is criminal only when he attempts to propagate them, and then only when they have a tendency to disturb the peace of society—to invade the general rights of property—and are most essentially criminal, if having a tendency to produce the dreadful results charged in the indictment. But bad as the tendency of these writings may be, and unquestionably are, if truly portrayed in the indictment, I know not how much less danger would result, if, led away by our feeling, we bend the rules and principles of law from expediency, or the supposed political necessity of convicting the accused. The present crisis may pass without leaving any dangerous consequences behind it. The good sense and virtue of the people, and the fear of punishment in transgressors, will check the progress of these alarming doctrines; but if we invade the panoply which the law has provided for the protection of the accused against arbitrary or vindictive judgments, we establish precedents, the evil consequences of which cannot be calculated.

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The criminal intent, then, does not consist in writing or possession of a Written or printed libel, but in the publishing it. It is not easy to conceive how the criminal intent of publishing one libel, can be proved by the having in possession other libels not published, any more than you would be permitted to prove a man guilty of stealing one horse, because you might prove that he had a propensity to horse stealing; but you would not be allowed to introduce such proof; the quo-animo with which a horse is taken is as necessary in an indictment for horse stealing, as for publishing a libel. Now as I observed before, if the matter of the pamphlet charged in the first count in the indictment is libellous, does not the acknowledgment of the traverser, that the sentiment in the several pamphlets, coincided with his own, embrace in it the sentiments in the pamphlet charged in the first count, and of which evidence has been offered of publication; if so, does not this libel of itself afford sufficient evidence of malice, without resorting to the matter of other pamphlets not charged, then why resort to them: the traverser was not apprized from this first count, that he was responsible for any libel or libellous matter except what was contained in the libel set out in said count. If you are permitted in order to prove malice in publishing the libel in the first count, by reading to the Jury the libellous matter of other alleged libels, what will be the consequence. The matter in those other libels may be of a more aggravated or inflammatory character than in that set out in the first count. Is it not evident if such be the case, that the jury may be influenced to convict the traverser, not by the matter of the libel with which he is charged, but from that of other libels, with which he is not charged: surely, if malice in the publication of a libel be an inference of law, that inference must be drawn only from the libel charged and published, not from other writings which are not libellous because not published. As I observed before, if the paper charged in the first count, be of itself libellous, the criminal intent of publication is to be *inferred* from the confession of the traverser that he approved of the sentiments contained in it. If such inference can be drawn from such confession, it can be as well sustained from the matter of this libel, as from any number of others, and there is no need to resort to them for such inference: if

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the matter of such paper be not libellous no number of other libels found in the traverser's possession, however coinciding with his own opinions can sustain the libel charged.

Again, if the matter of those pamphlets which the Attorney for the United States, has moved the court to be permitted to lay before the jury be libellous, may not the traverser be hereafter arraigned upon them, if proof 3 18 shall be had of their publication; this is possible, almost probable, if his zeal in the cause be so great as has been attempted to be proved; then might he not be convicted by their instrumentality in the present prosecution, and again, in a subsequent prosecution for publishing those very libels? I thought the court had decided this point in a former opinion in this case, where they said they could not be evidence, *if they were of themselves indictable writings*.

Again: If the proof of malice in the publication of the charged libel be not complete, can it be made so by the production of other pamphlets or libels not published? Is it an influence of law, that having such libels in the traverser's possession, furnishes any proof of malice in the publication of the charged libel? I question the legal logic of such an argument. It was almost as easy to publish, by distributing fifty pamphlets as one: now, if but one of fifty was given out, is it not as probable that he did not desire to publish them as that he did. Now, inference from facts or acts is matter of law, and I should hesitate to tell the jury that the traverser, having in his possession fifty other libels or any lesser or greater number which he might have published with the same ease as he published one, is proof of malice in publishing that one. An inference to be drawn from proved facts, or circumstances in law, is something like a corollary drawn from a previously demonstrated theorem, in mathematics. I wish it was as certain and clear. An inference deduced from a proved theorem in Geometry is unquestionable every body will agree to it; an inference drawn by law, from *previously* proved facts or circumstances, is dreadful at least: two discreet Judges may and often do disagree in regard to them. Do we not hear every day in this court, of the most wise and able Judges—of the venerable Hale himself— admonishing courts and juries not to lend too willing an ear to them, at least against circumstantial evidence which is the same thing. How many almost irresistible cases of inferences

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drawn from *pregnant* facts have been shown, in which time, proved the falacy of such inferences, and that many an innocent man, has been consigned to an ignominious death by circumstantial or (which is the same thing,) inferential evidence; and still so strong were the facts and circumstances in the very cases cited by them, when time proved the innocence of the accused, who had suffered the penalty of the law, that under the same circumstances, I should permit the same evidence to go to the jury. But in the case before the court, those admonitions are well worth considering. We are asked to permit certain pamphlets, said to be of similar libellous tendency and proved by the confession of the traverser to coincide with his opinions, as the one charged in the indictment, and of the publication of which, evidence has been offered to the jury, to be laid before and read to the jury, although such pamphlets were never out of the possession of the traverser, nor shown to any one, to prove malice in the traverser, in the publication of another pamphlet charged to have been published by him, in the first count in the indictment. I do not distinctly see the legal inference of malice in having in his possession those unpublished pamphlets; he could have published them, if this malice was in his heart why did he not? It is not in evidence that when he permitted one of those pamphlets to be taken from his counter and read by Mr. King, that he did it with reluctance, and that he was warned of the danger of bringing such writings so far South? Is it unreasonable to suppose that he was deterred by the warning? Taken then the whole evidence together, although it proved great indiscretion in the traverser, and great guilt had he propagated his writings—and that he would have deserved the most condign punishment had he had the temerity to have 19 published them—yet, if I am to take the whole of the testimony in the case, I should be compelled to say, that in withholding the other pamphlets from the view of others, or of any other, he was influenced by the counsel he had received, and was afraid to publish them; and that, under the circumstances in which he permitted the first pamphlet to be taken from his counter and published, if such permission be a publication, that he then was aware of the danger he was in, and that under such circumstances the having in his possession other pamphlets of a similar character, (if the publication by permitting the pamphlets charged in the first count to be taken from his counter and read by Mr. King, be

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not taking the contents of the pamphlet into view of itself a malicious publication), it cannot be made so by having other pamphlets of similar tendency in his possession, which he did not publish nor attempt to publish.

It was *contended* for among the reasons assigned by the Attorney for the United States for the admission of those pamphlets in evidence to the jury, that some three or four of them were *endorsed* with the words "read and circulate," in the hand-writing of the traverser, and this was evidence of malice, in the publication of the pamphlet charged in the first count, and of which evidence of publication has been offered to the jury; but this pamphlet last spoken of, had also the same words written on it: whatever evidence of malice may be inferred from those words, is *furnished* by the said pamphlet itself, and therefore it is not necessary to resort to other sources for such evidence. It is true that a *multiplication* of the same inscriptions on other pamphlets, may, and do manifest greater zeal, and more intense interest in the subject matter of the writings, and indicate an intention on the part of the writer of such inscriptions to publish them. But an intention to publish is no publication. The malice which the law denounces is in the publication, not in the writing or composition. A man may express his thoughts or opinions in writing with impunity, and is as innocent in the eye of the law, provided he keep such writings or compositions locked up from the public eye, as if they were locked up in his own mind. Is not an indication or *manifestation* of an intention to publish certain writings or printed compositions, and the withholding the *execution* of such intention as strong evidence of change of purpose from fear of the consequences or for other reasons, as of malice in the publication of one of them in the way and under the circumstances in which the one charged to have been published in the first count, was published? It is very clear, it seems to me, that if there were no other evidence of any other publication of any of the pamphlets in question, than the inscription on the cover, of "read this and circulate," that the indictment could not be sustained, because such inscriptions of the pamphlets are never shown to any other person, is, in the eye of the law, harmless. If then we are asked to admit such inscriptions on pamphlets never shown to, or seen by any other within this District, because there is evidence that

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one such pamphlet was permitted to be seen and partly read by another, must we not look at the evidence which proves such *exhibition* of such pamphlet, and *connect* that with such inscriptions on other pamphlets not published, to see how far such inscriptions go to fortify and strengthen the evidence of malice as to the published pamphlet? in other words, to see what legal inference of additional evidence such inscriptions afford? If this were a case of ordinary importance, I should say, without much hesitation, that they afforded no such inference. It is for the jury to draw inferences of guilt or malice from circumstances; they are fully competent to do so in the present case from the evidence now before them; but is often, and almost always, a nice point for a court to instruct a jury, from what circumstances or *facts* inferences of guilt or malice may be drawn. It is saying, Gentlemen of the Jury, *such and such* a circumstance, if proved to your satisfaction, is evidence from which you may and ought to find against the traverser. It satisfies our mind, and ought to satisfy yours. But *juries* ought and will judge for themselves in criminal cases, and I have always thought it a delicate matter in criminal cases to give such *instructions to juries*. It is true we are not asked to give an *instruction*, but we are asked to permit evidence to go to the jury, which, if allowed, carries with it the opinion of the Court that such evidence affords inference of malice. I must see such inference partly clear myself before I give my sanction to the jury to draw such themselves. It is true that the law denounces any published writing having a tendency to produce a breach of the peace, or insurrection, or to jeopardize the general rights of property, whether the intent of the writer was wicked or innocent, as libellous; the writing being of a libellous character is of *itself* evidence of malice in the publication, and it would be no excuse for the publisher to say, I meant no harm—I thought I was doing good. In the eye of the law he is guilty as if his intention was really wicked; and this is called implied malice, in the absence of any other proof of malice, than what is afforded by the internal evidence of the writing itself. Now the object of the motion to lay before the jury other libellous papers, can be for no other purpose than to prove express malice; for the published libel charged in the first count, if it contain libellous matter and is as published, is, of itself, sufficient proof of implied malice; and if it be not libellous, no other libellous writing can be introduced to make it so; then, if it be libellous

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itself, it implies malice, and if other similar writing be introduced to prove malice, what does it amount to but proving the implied malice of one libel by the implied malice of other libels; or if it be said that some evidence of express malice has been laid before the jury, can you make this evidence more strong or clear, by evidence of implied malice contained in other similar writings not published. Upon the whole, I do not distinctly see, under all the circumstances of this case, how the unpublished writings can be admitted to prove from the implied malice to be gathered from them, if they had been published, the implied malice in the libel charged and averred to have been published, or how such evidence of implied malice in them can be brought to prove express malice in the publication of the charged libel in the first count. I am against the motion.*

* According to the decision of the majority of the Court, the Attorney for the United States went on to give in evidence of the possession of other publication.

Robertson testified that he found a number of pamphlets on Dr. Crandall in Georgetown, in the place where he kept his office. I don't recollect how many there were in his office—there were a number at his lodgings in a trunk. After I told him the charge, he denied distributing any; but that he had them he did not deny. He said he had been in the habit of taking the *Emancipator*, but they had stopped that, and he had taken these in its place; and they were sent on to him from New York. To the best of my recollection, he said they came to him in a box by water from New York, and not by mail, I tied them up in a handkerchief, and brought them to the jail, where I left Crandall. I was afraid, when I got in the hack, of some trouble, and proposed to Mr. Jeffers, that it was best to take back streets, and go to the jail, and deposit him that night, for fear he might be wrested from us and hurt. I offered to take him before a magistrate, if he chose. It was his wish to be taken out of the way—to go to jail. Before we left the office there was a considerable 21 collection, and I was glad to get him off as quick as we could, for fear he would suffer some injury there. I was not mistaken, for a considerable number of men were waiting to meet me somewhere on the Avenue.

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Cross-examined by Bradley. I had some conversation with Dr. Crandall, partly at his office, and partly on the way. I went to his lodgings, and found Emancipators at his lodgings. He said he had given up the Emancipator, and had taken these pamphlets in place of it. There were the same kind of pamphlets at his house and at his office. I don't think we offered to take him before a magistrate in Georgetown. I told Dr. Crandall my fears were considerably up for his safety. I was afraid they would waylay us, and I proposed, for his safety, that he should go to jail that night. He appeared to have no concealment, but gave us free access to search. We found among the parcels of papers a number of Telegraphs, and a great many newspapers; some from Baltimore, New York, and Boston. He showed us the trunk, and opened it, and showed us the pamphlets. I can't say whether they were in an envelope of brown paper; I think they were open. I can't recollect at this time whether there was an envelope under them in the trunk; perhaps they might have been tied in a bundle with a string, but I can't recollect. We found others there—the same pamphlets that are in Court. There were some letters; but I don't recollect whether we brought away the letters or not—we brought a great many papers. We found at his office a great many plants, but I don't know what kind of papers they were put up in. I don't recollect as any were in newspapers—I can't say positively, but think they were in something similar to pasteboard. When I first saw him, I asked if this was Dr. Crandall? He said yes. I then told him my business, and showed him the warrant. He did not say immediately that he had abolition papers. After we found them, he said they were sent on from New York. He said he had been in the habit of taking the Emancipator, but these were sent instead of it. He said he had not distributed any. This was about the 10th of August.

Jeffers recollects the pamphlets having the endorsement: he saw some of that sort in Crandall's office. I was there at the time they were found; and went into the office with Robertson. Robertson told him the object,—I made the observation that we wanted all his incendiary pamphlets. The Emancipators were mentioned also. I found the pamphlets on looking into a large box—the cover was off, and the open side of the box was turned down against the wall. These pamphlets lay in a corner. We then went up to his lodgings,

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and found all, except the large pamphlets, at his lodgings. I can't recollect precisely how many there were in the box. They were laid nicely in one corner—I don't think there was any envelope—some were new—nearly all were new that we found in the trunk. It is so long, that my recollection has failed me in some points. Crandall said they had stopped the *Emancipator* and sent these pamphlets instead of it. I think he made that remark in the hack, on the way to the jail.

Key. Did he say they were sent here by somebody else before he came?

Witness. I think he said they were sent round in a vessel in a box, to the best of my recollection.

Coxe. Was that said in answer to a question?

Witness. I think I might have asked him how he came by them. I think he meant all were sent round. I was asking him what he was doing with so many of them. He said he got them for information.—I do not recollect that he said any thing else. We proposed to go to his lodgings. I asked him if he had any more—he said he had a few more. We found the bundle 22 of papers on the table in the office. He had botanical specimens—I don't recollect as any were in newspapers. He remarked that they had stopped sending weekly and sent monthly. I asked what he was doing with so many of the same numbers at once. He said they were sent in the box. I asked what he wanted with them; he said to derive information. I had opened them and found they were couched in such language as I did not like; and I asked him how he could derive much information from such books as those. That was the amount of the conversation at that time.

Jacob Oyster. Sometime in the summer I knew Dr. Crandall in Georgetown. I cannot say how long he was in the shop. He had a box in it some time before he occupied it himself. After he came here he took sick, and did not come for some time. He rented the shop of me. When he first came, he told me he was a doctor, and wanted it for a shop. After he got well, he said he was going to lecture on botany in the city; probably at the college, and at

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Alexandria. I was in, when he said he ought to open the box—it was a coopered box. He said his instruments had been shut up so long, he did not know but they had got rusted, and the books mouldy. He opened the box, and I assisted him in taking out the things. During this time Mr. King came in, and picked up a pamphlet, and said he would like to have the reading of it. Dr. Crandall told him he might. I saw two or three of that sort, not more. When Mr. King saw it he told him, it would not answer here; it was too far south. Some day or two afterwards, I asked Mr. King what he thought of the pamphlet. He did not seem to like it. Mr. King asked me if I had seen the endorsement. I told him no. He showed it to me, “read and circulate.” I didn't see any writing on the others. I saw it on that. I had a few words of conversation with Dr. Crandall on the subject of slavery. On the first market-day after the news came of the attempt to murder Mrs. Thornton, I found him in the yard, and asked him if he had heard the news. He said no. I then told him, and said we had nobody to blame but the New Yorkers and their aid-de-camps; and I told him the boy said, or they said, he had been excited by these New-York publications. He turned round and said, “ I do not approve of putting them into circulation; the excitement is too high already.” I did not know of any that he had put in circulation.

Cross-examined. I was in his shop almost every day. He had books and papers and surgical instruments in the box. The newspapers and magazines were put in between the books, as if for packing. He did not tell when he got them.—I never asked him. I helped unpack them: the magazines were thrown out carelessly—then were laid aside carefully. It was a large store box, and the only one there was. It came in a cart to the shop. I never saw more than three or four people, Henry King, Dr. King, and Mr. Cruikshank, in the shop. I don't recollect any other. I don't recollect seeing any blacks or slaves there. Dr. Crandall was in the habit of going out into the fields with a tin box after flowers, and had just returned that evening he was arrested. The box was full of flowers, and two or three weeks afterwards they had rotted and I emptied them out. He used a great many newspapers, and spread them out in the yard to dry, after pressing plants in them. I thought he conducted himself very well; and so far as I was acquainted, I thought him a

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correct man in all his habits. There were probably a dozen different kinds of newspapers, from Boston, New York and Washington. There were some of the Telegraph; and some Baltimore papers as old as 1832, or 1833.

Key then counted out and stated the number of the pamphlets and papers taken by the officers from the prisoner, amounting in the whole to ninety-two.

William Robinson. I have not seen the pamphlets in Court. Give me one 23 with “read and circulate” on it. I never saw the prisoner write; but after I saw the pamphlet Mr. King had, I went to Mr. Cruikshanks, where there was a prospectus in his handwriting, and compared them.

The witness was stopped, and told that a comparison of handwriting could not be given in evidence.

He then said, I have received similar publications; but don't know where they came from. I sent them back to New York with my remarks upon them—I returned them to the publishers. I can't tell how they came. They were not post-marked, and I paid no postage. I heard Crandall admit the writing to be his.

Charles Gordon. I received one pamphlet a very short time before Crandall was arrested. I sent it to New York to the agent with my remarks. Perhaps it was in June or July—a very short time before the arrest. I am employed in the War Department. The whole building was flooded with them. I received none after I sent that one back—or not more than one. Some others, he believed, received them after that time.

Robertson. We found some pamphlets at the shop and some at the house.

Key. What kind did you find at the office, and what at the house?

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Coxe objected. The Court has decided that you cannot even give the titles, till you prove the publication.

Key. Crandall says they were sent by water in the box. I want to know what kind was sent in the box.

Cranch , C. J. I can see no objection.

Robertson. To the best of my recollection, we found the larger kind (the Anti-Slavery Reporters) in the office. I don't recollect any others at the office, except the newspapers. We found the smaller kind and the books in his trunk at his lodgings.

To Bradley. I do not wish to be understood that Crandall said all the papers came in the box. I don't recollect whether he made the remark as his office, or at his lodgings; I think it was in the hack. The principal conversation was with Mr. Jeffers. I recollect checking him, and putting him on his guard that we might be witnesses. I did not wish him to convict himself.

Bradley. That was all right enough, if he had any thing to conceal.

Jacob Oyster called again. Mr. King called my attention to the writing, and asked if I had seen it. It was a few days after he got it. I can't say as it was on when he got it. Mr. King did not say it was on when he got it. I afterwards saw one in Dr. Crandall's shop, and took it up and read a part of it. I then went over to Dr. Linthicum's shop and asked Mr. King what he thought of it. He did not seem to approve of it. I didn't notice any writing on that I saw in the shop. The box was opened first in the front room, and afterwards removed to the back room. Dr. Crandall was there when I looked at the pamphlet, but he was busily engaged in reading, and I do not know as he saw me take it up. He knew I was in the office, but I don't know as he noticed me at all. I said nothing, but went out.

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Key here proposed to read a statement of the evidence already put in, with a view to ascertain what might be put in hereafter.

Bradley objected to such an extraordinary mode of proceeding. It was putting in a partial, one-sided statement, and was either intended to affect the jury improperly, or to ask advice of the Court, what course he might pursue in the prosecution.

The Court said, it was immaterial whether he gave a verbal or written statement, or whether he made his motion first and gave the statement in support of it; or the contrary.

Key postponed the reading and went on to introduce further testimony.

B. K. Morsell was one of the examining magistrates in the jail. He recollected that Mr. King said the pamphlet had on the words "read and circulate," in the presence of Dr. Crandall. Dr. Crandall, in the course of the examination, acknowledged the handwriting to be his. He said he didn't pretend to deny it. He said the papers were given him as he was about to take passage in the boat. There was a large bundle brought to the jail. I can't say as these are the same. They were left with the jailer. My recollection is, he said they were given to him at the time he was about to go on the boat, or after he was on the boat—I don't recollect which—at New York. He said they were sent to him, or brought to him—I don't recollect the particular expression. I understood he was on his way here. He said they were all here, except twelve or thirteen which he brought on.

Bradley. Was not a distinction drawn between those that had the endorsements on, and those that were new?

Answer. They appeared to be all together.

Cross-examined. I don't recollect any particular distinction. I understood him as speaking of all the pamphlets together. I think he made the remark that some had been in his possession a long time; that was all the distinction drawn. It was proved he had been

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here some months; it might have been weeks—I can't recollect. I understood it as a contradiction, to say that they had been given to him in New York, and afterwards to say some of them had been in his possession a long time. I looked at several of them, and saw some were of older dates than others. I can't recollect distinctly, but there was considerable interval between the dates. I can't recollect any distinction, except that some were of old dates and some new. We did not take the examination in writing; we tried, but found we could not do it. There was much commotion outside the jail; but I didn't see any considerable alarm in the jail. The prisoner seemed much agitated, which I didn't think wonderful.

To a Juror. I don't recollect that Crandall said any thing about the time when the endorsements were put on.

Key. That was an admission of mine. I admitted that he said the endorsements were put on some time before, because I distinctly remembered it.

To Bradley. I don't remember Crandall's producing a written paper at the examination. I think it likely he did. There were three magistrates sitting—he might have given it to one of the others.

Bradley said he should like to have that paper produced. It was strange what had become of it.

C. T. Coote attended at the examination at the jail. Mr. King was examined; and I understood him to say, that the words were on when he got the pamphlet from Dr. Crandall, "please to read and circulate." The papers were then before the magistrates; and he stated he had received them, just as he was leaving New York going down to the boat. It was distinctly stated that the endorsements were made some time before.

To a Juror. I have no recollection as to the time, but it was some time before.

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To Key. He said they were put in his possession as he was going down on board the steamboat, at New York. I have no recollection that he said he came direct to Washington. My impression was, that he had been detained somewhere on the road, and in the interval had written the words 25 upon them. I did not think what he said a contradiction. Dr. Crandall admitted the words were in his handwriting; but he said they were put on some time before. That statement he referred to some interval, and did not know whether that was twelve or eighteen months. He said these were all he received except about a dozen. He didn't say where they were now,—whether he had distributed them or not. I didn't understand that the number had been diminished since he came here; but that these were all that had been brought from New York, except about a dozen. My impression was that these were all he had brought to this District; except the one he had given to Mr. King. The one to King had been testified about, and Crandall did not particularly except it.

Cross-examined. I recollect he said he had been a subscriber to certain papers; and on my pointing to the dates of some of them, he said he had received them a long time before. I recollect that when I or one of the others asked him if he knew the nature of the pamphlets in New York, he said he supposed they were of the same description as he had been in the habit of subscribing for. When he was asked why he was put in possession of so many numbers of the same work—whether it was not with a view to their circulation, and that he might be an efficient agent: he said it might be so. Dr. Crandall didn't seem to intimate any knowledge or acceptance of such an appointment.

The Court asked if he intimated that they were given him with his approbation.

Answer. He admitted that they contained his sentiments.

Bradley insisted upon an answer to the question of the Court.

Answer. I did not understand that he approved of the appointment or considered himself an agent.

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Bradley. Was a word said about the contents of the papers? Did he say he had looked at them?

Answer. There was nothing said about the papers. They were all open; but there was not a word said about the contents. I recollect there was a paper read by Crandall at the examination. I don't know what became of it. It is my impression Crandall kept it; I was surprised to find none of the magistrates had it. I don't recollect a word said about his going to a store in New York. He did not say that he knew the contents of the papers, but supposed they were similar to such as he had taken. I think he read a paper, which contained a statement on the subject; and I understand it was written while he was in jail. I have no recollection of his saying that he was a member of an Abolition Society, or of an Emancipation Society. Something was said about the endorsements having been on two years. I showed him one that had not been published two years, to show that it could not have been on so long.

Bradley remarked, that it had been published two years, within fifteen days.

Morsell, again. He said he supposed they contained his sentiments. When he was asked the question whether he knew, what they were when he got them, he said he supposed they contained sentiments of the same kind as he had taken some time before. I think those were his very words. The pamphlets were then before us and the question referred to them. He said he didn't deny, that he was an anti-slavery man—that he preferred those principles; but when he came here he found himself too far South to circulate the papers—and they were all there but ten or a dozen. There was nothing from which I could infer that he stopped on the road—others might; if he said so—I didn't hear it. There was considerable confusion in the jail, and 4 26 a great many people in it, and he might have said a great many things I did not hear. I had no knowledge of any difference between the pamphlets at the office and those at the house. I thought they were all brought on together. I think, now I recollect, that Crandall handed a paper, which he tried to read and could not. I think it was handed back to him. He began reading, but could not get through with it. I

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suppose it was written under considerable agitation. I don't recollect how long he had been here; nor how long he had been in New York.

Jeffers. Since it has been mentioned, I recollect there was a paper which he tried to read, but could not get through it, he was so agitated. I think I recollect that Dr. Crandall rolled it up, and put it in his pocket. He said the pamphlets were similar to works he had been a subscriber for, and he received them in place of the *Emancipator*. This was said in the hack. He was much agitated and I thought he was indiscreet in declaring his sentiments so openly. The only pamphlets found in the office were the bundle of large ones; the rest, all with the covers, were found in his trunk. I did not find any with the words "read and circulate" in the trunk. I found some of the same shape as those (held up by Key) in the shop, with the endorsement. In the hack, I asked him what he was doing with so many, all of the same number; he said he got them for information monthly. I asked him what he wanted of so many of the same number for information. He made no reply. The conversation was in the hack after we got the whole bundle of papers. It did not refer only to the *Emancipator* and the large pamphlets found in the office. He might have taken it so; but I did not so state it.

To Coxe. I stated that I found in the shop a considerable number of *Emancipators*, mixed with *Telegraphs* and other papers. I saw books and pamphlets on the table, but did not look at their titles. The box was open and turned up, the open side against the wall. It was there I found the pamphlets; the *Emancipators* were on the table; and that is all we found at the office. The way I came to think about his having so many, was that we found several together, of the same kind, laying close, as if they had never been taken apart or opened. They seemed perfectly new. The small ones in one pile by themselves; the large ones in another pile by themselves, pressed together—both appeared quite new—in one end of the trunk. There was some conversation on the subject of slavery in the hack. I think he first said, he didn't mean to deny his principles. I think I asked him if colonization-

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would not be the better plan? He said no. He was in favor of abolition, or the immediate emancipation of slaves.

Bradley. I will ask you if he did not say immediate preparation for emancipation?

Witness. I don't recollect—I can't say that he dida't—I wouldn't say. He made the same statement in the jail.

Morsell. He said he was an abolitionist.

To Bradley. I understood that he was an abolitionist. I so inferred from what he said. He didn't say he was for immediate preparation. He said he was an anti-slavery man. He didn't say any thing about preparation.

Robertson. My recollection is rather indistinct about the paper. I recollect there was one produced, but his agitation was so great he could not get through with it. Some one offered to read it for him, but whether it was read or not, I cannot say. My impression is, it was given back to him.

To Bradley. He was greatly agitated. There was a great collection outside the jail, which naturally caused a great excitement within.

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To a Juror. He was put in jail the day before the examination: he was arrested on the 10th, and examined on the 11th.

William Robinson , again. I have no recollection of what became of the pamphlet I saw in Dr. Linthicum's shop. The witness then testified that he saw the paper accidentally in the shop, put up edgeways, between some bottles, and asked Mr. King where he got it; he told him from Dr. Crandall; and this was four or five days before the arrest.

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Mr. Redden said he had seen the pamphlet in Linthicum's shop, with the words "read and circulate;" but he could not say it was the same with those in Court.

Jeffers. I think the question was asked before the magistrates in the jail, whether he came on directly; and he said, these are all the pamphlets I brought here, except about a dozen. Those are the words to the best of my knowledge. Robertson told him he had such a warrant, and read, or stated the substance of it. I think the first words I said were, we want all the abolition papers and abolition pamphlets you have got. We looked over the papers and picked out the Emancipators. I then asked for the pamphlets, and he turned over the box, and I stood near and saw them and took them out myself. The pamphlets were all found in the box. The Emancipators were laying on the table. When he said he was for immediate emancipation, I remarked that it would be attended with direful consequences. We should all be murdered and have our throats cut, or something to that effect. I then stated, if that should be effected, the next thing they would be for, would be amalgamation.

Thruston , J., observed, that would be after their throats were cut.

Witness. Crandall's reply was, well, let the laws operate in that case.

Robertson. There was a conversation of the kind mentioned by Mr. Jeffers in the hack. I believe the question put was, "Don't you think it very dangerous, at the present time, to set all the slaves free?" I don't recollect the distinct words of the answer, as related by Mr. Jeffers, but I inferred—[The witness was stopped and told to state facts, and not his inferences.] My impression was that he was in favor of it, let the consequences be what they would. Mr. Jeffers also asked him, if he did not think it would be jeopardizing the lives of the white people, or have a tendency to amalgamation? He didn't raise any objection to that. I inferred that he thought the slaves ought to be all free, and had as much right to be free as we had. He did not deny that these were his sentiments. About that time, I cautioned him not to say too much, or to speak too freely; that we might be witnesses against him. I don't recollect what he said then.

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Bradley. Was not the conversation a general discussion upon the principles of the Anti-Slavery Society, and their effects; and was not what he said, in reference to the views of abolitionists, rather than his own individual opinion?

Witness. I don't know; it might have been so understood; but I had ascertained before what his principles were.

Key here offered to prove, that, at about the time of the publication of the libel to King, and about the time of Crandall's arrest, similar libels were distributed throughout the District, sent here from New York, nobody knows by whom, and sent round nobody knew how, to many persons in the District.

After considerable argument,

Cranch , C. J., delivered the opinion of the Court, that evidence might be given of known published libels, found in the traverser's possession; [i. e., 28 evidence might be given, that Crandall had in his possession copies which had been published in the District by somebody.]

Thruston dissented from the majority of the Court, for the reasons as given in his opinion, page 15.

Key then offered several Emancipators to be read to the Jury, as papers Crandall had subscribed for, which, after some discussion, were admitted; and long articles were read by the counsel on both sides. The object on the part of the prosecution being to show the intent with which the other libels were published.

Key then offered the libels charged in the third count, as pictorial libels; and argument was had *first* , whether the count was not so defective as to preclude all evidence upon it; and *second* , whether the libellous pictures were properly described.

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The Court, (*Judge Morsell, contra*) refused to say that the third count was so defective that they would not permit the United States to give evidence in support of it; but without prejudice to a motion in arrest of judgment upon that count, if the verdict should be against the defendant.

On the part of the defendant, it was then urged, that the papers found upon the defendant had been illegally seized under pretence of an unlawful warrant commanding the officer to whom it was directed to arrest the defendant, and to search for and seize any incendiary pamphlets or papers which should be found in the defendant's possession, and bring them with the defendant before the justices who issued the warrant, and that, therefore, the pamphlets and papers so found, are not admissible in evidence to the jury.

Key contended, that if the warrant was illegal, (which he did not admit,) yet the fact, that the libels were found upon him, may be given in evidence, in the same manner as you may, upon an indictment for counterfeiting coin, prove that the defendant was found in the possession of the instruments and implements of coining, or upon an indictment for burglary, give evidence of false keys, &c.

The Court was of opinion, that the seizure of the papers, even if illegal will not prevent the United States from giving in evidence to the jury, the fact that the defendant had in his possession some of the libels charged in the indictment, and of the publication of which, in this District, evidence shall have been given.

The Attorney of the United States having offered evidence tending to show that the libel charged in the second count, and one of those charged in the third count, had been published in this county, offered to prove that printed copies of the same were found in the possession of the defendant at the time of his arrest, with the words, “ *read and circulate* ,” written by the defendant, upon some of them.

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The *Counsel for the defendant* contended that if, in any case, the possession of a copy of a libel is evidence of a publication by the possessor, it must be a *written* copy of a *known* published libel. *Starkie on Ev., part 4, p. 871, 875, 849; 3 Chitty , 875.*

The Court permitted the United States to give evidence to the jury, that the defendant was found in possession of printed copies of the libel charged in the second count, and of one of those charged in the third count, of the publication of which, in this District, by some one, some evidence had been given.

The Attorney for the United States then offered in evidence the pamphlets containing the pictures which were charged as libellous in the third count.

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The Court permitted the pictures to be given in evidence, and shown to the jury, but refused to suffer the pamphlets attached to the pictures to be read to the jury by the Attorney of the United States, as no part but the pictures were charged as libels in that count.

Testimony was given to show that the papers and pamphlets in Court were the same with those found on the prisoner, and Mr. Key, Mr. Ball, and Mr. McNamee, were sworn, as to their having been in their custody from the time of the examination in the jail till they were produced in Court.

It also appeared, that on the first day they were produced in Court, they were taken about the court-room, and examined by many persons, and that one pamphlet, belonging to Mr. Bradley, and not found in the traverser's possession, was found among them; and Mr. Bradley testified, that two other similar pamphlets, with the words "read and circulate," had been taken from his possession, which had been received by him from New York, had been taken away, he did not know when, or by whom.

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[*Key* here went on to prove, under the foregoing decision of the Court, that similar libels to those found in the traverser's possession, were published in the District.]

Charles Gordon and James A. Kennedy , clerks in the Post Office, testified that pamphlets similar to one found in possession of the prisoner, were sent on from New York in July, just before Crandall's arrest, to the amount of a bushel and a half, some of which were sent out and returned to the Post Office, and many of which were not delivered at all, but remain there now; that they could not have been put into the office at Georgetown or Washington without their detecting it.

Mr. Fendall also proved that the *Emancipator*, and other abolition papers published by the Anti-Slavery Society, were regularly sent to Washington, in exchange for the *African Repository*, published by the Colonization Society, and that they were read by many persons, sometimes loaned out of the office, and even kept on file to be used by any members of the society.

Gen. Hunter and *Mr. Giddings* testified to having received, and having known of others receiving similar papers, about the time of Crandall's arrest.

The Court decided, that in order to give these publications in evidence, proof of publication must be brought home to the defendant; and that the proof thus far showing that they were printed and published in New York, and sent on here while the prisoner was here, was of itself evidence that he was not the publisher, unless he could be connected with the Anti-Slavery Society as an agent.

Key then offered to examine as a witness, one John Colclazer, a man born of a white woman.

The *Counsel for the defendant* objected;

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But *the Court* , (*Judge Thruston, contra*) over-ruled the objection, and the witness was sworn and examined.

He testified to certain conversations he had with Crandall in the jail, he having been confined in the same cell with him: after he had made some statements himself of what he pretended to know, Crandall replied, then the female slaves make prostitutes of themselves, and whoremasters of their owners.

Mr. Tippet , (a keeper at the jail) said he was present on one occasion in the jail, when Dr. Crandall had a conversation, the result of which was, that in talking with a gentleman who called to see him, he avowed his approval of the circulation of abolition papers at the north, but said it would not do at 30 the south, for the people would not bear it; and he stated, as the witness inferred, that it was the object of abolitionists to get the south to combine with the north to emancipate the slaves.

Here the case was closed on the part of the government.

Mr. Bradley then opened the case.

He read part of a speech of F. S. Key in the colonization meeting of 1828. Eleventh Annual Report, 1828, page 20.

After reading this, he was asked by the Chief Justice what he was reading from. To which Mr. Bradley answered, "From a speech made by the District Attorney at a colonization meeting."

To which the Chief Justice replied, that he had thought that Mr. Bradley was reading from some of the libels that had been given in evidence.

He added that he had not heard what was read very distinctly.

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On Mr. Bradley's concluding his opening,

The *District Attorney* stated that he thought a most unusual course had been pursued on this occasion; that the Court had made a remark on the passage read by Mr. Bradley calculated injuriously to affect the prosecution; that under these circumstances, he claimed the right to reply to it, and to read passages in the speech following those read by Mr. Bradley, to show, in opposition to the Court's remark, that there was nothing in the extract read that could be thought so like the libels given in evidence that the Court could suppose it to be read from them.

Judge Thruston remarked, that he thought it was one of the pamphlets read in evidence, and that it was certainly very innocent to think so.

The *District Attorney* stated, that he would admit; but he still thought it unusual, and calculated to prejudice the case before the jury to state it. The Chief Justice then stated that his impression, under which he had made the remark, was that Mr. Bradley was reading from some of the pamphlets from which the District Attorney had read passages, other passages, which he was offering as exculpating him from the charges.

Mr. Bradley then remarked, that he read the passage with no other design than to show, in better language than he could state it, that there was a great excitement upon the subject of slavery at the north.

Mr. Bradley went on to state in brief what he should prove, and to make some points of law and evidence, which are repeated and commented on more fully in the summing up of the case. He then went on to call the witnesses for the defence.

B. Hallowell affirmed. I knew Crandall about a year ago. I wished to engage a person to deliver lectures on botany at my institution at Alexandria, and had written to a gentleman at the north upon the subject. Some time after, Dr. Crandall came with letters of introduction, showing that he was a Christian, a scientific man, and a gentleman. I told him I would give

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him one hundred dollars a year, and I believed he could make up a sufficient class besides to add to his compensation. Crandall said he did not know as it would be worth while to move his family. He went away to take it into consideration, and finally concluded to accept, as he could get scholars in Alexandria and Georgetown. When he left Alexandria for the north, he was gone a longer time than I expected, and when he returned I thought he would not have time to finish his course before the vacation; and I proposed to him to defer it till after the vacation. He agreed to it; though I should have felt committed to allow him to go on, if he had chosen. He had a view, not merely to a class for that summer, but for every season while he should remain in the District. He did not commence the course, but was arrested before he 31 began. I do not recollect exactly when he came. It was not earlier than May; it was the last of May or the first of June. He brought letters of high character from persons of good standing.

Cross-examined by Key. He spoke of bringing his family; and said he did not know as he could receive sufficient remuneration. He said he should have to return to New York to move, and he didn't know as he should find sufficient inducement to bring his family and reside in the District. (Upon its being mentioned that he had no family.) I did not know as he had a family; he did not say so; but when he spoke of moving here, I inferred that he had. He said he found that besides my offer, and a class in Alexandria, he could also make up one in Georgetown, and then he said he would come and make a permanent location in the District.

General Fowler. I know Dr. Crandall. I am fond of hunting after wild flowers, and am fond of cultivating plants. Soon after Dr. Crandall came here, he was introduced to me as a person acquainted with botany. I proposed to him to take excursions for the purpose of obtaining flowers. We went six, eight, or ten times together. Our only business was to hunt for plants, and our conversations were confined to that subject. I had no reason to suppose that he had any incendiary pamphlets with him. His conduct was that of a gentleman. I never knew him speak with any negro. He always took a tin case, to preserve the specimens we collected; but he never had any pamphlets or papers with him to my

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knowledge; there were never any in the case. His acquaintance with botany went so far beyond mine, that I could not tell how much he knew. Our intercourse was altogether confined to those excursions; and we had no conversation on the subject of slavery. His office was near where I live—one or two squares off.

Jared Stone. I have known Dr. Crandall seven years. He has lived three years in my house, and ate at my table at Peekskill, New York. I knew him till April 11th, 1835, when I left there. He was a professor of physic, and obtained a good reputation in that part of the country as a physician and surgeon. His reputation was unblemished. I knew him to have temperance papers; he was active in that cause. I never knew him to have any abolition papers, nor to say a word upon the subject.

By Bradley. Are you an abolitionist? I am opposed, if any thing.

Cross-examined. I have not known a Rev. Phineas Crandall of Peekskill—never knew such a man there.

To Bradley. I have never known Phineas Crandall of Sandy Hill.

[*Mr. Key's* object was to put in evidence, that the prisoner was a member of the Anti-Slavery Society, because the name Phineas Crandall, of Peekskill, was in the list of managers of the A. S. S., and published in the Anti-Slavery Reporter. *Mr. Bradley* put in the deposition of the two secretaries of that society to the effect, that the mistake was in the name of the place of residence, which should have been printed Sandy Hill; and that Reuben Crandall, the prisoner, was not a member of that society; and *Mr. Key* abandoned that point.]

Mr. Hallowell called again. My impression was, when I testified before, that Dr. Crandall brought the letters with him, when he first came here in May; but I have since become satisfied, that he did not bring them till his return. When he first came, I told him it would be necessary to bring letters, because I had been frequently disappointed. I thought he was a

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married man, because he said he would go home and move down; and I inferred he had a family.

Cross-examined. I cannot tell what time I first saw him. It was in May 32 or June. When he came again, he had been back to Peekskill—as I understood, to the place where he resided in New York, and had returned to live here.

Ward B. Howard. I have known the prisoner for some years, I think it was about seven or eight years ago when he first came to Peekskill; and have been in the habit of seeing him almost every day, till I left there myself. His reputation was good as a physician and surgeon. I have no fancy for abolition. There was no society of the kind at Peekskill. I was in public business there as Sheriff of the County, and think I should have known it, if there had been such a society. I understood that Dr. Crandall attended a course of medical lectures in Philadelphia, and received a certificate of admission. When he came to Peekskill, he brought his papers to me to examine, with a view of being introduced. He was very actively engaged in the Temperance Society, and in forwarding its interests. I don't know as I should know his general handwriting now; but I should know his signature. I cannot identify the handwriting on the pamphlets to be his. [This witness identified certain signatures to the appended paper, which was admitted in evidence, and also to others from a high source which were rejected. There were affidavits, and depositions, taken by Bradley, in which Key had refused to join, offered here, showing that Crandall was neither an agent or a member of an African Slave Society.]

“With pleasure I state to the public, that Reuben Crandall, M. D., during his residence of seven years in this village, has sustained a character of a man of talent, that of a successful Physician and Surgeon, and a gentleman of integrity. In his pursuits of science, botany presents the most favorable objects.

BENJAMIN BASSETT, M. D.

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Peekskill, 8th June, 1835.”

“It is with pleasure we fully concur in the above merited tribute of worth to the character and acquirements of Reuben Crandall.

Doctor EUGENE J. STRANG,

“ JAMES BREWER.”

Key objected to *ex parte* papers in evidence.

Bradley said it was impossible to get the witnesses. They were beyond the jurisdiction of the court, and refused to come for fear of injury. He had proposed to Mr. Key to have depositions taken, but on his refusal, he had taken them himself. He thought they ought to be allowed to go to the jury.

The Court said they were not legal evidence, and if objected to must be refused.

Jackson O. Brown. I was living in Peekskill when Crandall first came there, and boarded in the house with him nearly two years. I had an opportunity of knowing his character. I roomed with him part of the time. I never knew him engaged in an abolition society; he was an active member of a Temperance Society.

To Key. I am not sure as I should know his handwriting, as I have not seen it for two years.

Mr. Jeffers , again. Mr. Robertson showed Crandall the warrant, or stated the contents when we went into the office. I have no distinct recollection of the contents of the warrant, but believe it was directed to us both. Mr. Robertson took it. We found the Emancipators among a file of newspapers. When I went in, I asked for the pamphlets. We first looked over the papers, Mr. Robertson and myself. When we had done looking over the papers I 33 went towards the box. I don't recollect as I asked for pamphlets there or not. Dr. Crandall took hold of the box and pulled it round. I found the pamphlets. While we were

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in, getting the pamphlets, we closed the doors for fear of excitement. I think we locked it. When we came out, there was a considerable crowd, and we hurried him into the hack, for I did not know but they might wrest him from us. It was in the evening before candle light. When we went in, it was not dark. I think I went, before we left, to get a light at Dr. Linthicum's. When we went down to Georgetown, it was some time before we could find Dr. Crandall, he was out. We loitered about some time. I went to his house three times. I kept on High street all the time. I had a conversation with Squire Gettys about what I was after. I never tell my business when I am after a man; but when I met Squire Gettys, he insisted on knowing, and as he is an old experienced magistrate, who knew the law, I told him. I don't know exactly how many pamphlets we found. The pile was about two inches thick. I think I got a light before we were done.

Jacob Oyster again. I was not in when the gentleman served the warrant. The same evening I was sitting in front of my door, between sundown and dark, when Mr. Robertson came and spoke to me, and sat down; presently he jumped up and went down in a great hurry. I saw two officers go up to Crandall just as he was going into the shop. I went round into my back yard, as I had a curiosity to see what they were after. Mr. Robertson asked Crandall where his printing press was. He said he didn't comprehend, but if R. would explain he would answer. Robertson then asked where the pamphlets were. Crandall asked what pamphlets. Robertson named the abolition pamphlets, and said they wanted all of them. Crandall said then look and see, and told them he would give them any satisfaction in his power. This was in the back room. I did not see them show any warrant. They turned over a good many pamphlets on the table—there were no newspapers in that pile. Soon after Mr. Jeffers picked up one with a blue cover and yellow margin, and gave it to Robertson, who put it in his pocket and turned round. I didn't see the box moved away from the wall during the investigation. The key of the shop was given to me. When I went in next, the box was not moved away from the wall.

Henry Gaither. I was in Dr. Linthicum's shop at the time of the arrest, and heard a rumor half an hour before, that the officers were in pursuit. I saw Dr. Crandall come up and they

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went in with him. In a short time a good many had gathered round. Soon after, Mr. Jeffers came in after a light, into Dr. Linthicum's, and I asked him if they had discovered any thing. He said yes; every thing, and more than I had expected—that they had found one hundred and fifty, or one hundred and sixty pamphlets. Upon this there was considerable excitement. I was excited; and was afraid that when they came out, he would be wrested from the officers. Mr. Oyster came in and I asked him if he had seen the pamphlets—he said yes; there were not more than two or three, not exceeding three. I told him Jeffers said there were one hundred and fifty or one hundred and sixty. Oyster said Jeffers is a liar. There was considerable conversation, that such statements should be made to prejudice the public, so that it made an impression on my mind. I have met Mr. Jeffers on the Avenue since, and have frequently spoken with him since upon the subject. Since the court was in session, I asked him what time the trial would come on. He said in a few days. I remarked, poor fellow, he has suffered severely any how by laying so long in jail. He replied, yes, and he believed him to be innocent. 5

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Mr. Wilson. I was present at the time spoken of by Mr. Gaither. There was a considerable crowd about the shop. I remember one of the officers came to the door and said they had discovered more than they hoped for—he said they had found, as I thought, one hundred or one hundred and twenty pamphlets—I don't recollect exactly the number. Some one said, “we ought to take the damned rascal and hang him up on one of the trees opposite.” There were some trees there. My family was sick and I was going home with the doctor, and I went away.

Jeffers. I ask leave to make an explanation, Mr. Key. When I went into Linthicum's shop to get a light, the office was dark—the door and shutters were closed. I think we had not then looked over the newspapers, and I saw the Emancipator on top, and supposed they were all Emancipators.

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Coxe. I thought you testified, that you separated the newspapers first and then asked for the pamphlets.

Witness. Dear man alive, it was necessary to get a light to examine the papers. If I said he was innocent, it was before I knew the evidence, and must have been in consequence of some remark from Mr. Gaither. If I did think so then, I don't now.

Bradley. What has induced you to alter your opinion?

Witness. The testimony I have since heard in court—the testimony in court yesterday. I didn't know such things were to be extracted for the sake of being introduced here to discredit my testimony.

Hon. A. T. Judson. I have known Dr. Crandall from his early boyhood. I am a Representative from the district in which he was born. His father lives in the town where I live, in my immediate neighborhood. He studied with my family physician, Dr. Harris; and I have been acquainted with his reputation. No young man stood better in society. He maintained a perfectly fair reputation in all respects. I have known him occasionally since he left there. He has visited the town, perhaps once in two years, as is the custom with our young men when they settle away from home, and has generally called at my house. He was intimate with my students. I was District Attorney for that District. Dr. Harris lives near, and Crandall was in my office often. I have always known Dr. Crandall as peaceable a citizen as any in the state. Dr. Harris stands high in his profession. He is professor of Yale College, and a member of the medical Convention, and educates as many students as any in Connecticut. I forget the precise year when Crandall was admitted, but it was about '27 or '28. After being admitted he left town and settled in New York. I have not seen him for two years till I saw him in prison; and never heard aught against him, till I heard of this accusation here.

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Dr. Sewall , [*President of the Washington Medical Society, Professor of Anatomy and Surgery in the Columbian College, District of Columbia.*] Dr. Crandall called on me last summer or last spring, for the purpose of obtaining a license to practice. He exhibited two letters, not directed to me, but general letters of recommendation. It appeared that he had been regularly admitted and had been in practice seven or eight years. I had considerable conversation with him, and I thought him a man of education, and of uncommon intellectual powers. I think he said he had given a course of lectures on Chemistry in New York; and he said he thought he should deliver a course on Botany in Georgetown. I told him by no means to relinquish the practice of medicine—I thought he was too well qualified for it; but if he could deliver the lectures without interfering with his practice, it would be well enough. He said he had thought of settling at the west; but he should remain here during the summer, and should, perhaps, 35 practise in Georgetown. I told him the certificates were not sufficient to obtain a license. He said he had a diploma, which he afterwards brought. (Witness recognised the diploma in court.) It is regular and properly signed. That is all the acquaintance I have with him. I gave him a verbal license to practise, as is usual till the meeting of the board, when a written license is granted. The board did not meet till after the unfortunate occurrence of his arrest.

Hon. Mr. Judson , called again. Dr. Crandall is the brother of Prudence Crandall. In the winter of 1833, Prudence Crandall, having kept a school for young ladies, immediately changed it, at the instigation of Garrison and others, to a colored school. It was the object of Tappan and Garrison to get colored children from the south and educate them and send them back. I had received a petition, being then a representative, for the legislature to interfere and suppress it by law. I had been to New York, and was going home in the steamboat, when I saw Dr. Crandall.

Key objected to any conversations being given.

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The Court ruled that the prisoner's character might be given, and his declarations when they formed a part of his acts.

Mr. Judson. I told him the difficulty we had had with his sister. He said he was going to break up the school. He said he didn't know as he could, because Prudence was a very obstinate girl; but he had another sister, younger, then engaged in it, that he could at all events get her away. I told him, that in a few days I was going to present the *projet* of a law, and if he was going on for that purpose I would aid him. When we arrived at Norwich, the stage was full, and I took him in my gig, and carried him home. I always understood he used his whole influence to break up the school as much as any other individual, and appeared to be as zealous to effect that object. I have not seen him since till I saw him here in jail. That's all I know about it.

Dr. Sewall called by a Juror. I have no reason to believe that Dr. Crandall had any other object in view, except to practise his profession, or to deliver lectures on botany. I had no conversation with him except on medical subjects. He left no abolition pamphlets with me, as has been reported; a great many things have been said which were not true.

Hon. Mr. Ward. I am the representative in Congress of the district in which the prisoner resided in New York. I knew him by reputation, and knew him personally slightly. His reputation is that of a respectable man and a good physician. He had lived there seven or eight years.

Mr. Austin. I was for many years a resident in Peekskill; and was acquainted with Dr. Crandall. He resided in my family three years before he left there. Soon after he came to Peckskill, he was a boarder with Mr. Stone. He came to live at my house after having raised up Mrs. Austin from a long and dangerous sickness; her health, however, being still feeble, and subject to occasional attacks of her old complaint, bleeding from the lungs. Crandall had a high character in his profession. As a surgeon, he was sent for far and near. I was president of a Temperance Society. Dr. Crandall was secretary, and was in

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the habit of receiving papers—scientific and temperance. I never knew of any Anti-Slavery Society in the place. I must have known it, if there had been, and I never knew him to be a member of any such society. I think I should have known it if he had been. I left there, and came to reside in Georgetown the fall preceding the spring in which my family came. I could not leave in consequence of business. Mrs. Austin had been confined most of the winter and spring to her room, in consequence of ill health, and was still quite feeble; and my two 36 children were always sick when travelling. I solicited by letter that Dr. C. should come on with them. He did come, and when he got here was going immediately back; but Mrs. Austin was here in a strange place and in bad health, and we solicited him to remain a few days, till our house was ready and we got settled. He did so. He had thought of going to the western country, to one of the new states. While here, I understood he had made arrangements with a gentleman to go in the fall and settle at Logansport, where he understood there was a fine opening for a physician; that he was to return to the District after he should have been to the north, and lecture on botany during the summer. I can't tell how long he was gone between the first and second visit. I think he came here the second time about the middle of June. He was taken severely sick soon after he arrived, and remained confined at my house. I think this was before he took possession of the office. I have understood there was an Emancipator in Court addressed to me; but I never subscribed for it.

Cranch , C. J., remarked, I received two, and I am not a subscriber.

Austin. I don't recollect ever seeing any abolition pamphlets in his possession. He was an inmate of my family at Georgetown, and was sick there. If he had had any about the house, they would have attracted my attention. I do not know how the box came. I suppose the library did not come till the second period. It came by water, I believe, but I did not see it on board the packet, to my recollection. The trunk came with him; he left it at the tavern over night, and it was sent up the next day. I haven't any distinct recollection of some abolition pamphlets being sent to me, with some for Crandall. It appears to me that a Mr. Dennison left some pamphlets for Dr. Crandall, and some for myself. I can't say

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positively how long ago. I know nothing that can fix the time. It might have been a year before I left New York; or it may be longer or shorter.

The witness was shown some numbers of the Anti-Slavery Reporter, found at the prisoner's office.

Witness. There is nothing by which I can identify them as the same. I cannot swear to their identity. I cannot even swear that they are copies of the same work. I did not read them. I cannot swear that I should know Crandall's handwriting generally. I should know his signature. I could not swear the writing on the pamphlets is his; there is nothing peculiar to mark it as his. I have seen him write a dozen times; but see nothing in this to fix it as his or not.

Mrs. Austin , (wife of the last witness). I have known Dr. Crandall as long as Mr. Austin. He always conducted himself with the greatest propriety, while in our family. He stood high as a physician and as a gentleman. I remember Mr. Dennison's leaving a number of pamphlets at the house, similar to those in court; but I could not say they were the same. Dr. Crandall came, by Mr. Austin's request, to accompany the family to Washington. He did not consent to come farther than Philadelphia; and if we stood the journey well he intended to stop there. We had anticipated meeting Mr. A. there. He had intended to go to the west and settle. When Dr. C. left Peekskill, he did not intend returning there, till he had visited his friends in Connecticut. While I was clearing up the house, before we left, I told him there was a large box in the garret I would give him to put in his papers and things, which laid about the garret. I asked him what he would do with his library. He said he would ask permission to leave it a short time in the house. I told him he had better not. My advice was to him, to put his library and instruments, and every thing belonging to him, into this box, and then they would be out 37 of the way. He consented. Some of his magazines and papers were in an old trunk; but he had some medicines in the closet, which I wished to put into the trunk; and I carried them up garret and packed them into the box. I can't say as I put any into the box with writing on, but I saw some with the writing

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on a day or two previous. The second time he came, he came to our house himself when he arrived in the evening; his trunk was sent over about 9 or 10 o'clock the next morning. He had carried a letter from one of my daughters, and received an answer to bring back, and I assisted in looking for it in his trunk. I saw a package nicely done up in one end of his trunk, which I thought was books. I saw it about five or six weeks afterwards. We had not found the letter, and I went up and took every thing out of his trunk. I untied the bundle and took out some pamphlets and books, which are the same as now in court. I thought there were different kinds. They appeared to have been unopened. They remained so eight or ten days.

Bradley wanted to show the conversation which took place between the witness and the prisoner, both before and after the bundle was opened; but *Key* objected, and the *Court* ruled that such conversations were not competent evidence.

Mrs. Austin went on. While he was a member of our family at Georgetown, he received several Emancipators, and two other papers that came in the place of it. I destroyed them; one was destroyed before his arrest, and the other, a small one, that came in place of the Emancipator, I threw in the fire, the morning after he was arrested. It came in an envelope through the post office. I saw the bundle in the trunk several times, and was in the habit of going to the trunk to take out clothes. I should think they had not been disturbed at all. They were packed up very tight when I opened them, and when I saw them last they appeared to be all there. I did not tie them up again. I had some conversation with him about them. I asked him if he purchased those tracts, and—

Here the witness was told not to state what was said.

To Mr. Key. Dr. Crandall came the second time about ten o'clock at night. About nine o'clock the next morning the trunk was sent over. I then saw the package tied tight with a cord. It looked like a bundle of books, as if done up by a bookseller. I saw it frequently in the same state; and untied it a month or six weeks after it got there; but did not tie it

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up again. There were three different sizes of tracts in the bundle. I untied it about ten days before Dr. Crandall's arrest. The Emancipator came through the mail; and two small pamphlets came in place of it, with an envelope, just as it came from the post office.

Mr. Burger. I am acquainted with the manner in which the Emancipator has been published. Previous to about July, last past, it was issued weekly; after that time, it was changed, and issued only monthly; and the other three weeks, other papers were issued or sent in the place of the Emancipator, viz. Human Rights, one week; Anti-Slavery Record, one week; and the Slave's Friend, one week. The three latter were each to supply the place of an Emancipator.

Key wished to call witnesses to further declarations that the prisoner was a member of the Anti-Slavery Society.

The Court ruled that the Attorney for the United States could not do so now, but ought to have done it in the opening.

Mr. Carlisle then opened the case on the part of the government, and was about to read some parts of the pamphlets, containing the libellous matter charged in the indictment; which parts had not been read in the opening of 38 the evidence. The defendant's counsel objected to any thing being read in argument to the jury which had not been read when the pamphlets were offered in evidence.

But *the Court* overruled the objection; and said that the United States had not only the right, but were bound to give in evidence the whole of the publication which contains the libellous matter charged; and either party has a right to read any part of it pertinent to the issue.

After having continued his argument for some time, Mr. Carlisle found himself too ill to proceed, and.

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Mr. Key , continued the opening, stating the points proved, with a recapitulation of some of the legal points made, and concluded with stating, that the jury would here find a man professing the doctrines of abolition, with papers of an incendiary character, many of which he brought with him from New York, others were sent to him, and he was publishing them with the words “read and circulate” upon them in his own handwriting; admitting that he has circulated a dozen, and don't choose to tell how nor to whom. He should say it was a strong case as ever could be made out, and he should leave it to the jury to say whether he was not guilty of the offence charged in the indictment. No matter what the counsel on the other side might say or believe, for men's minds might take a coloring from the position in which they viewed such a case, it was for the jury to determine, upon oath, what was the traverser's motive in coming here with such papers, and professing to reside here with them in his possession.

MR. BRADLEY'S SPEECH.

May it please the Court,

We have now, Gentlemen of the Jury, arrived at that stage in the progress of this cause, when it becomes the privilege of the defendant to present to you his defence against the charge for which he has been put upon his trial. I shall do this without further preface, for you have a most laborious and fatiguing examination to make. The character of the offence is such that it is almost impossible to divest ourselves of prejudice against the accused; but I rely with confidence on your making every effort to subdue such prejudices, to give him a patient hearing and an impartial examination of the evidence; and I shall be content, whatever may be the result of that hearing and examination.

Before I begin the examination of the disputed points in this cause, I will endeavor to facilitate our other inquiries, in order to present to you a condensed view of what may be considered admitted or proved—matters about which there is no dispute.

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1st. The traverser is the same person who was arrested in August last, charged with circulating incendiary papers, and who has been confined since then to the present day, in our county jail.

He is a man of science, an able and skilful Physician and Surgeon, most estimable in his private life, one of the most active friends of the great cause of temperance, and, above all, a devotee to the science of Botany.

2d. That he was a subscriber to various periodical publications, scientific and moral, and had in his possession, and used in the preparation of his botanical specimens numerous papers; Telegraphs, Metropolitans, Baltimore, New York, and Boston newspapers, and last, not least, the Emancipator.

3d. That he came to Georgetown in the month of June last, under an engagement to give lectures there and at Alexandria, on Botany; opened an office, and obtained a license to practise as a Physician and Surgeon.

4th. That he there used the papers I have mentioned in drying his plants, and while soon after his arrival he was unpacking a box containing books, papers, surgical instruments, and botanical specimens, he took from it among numerous other pamphlets and papers, some of the publications of the Anti-Slavery Society of New York, and a friend standing by, cautioning him against such publications, took one up, saying that he would read it, and did take it away.

5th. That this paper was seen by some one else and led to his arrest.

6th. Upon his arrest, a large number of papers were found in his possession—among others five copies of the Emancipator, three or more of No. 3 of the Anti-Slavery Reporter published in August, 1833, and four or more of No. 4, of the same, published in September, 1833.

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These are all the publications of the Anti-Slavery Society now in evidence. True, the officers who arrested the traverser brought with them other papers which they supposed to be embraced by their warrant; but it does not appear in evidence what they were; nor have we now any means to determine the character of their contents, although the learned District Attorney has often held them up at this place before your and our eyes; and we know not whether they relate to law or religion, politics or morality. He has also furnished you with the number of each separate size, and evidence that they were taken illegally from the traverser's possession. *Still they are not in evidence.*

Upon his arrest the traverser was brought before three magistrates, in the jail, and underwent an examination before them, upon which, the prosecutor has greatly relied; an examination accompanied by circumstances of alarm and danger rarely equalled—an alarm and danger created for the occasion. Of all testimony which is admissible upon a criminal prosecution, that of examinations before the committing justices, and the admissions to the arresting officers, should be received with greatest caution, and examined with the strictest scrutiny; and in this case, especially, it is most remarkable, that the supposed contradictions of the traverser are in fact differences, material and extraordinary differences, between the magistrates as to the facts which then transpired.

I shall have occasion to refer to this hereafter; but there is one fact to which I beg leave to call your attention now, as characteristic of the strange and unaccountable misconceptions which have peculiarly characterized this whole case.

It is agreed by the justices, two of whom have been examined, that the package of papers taken from the traverser's trunk—of which you have the number, but which are not in evidence—was given to him at New York while on his way here, without *his knowing their contents or character*: as to what he *supposed* about them, I shall speak in another place.

One of these justices thinks he said he brought that package here, and these are all he brought, *but about* a dozen.

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The other thinks he said these are all he brought; but he inferred that he had stopped on the way and left some.

Now, Gentlemen of the Jury, the learned gentleman who assists the prosecution, and who opened the cause with so much perspicuity and eloquence, has been followed by the District Attorney, and both wound up with, and 40 made this the burden of their address, as containing conclusive proof of an admission that he had circulated a dozen here.

Let us examine this. The magistrates understood him to admit that he had received *all* the papers found in his possession, and produced before them, at New York while on his way here. Could this be so? Could he have said so?

In the first place, it is incontestably proved by Mrs. Austin, that all the papers found at his office, *being about a dozen*, were, together with other papers, books, and some botanical specimens, put by her into a box, at Peekskill, in May, 1835: that they had been lying about as waste paper for eighteen months previous; that this box was nailed up by Dr. Crandall, and that this is the same box from which they were taken at Georgetown. It has been proved that twelve were taken from that box, and that it came by the packet from New York, probably about the first of July. It is also beyond dispute, that he arrived here some time in June, and brought with him that package which was found in his trunk, and which was given to him at New York under the circumstances already stated, and not opened at all by him.

It is also in proof, that neither of the justices ever heard that these loose old pamphlets were found in one place, and this package of new ones in another place; and that they came by different conveyances. They had the whole affair admirably confounded by the intelligence of the arresting officers, and supposed all the papers to form one collection. You understand the facts, and can readily perceive the error into which they have fallen, and can re-concile what they supposed to be contradictions. In their questions they referred to all the papers. In his answers he drew the proper distinction, and when he said

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he brought them from New York, and he brought *all* those except about a dozen—and when he said he had had some of them, those endorsed, for two years, he spoke the truth, as you, who have heard the evidence well know. And yet we have been taunted with this—it has been trumpeted forth as proof conclusive of his having admitted the circulation of a dozen. We have been called upon to produce the witness from New York who gave them to us—to get an account of them—to bring the respectable citizens to whom they were given here. Beautiful and conclusive as the argument is, we are compelled to demolish it. There were none circulated. We can't produce the proof the gentlemen so earnestly desire—but we must produce the man who gave them to him!! Have I not offered to the District Attorney his deposition? Have I not offered to take a commission to New York to examine testimony where the witness would be safe? The gentleman does not deny this. Why then taunt us with that which he knows was impracticable. What! bring into such a community as this the actual incendiary—him who would have made us the dupe of his villany, who palmed upon us as temperance tracts, papers for the possession of which we are put upon our trial? Bring such a man here and expect him to tell the tale of his own infamy! We are told he would have been safe—safe! “He would have come as a witness.” Gentlemen, my client has now suffered nearly nine months' imprisonment—he has escaped by a miracle the tender mercies of a mob. His case is a shining light—a moral beacon, pointing out the infirmity of our laws—the breakers of a popular commotion. I know the law could not have touched him. But have you not heard even while sitting in that box, mob law openly proclaimed? and the most violent acts extenuated and justified? I know a brave man would not excite a mob; it is the coward's last resort for vengeance, when, with a dastard spirit, he would seek in numbers, countenance and support, and divide the risk, which alone, he would not dare. But 41 brave men may become excited and mingle with them, and although a chivalric generosity is inseparable from true courage, it is seldom found in a popular commotion. But it was unnecessary; our case is perfect without this proof; these papers are not in evidence; and if they were, his possession of them is fully accounted for.

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Keeping this fact constantly in mind, that these papers are not charged in the indictment, and are not produced in evidence, let us next proceed to inquire what you are sworn to try.

There are five counts in the indictment, to three of which only has any evidence been offered, the others are abandoned.

The substance of the first and second is essentially the same. They charge different libels, but of the same character, and the same intent.

First, The indictment charges that slavery exists by law in the District of Columbia, and

Second, The traverser, intending to bring the laws and government of the United States into hatred and contempt among the good citizens, and to influence them to resist, oppose, and disregard the laws and the rights of the proprietors of slaves, and to stir up the people of color, free and slave, to insubordination, violence, and rebellion, published the libels set out in the indictment.

I will read to you the passages extracted from the papers, and copied into the indictment upon which this charge is founded without the averments and inuendoes with which they are burdened.

(Here refer to them.)

This then is the charge. It is one of serious magnitude, and character; and if true, deserves the most exemplary punishment.

I shall not stop now to criticise the language thus charged to be libellous. The halls of congress throughout this session—the pulpit throughout the year, have resounded with much more emphatic language. I shall call your attention to this matter again.

It is remarkable, however, that the first libel is a comment upon an article in the Commercial Advertiser; the second, third, and fifth, part of a controversy between the Anti-

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Slavery Society and the Colonization Society; and the fourth, an essay, by a Mr. Whiteley, upon the colonial system as it affects slavery in the West Indies. This was pronounced by the learned attorney to be a horrible and false account of the fruits of slavery. The libel does not set out any facts; it charges that there, slavery is demoralizing, and cruelty and wickedness its actual fruits. If it be true that a slave is but personal property, that he has no rights, that he may be punished at the discretion of his master, I leave you to determine if the possessisn of a copy of Mr. Whiteley's pamphlet is an indictable offence. But I shall take the liberty, before I have done with this matter, to give you also the opinion of the philosopher and statesman, Thomas Jefferson, on the same subject.

I come now, gentlemen, to the second count, and my ears yet resound with the startling force and power, the emphasis and action, with which the learned attorney read this to you. Never since the days, when with breathless eagerness, I listened on my nurse's knee to the horrors she could conjure up, have I been more startled, and appalled. One might have thought he heard the voice from the mountain top—yea, from the house tops—penetrating every chimney corner, and calling upon the slave to rise in the majesty of his strength, to apply the torch to the threshold, and the knife to the throat of the planter—that he might revel in the carnage of the chivalry of the South. Is this so? Read it, and see how deep must that prejudice be which does not perceive in every line the most earnest anxiety to enforce the great abstract truths the author Mr. Whittier would inculcate, with peace and good will pervading the whole; while he enforces his argument with appeals to the temporal interest, and next to the personal safety of those whom he supposes surrounded by a still increasing and momentous evil. This very language is but an argument, founded upon the natural course of events, the rapid increase of the evil he deprecates, and the horrible consequences in which it will result; that this increase is too rapid for the drain opened by the Colonization Society, and still more energetic means must be found to remedy it. Is this indictable? Is it because he maintains in grandiloquent phrases the doctrines of the Declaration of Independence? Is it because he avows his scheme of abolition in the language of poetry? Or is it because he closes his appeal with

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an argument founded upon the truths of political economy? Show me where there are ten men in this country who discuss this subject, and I will find you in each the subjects of indictment. But this is an argument addressed to those upon whom he supposes the evil to press—who have influence and power to stem this flowing tide. It is only prefiguring what about the same time, or within a few months after, was declared to have actually come to pass, by Wm. S. Archer, then, a member of congress, from Virginia, at a meeting of the Colonization Society, in language more emphatic—published and circulated in this city.

“A recent and most tragical catastrophe, of which his own state had been the scene, had now put the public mind wide awake to the interest of this great subject, in every quarter. The moment ought not surely to be lost. Men could not now say, as they were wont, of the extremest peril and crisis of this evil, they will not come in our day.

“It was demonstrated by proof of frightful validity that the peril impended, that the crisis might come on any day. No! he was wrong! It was not in the day that this form of horrors ever disclosed itself. It came in the night—disclosed itself in the midnight glare of habitations in which every form of outrage and butchery had previously been wreaked, on every form of life and helplessness, even to the sleep of the cradle. To avert the remotest prospect of evil of this character, what exertion ought to be omitted? What sacrifice or expenditure declined? None that gave even faint promise of aid!”

Dismissing this matter, however, for the present, let us proceed to the great question of publication: Did the traverser publish in this county the libels set out in the indictment, and with the intent charged?

This has pressed upon you, upon two distinct grounds. First, a publication as legal intendment, which I shall designate a legal publication.

Second, a publication in fact, from which you are to infer the intent charged.

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It has been contended that the having a printed copy of a published libel, is prima facie proof of publication by the party in whose possession it is found. You will observe this is not the law laid down by the court; they have not gone so far. They say it is a circumstance *tending* to favor such a publication—and this is the broad distinction between prima facie evidence, and this—that the former is conclusive unless rebutted, the latter is the slightest possible shade of suspicion which, with cumulative evidence, may satisfy your minds. Any other doctrine than this would be too monstrous to be tolerated, and if supported by the process under which these papers were brought here, would at once prostrate our privileges, and demolish our social liberties. But let us appeal to reason, to common sense, and see if it has any foundation. Take the case of some favorite libel. It is printed and published, the first, second and third edition, and ere a week has elapsed, you could not in the whole country find twelve men to try the cause impartially. Every 43 one has a copy—every one has a friend who has offended. If I may be indicted, put upon my trial, and compelled to show where I procured a copy—so may you and every one, be arraigned, stained with a criminal charge, subjected to animadversion and expense, be incarcerated for months, because in my house or yours was found a single copy; for it makes no difference in principle whether there be one or ten. This can't be law. No freeman could live under it—civil liberty is gone. The books say, if a man has a *written* copy, the presumption that this is the original from which all the others were printed, throws upon him the burthen of proof to show how he came by it.

Let us next inquire if there has been a publication in fact, from which you may infer the intent.

What is an *actual* publication as the learned prosecutor calls it? It must mean, when a written or printed libel is given to some third person, or to the person against whom it is directed, either by the libeller himself, or by his authorized agent.

What is the evidence? The traverser was engaged in unpacking a box containing surgical instruments, botanical specimens, books and papers. While thus employed, a friend

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standing by observed two or three papers, one of which is charged in the indictment, and immediately cautioned him against such publications; but upon looking at it again, said he would like to read it, and in fact took it away. This is the whole proof. Is this a publication by himself within the meaning of the indictment? Look at the case cited from Campbell; where a man hearing that another had a libellous print, went to see it—it was shown to him, and the parties libelled were pointed out to him. That was no publication! Shall I comment on this? Was it given by the traverser? He yielded a reluctant assent to the other's taking it. What became of the paper? If published, who did publish it? According to the doctrine now contended for, Mr. King is placed in a peculiarly awkward position. He had it in his possession—a printed copy of a published libel. He carried it to Linthicum's shop—he exposed it to public view. What became of the paper? Is it not now among those offered in evidence by the prosecutor? Was it not seen by Dr. Crandall in Linthicum's shop? Was he not there every day? Had not he been warned against it? Had not he avowed himself hostile to the circulation of abolition papers in his conversation with Oyster? Was it not his particular interest to take it into his possession? Again, there were three taken from the box when it was opened—Oyster saw two afterwards—the officers found three at his arrest. He says on his examination that he brought all from New York but a dozen—twelve were found at his office—three outside, the rest within the box. Instead of floating about stirring up the people to sedition and rebellion, or passing like the hunted slipper from person to person, is it not now, gentlemen of the jury, quietly resting on the prosecutor's table, ready to do mischief to none but its former master? For the present, I shall forbear to speak of the intent which is supposed to appear upon the face of the libel, and admitting it to be all that is charged, I will maintain, that with the publication proved we must connect the intent, and are not bound by that which appears on the face of the libel. Or in other words, it is not true that every man is supposed to intend malice in every form of publication, although the matter published be libellous.

The learned prosecutor has given up the whole ground. He first charges these to be most wicked and horrible libels, designed to produce insurrection, servile war, and rebellion;

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and yet he says they might very properly be given to old and respectable citizens. If so, then are the circumstances of 44 the publication to be examined with the utmost caution. Does the gentleman mean to say, that Mr. King was not and is not a respectable man; a citizen here, whose declared opinions had already apprized the traverser that he was not to be operated upon? He says this man was a fanatic; who had staked all to disseminate these vile papers throughout the land, and to inflame young men with these high wrought pictures of liberty. The proof is, that he permitted a friend to read one; and yet the prosecutor himself, has here in this room, day after day, permitted youths of eighteen as well as aged men to read these very papers, each and all of them. Would *he* corrupt the morals, influence the zeal, undermine the patriotism of these youths—make them fanatics?—Aye; but he *shows* that he had no such intent. Have we not shown this also?—Have we not *shown* how these papers were brought by some Mr. Dennison to Mr. Austin's house, at Peekskill, years ago? How some were left for Mr. A. and some for Dr. Crandall? How they were thoughtlessly, in that land where their *possession* was no crime, mingled with other papers? How they were innocently packed up by Mrs. Austin, and how they came to this District? How they were brought to light? And have we not now traced back each one to the District Attorney's possession? We have combated even the suspicions, the vague fancies, the ideal realities of the gentleman, with the simple weapons of truth.

It is one of those remarkable instances, in which the wit and power of man are baffled, where a train of circumstances tending to prove a guilty knowledge and a criminal act, have by a single accident been met and destroyed. Who could have dreamed when we went into this trial, that we should have had the testimony of Messrs. Brown, and Stone, and Howard; or who, far away from friends and home, in a land of strangers, with every man's hand lifted against him, who could have divined that we should have had the innocent agents who aided in bringing on him this charge?

Thus then have we met, and destroyed every shadow of ground for this *actual* publication.

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The learned prosecutor, finding this would not do, makes a desperate effort to retrieve his cause; and desperate indeed must he have thought that cause, when he resolved to rely on *constructive* publication, presumptive publication!

You are then to infer that he published these papers, because you are to believe that he brought these pamphlets with him. *We have proved the contrary*. That they were issued by the Anti-Slavery Society, and that when at home he was a member of that Society—(we have proved by Mr. and Mrs. Austin, Messrs. Brown, Stone, and Howard, that he could not have been). That when he received them at New York he supposed them to contain sentiments corresponding with those in the papers for which he was a subscriber—(we have proved he subscribed for numerous periodicals, particularly botanical and temperance papers). That he was a subscriber for the *Emancipator*—(we have proved that it was regularly sent to persons who did not subscribe for it, and one addressed to Mr. Austin has been produced by the prosecutor). That as he approved of the papers for which he subscribed, and as he subscribed for the *Emancipator*, (which is nowhere proved) and as the *Emancipator* contains sentiments similar to those of the libels in the first and second count, therefore, he approved of those papers. Such is the train of reasoning upon which the prosecutor expects a conviction against evidence. Is not this the house that Jack built?

But this is not all: we have another proof. Mr. Fendall has proved that some three years, or two and a half years ago, there was a controversy between the Colonization Society and the Anti-Slavery Society; that during 45 that controversy, copies of the libels set out in the first and second counts, were sent from the latter society at New York, to the former in this city. Here then is proof of a publication within this county, and you are to infer that at that time Dr. Crandall was a member of *that* Anti-Slavery Society, and authorized the publication of these papers; and being here with a copy at this time he is responsible, and deserves to be punished as a disturber of the public peace, and the stirrer up of intestine war. Is this law? Is it reason? Is it justice? Is it common sense?

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But let us look at the testimony on which these monstrous presumptions are based.

First, we have Judge Jeffers, regularly installed into the judicial office by the authority of Clement T. Coote, Esq., Justice of the Peace, &c.—and what does he say? That Crandall subscribed for the *Emancipator*? He has been on that stand four times, and has not told the same story twice. Did he say subscribed? No, gentlemen; “ *he had taken* ” the *Emancipator* was what he first said. But Mr. Coote understood the traverser to approve of papers for which he had subscribed. Had they any such? The prosecutor was at fault. Next day, and after the attorney had *written down* “*subscribed,*” and not till then, did Jeffers recollect that he had said “*he had subscribed for the Emancipator.*” Jeffers stands here contradicted by three witnesses: by Oyster, about the box being turned down and the number of papers; by Gaither and Wilson, as to the number of pamphlets found. But, gentlemen, we have a better witness still—Mr. Jeffers himself; for Mr. Jeffers contradicts himself. And who got up this excitement? Mr. Jeffers. Who inflamed the people to madness? Mr. Jeffers. Who, after having set the town on fire, tried by cross-questions, by every means, while the fire was raging behind, and around them, with terror before them, and fierce and startling sounds pursue them,—who tries in the dark to embarrass his victim, to catch him in the toils thus spread around him?—and when he appeals for support to his friend, who never before failed him in time of need, does Robertson come to his aid? Alas, gentlemen, Robertson did not hear that;—not one word of encouragement comes from his lips! I do not mean to say that Mr. Jeffers has intentionally said any thing which is not true. I do not mean to charge him with any greater fault than a bad memory, which needs stimulants, and a forward zeal, which needs restraint. He is a good officer, and I would not hesitate to trust him as far as any other.

The next is Mr. Morsell, one of the justices, a fair spoken, honest man; a good neighbor and citizen. No one can have more confidence in him than I; but *he is mistaken*. Partaking of the prejudices, not a little influenced by the excitement, under misapprehensions as to previous facts, he has converted the admission of the traverser as to his abolition

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principles, and opposition to slavery, into a declaration that he was, *at home*, a member of that society. There is in that one phrase, *at home*, to my mind, evidence strong as proof from holy writ, that Morsell misunderstood him. Where was his home? At Peekskill. We have had the sheriff of the county here; we have had three other witnesses who know all and every one in the village, man, woman and child, and it is not going too far to say what they have all done, for the last three years, and they tell you, with one voice, there was not, is not, and they hope there will not be, any such society there; he must have said, "I am, when at home, an anti-slavery man." He might easily have been misunderstood. He was an anti-slavery man; he is now an anti-slavery man—but what then? Does not Oyster prove that he was opposed to the acts of the Anti-Slavery Society—opposed to the circulation 46 of these papers—has declared this to be improper? He was desirous to produce a moral combination throughout the land, to relieve it of what he considered a curse, a great and growing evil; to do that which the Colonization Society is striving to do; to influence leading and influential men by such combination to avert the dreadful consequences Whittier had pointed to and Archer depicted. Was his object to produce excitement? Where is the proof of word or deed; and if there had been, do you not believe it would have been ferreted out? Have we not had brought here to testify against him the refuse of the jail?—men who have listened to detached parts of conversations between him and his friends? Jocular remarks, half sentences, have been brought, to impeach the credit of witnesses, or to inflame your minds with possible conjectures of what was meant. I do not mean to reproach the District Attorney; the charge here made was a heinous one; the foundations of society were broken up; its peace was invaded. He was called in; he heard enough to satisfy his mind, and stands pledged to vindicate what he then said.

But we have now got the Emancipator, and the next effort must be to connect the Emancipator, the Anti-Slavery Society, these publications, and Dr. Crandall, as his countrymen tie their onions, with a rope of straw. Mr. Coote says he (Dr. C.) was ignorant of the contents of the papers he received in New York, but supposed them to be such as the papers for which he was a subscriber, and Mr. Jeffers says he was a subscriber for

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the Emancipator. What the traverser said when these papers were first opened—and he was surprised by a view of the scorpions he had in his trunk—has been most carefully excluded from you. We have not even been allowed to state what we expected to prove. It is all right when the United States would prove his declarations, and no matter what the circumstances under which they were made, when in the extremest terror from an excited populace, whose outcries for blood could be heard—when so agitated that he could not read a paper which he had prepared—(and, by the way, I should like to know where that paper is)—when he is distracted with anxiety, and racked with forebodings, every thing he uttered is supposed to be perfectly well preserved in the memory of his auditors, and noted down against him; but when wholly unembarrassed, free from suspicion, to his intimate friend, one in whose family he had long lived, and in whom he knew he could confide, he explains and accounts for every thing, the benign policy of the law shuts him out.

For what was he a subscriber? We have shown; and I did intend to have read these papers, but your burthen is sufficiently heavy already; and really the testimony is so slight that it scarcely deserves notice. But it has been relied on and must be met.

Five numbers of the Emancipator have been produced, and extracts read from them. I shall not fatigue you with another reading of them, but take the first. This is an editorial article in reply to Mr. Gerrit Smith, then, if not now, a warm and active friend of the colonization cause. Are the sentiments the same? It will not do to take the general tone, because this is not sufficiently characteristic: the Colonization Society takes the same ground in part—all moral institutions some one of the other grounds.

What is this controversy? Mr. Gerrit Smith had said that slavery was sinful. Well, this editor says the law of God is paramount to all laws, and all moral power. Is slavery sinful? I shall not give my own opinion, I shall quote from the letter of the Synod of Kentucky very lately published, language tenfold stronger than is used in this article. (See that letter throughout.)

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But what then? What remedy do they propose? Is it excitement—force? No. Every line breathes the spirit of calmness, gentleness, kind feelings, sympathy. It is intended to conciliate friends; not to exasperate foes. There are, it is true, harsh phrases in some parts of it, which we would palliate or justify. But look to England; look at the whole history of this, country; look at the onward progress of the Colonization Society; and in every page of all, there you will find the same sentiment of things expressed in the same language. Are all these libels? If so, then are you unfit to sit there in judgment; you are the judges of your own cause. Again, look at the writings of the philosophic Jefferson, (see Notes on Va.)—look at the letters of men grown gray in the midst of the evil they deplore, and tell me if this whole article was set out, if it could be charged as a libel. But when such language from such men, living as they do in the midst of the scenes they describe, goes to that land to which the pilgrims fled for repose; where the sound of the scourge is never heard; where hill and valley resound with the cry of social liberty and equal rights; where they are taught at their mother's knee the great truths of political equality, and men grow up filled with abstract principles which they would that all the world should recognise;—who can be surprised that they grow warm in their speculations, and lose sight of the consequences to which they lead?

Those principles, too, I have heard as eloquently defended here by the learned District Attorney himself—as broadly asserted as they are in these books; and hundreds of hearts now rejoice, and daily prayers go up in blessings upon those enactments which have given relief to the oppressed—freedom to those who were in bondage. Yet I deny the right of these people to interfere in our domestic relations; come from where they may, from the cold north or the fervid south, no man not identified with me in social rights and social duties has any right to interfere in my domestic relations. He is an intruder, who enters upon his task at his peril; and if he disturbs those relations, he deserves, and the law will mete out his punishment to him. If he produces excitement, let him not come within its reach; if he would produce servile war, or encourage, or aid in it, he is a traitor to the

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constitution and the laws, and upon his conscience must rest the guilt of blood—the curse of Cain, if blood be shed.

But is it true, that the character of a paper shall be judged by one or two articles taken from three or four numbers? If so, turn to the African Repository No. 78, published in this city under the authority of that society which is now laboring to do more good to this country than all the Anti-Slavery, Temperance, and Missionary Societies, within its broad boundaries; that society, to the support of which, every true patriot and sound christian should bring his mite, as the greatest charity of modern times: conferring blessings, inestimable blessings, on those who give and those who receive. This number contains the address of Mr. Breckenridge, of Kentucky, which, whether considered as a splendid oration, powerful argument, or able political essay, deserves to be read throughout the land—whether we *approve the sentiments or not*. I do not agree with him throughout, and yet I have this monstrous libel in my house; it has been publicly circulated throughout this District, and contains language as far transcending any thing set out in this indictment, as these do the moderate speeches of the half-way members of the Colonization Society. Is that society responsible for this publication? Is the learned Attorney, who is one of the managers “when at home?” And yet the possession of it by him may, in the view of his successor in office, who ever he may be, subject him to indictment!

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Gentlemen, I do not stand here as the advocate of Dr. Crandall alone; but as the vindicator and asserter of the rights of freemen, of principle, of social order, against the monstrous doctrines which are to be deduced from this case, if it shall be in your judgment that he is guilty. You must not here consider him a stranger; as one who has no part with us in the protection which the law should throw around him; you must bring this matter home to your fellow citizens, to your own households, and then see to what it leads.

Look at this indictment and these papers. I say nothing of the other parts of this pamphlet. I have not read it, nor has it been read to you. I speak of that which is set out in the

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indictment, and this which is brought to show the intent with which that was published. And what is it? Does this advocate force, violence, sedition? Is there any thing to stir up the slaves, the free people, the whites? Not one word. There is now I believe in our statute book unrepealed, a law fixing the severest penalties upon Unitarians; would any one charge that as a libel, which was a discreet, and sober, aye, and unanswerable argument in favor of the repeal of that law? There are on that jury, men who were actors in the repeal of a Maryland law which until a few years past disgraced her statute book, and almost disfranchised the Jews. Did any one dream that the essays which denounced that law as it should be, were libels? Are those things libels which, addressed to our reason, endeavor to correct an evil? And do not these extracts show such to have been the intent of their authors?

Again: the traverser has been eloquently charged with having approved that passage in another of these papers, which calls the Southampton massacre an earthquake—as being a taunt, a sarcasm on the south.

Is this so? Look at the whole article: it is an appeal to the south to awake from their idle dream of safety. They are told they sleep on the brink of a precipice; they snore while every thing is crumbling into ruins around them, and even this earthquake can scarce break their slumbers. Is not this the meaning of it?

Again, in another article it is said,—and this was read with that peculiar emphasis which seemed to say, this you *must* feel and understand—it is said, that the laws of the District of Columbia authorize the arrest of a black man as a runaway slave, and he may be sold for his jail fees, though he may be able to prove his freedom. And is not this so? Have we not had during this trial daily admonitions of the uncertainty of all means to establish facts of which we were certain, and which we knew we could prove? Have not technical objections been raised to exclude the most vital testimony? And what is the negro to do who is incarcerated here! Where is he to get proof? —and when he thinks that all is prepared, who knows what flaw there may be in the evidence which he has procured?

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If the article had said, although he have the proof with him, it would indeed have been a gross libel; for here, thank Heaven, where the proof is produced, the courts and the law would shield him. But how does this show the intent?

Now where is the evidence of publication, and where the intent? Is more necessary? When were the papers published? Mr. Fendall says in 1833. The traverser then resided at Peekskill, never entertained a thought of removing from it, continued there to May, 1835, when the family in which he resided was broken up, and copies of these papers were put into a box as waste paper by the mistress of the house, nailed up, brought to Georgetown, taken out under the circumstances stated, and kept by him till his arrest. But neither the extracts from the *libels*, nor the papers read to show the intent, are libels. Alas, they are but the sentiments of thousands who have grown gray in the midst of slaves, devotedly attached to them. Men may be called fanatics for entertaining such sentiments; but how many of the holiest rites of revealed religion—how many glorious truths in morality, have called upon their professors the same term of reproach.

Gentlemen, this whole case, from its inception, from the making of the affidavit for the traverser's arrest, to this moment: this whole case has been influenced by the excitement then got up. Can we wonder at it? The thousand stories then afloat, have not yet subsided; the fierce and bloodthirsty denunciations then uttered, are yet heard hoarsely murmuring around us. But we must not listen to them, or lend the least countenance to any violation of the laws. The man that does, in the emphatic language of the indictment, applies the torch to his own threshold—the knife to the throats of his own family.

You have now the grounds of the publication: 1st, To Mr. King—2d, To the Colonization Society—and 3d, The intent is proved by the Emancipator.

And these are all. No man, who has witnessed this trial, can doubt but this is the whole evidence—that there was not another one distributed—that no other human being, within the reach of the prosecution, has seen one, be he white or black. He has had eight months

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to find them. He has searched the premises; he has ransacked the jails; he has hunted through society; and if there had been one other paper in this District, though it had been sunk ten fathoms deep in the filthiest well, or burned to impalpable powder, it would have been fished up, or its ashes inurned. He who could have brought such a prize would have had pæans sung in his praise; fair ladies would have been called to wreath chaplets for his brow, and the tallest and properest men to bear him on their shoulders. We should have had a jubilee! Odes would have handed him down to posterity in doggrel rhyme, and all the people would have gone out with harp and lute to meet him.

Can any one doubt this? Look at what has been done, and remember what is a *publication*. He would have been taken in the *mainor*; there would have been a publication in the courts, and the files of the Colonization Society would have been allowed to gather their dust, till some poor fellow, some northern man, from Connecticut, should come through New York to this city with his shoes wrapped in an Emancipator. Then indeed would have again begun a searching operation, and we should have a Jeffers to sit in critical judgment on philosophical publications, and a Robertson to bear witness to a second history of the West Indies.

But enough of this. The testimony is before you. I beg pardon; but I had forgotten the libel set out in the third count. What shall I say? Look at it. Is it like any of the others? Does it not bear upon its face, *prima facie*—no, positive, substantive, conclusive proof that it came with the others in Kennedy's big bag in July? But, says the learned Attorney, he published all those. He sent them from Georgetown to New York, and had them mailed there; or he sent a list of persons to whom they ought to be sent. And pray why did he not keep this one? Why send his own name? Aye, but, says the gentleman, Gen. Hunter received, one with one cent postage! It must have been mailed here. He was a fortunate man! for Kennedy soon found his mistake, and has voluntarily returned to the stand and explained that one cent. The gentleman cannot be serious. And after all, what is it but two wood cuts, one representing a man with a whip punishing, little children—the other, a man tending

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a school, with this pertinent inquiry, “which of these two systems shall we transmit to our posterity?”

We have been told that the character of Dr. Crandall has not been 7 50 attacked. You will recollect that when this was said, the learned gentleman added, “I have not attacked his character— *I have said he was a man of bad principles.*” Can this be so? Can a man with bad principles be a man of good character? But surely the gentleman said he was an incendiary—had no pursuit or profession—pretended to be a botanist, as a cloak to his designs,—all this the gentleman admits. Now show me a man of bad principles, and I will show you one of bad character. But he says only one witness has been produced, and he knew him when a boy. Have we not traced him, man and boy, from school to college, to Philadelphia, to Peekskill—brought his room-mates, and those with whom he resided year after year to this day? Have we not produced testimonials of the highest character from men of science? Did the gentleman ever hear a fairer or a higher character than has thus been exhibited—and this, too, hundreds of miles from his home and his friends by chance travellers? But his principles are bad!! Now, because he went to Connecticut, two hundred miles, to break up that school which was to send forth missionaries to light the torch of civil discord? Because he repudiated the circulation of these papers, and kept them closely locked up, so that in his absence no one could get to them, and in his presence no one could see them? Did he then or at any time disavow his principles?—that he was opposed to slavery, but equally opposed to all excitement on the subject? Let the gentleman show his bad principles.

We have thus, gentleman, gone through with the evidence in this cause. It is scarcely necessary to say, that this duty has been most unpleasant to myself. I did not think it necessary, and would have submitted the cause, even after the District Attorney had closed, but other counsels prevailed. We have attempted to satisfy the public rather than you, that this cause is without a shadow of foundation; that all the extraneous matter, with which it has been loaded, has nothing to do with it, and that the testimony has thrown so

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broad a flood of light upon the character and conduct of the accused, that he will go hence without a shade upon his conduct or character which the bitterest foe could detect.

MR. COXE'S SPEECH.

I am not aware, Gentlemen of the Jury, that during the whole course of my professional career, I ever advanced to the performance of a professional duty with feelings of more intense anxiety, or in the result of which I felt a deeper interest. This anxiety and this interest are not limited to the consequences which may befall the traverser, an individual as much a stranger to me as to any of you, and whom I am not conscious that I ever saw until I met him in your presence in this court room. Principles have, however, been advanced, a course of procedure has been adopted in this case, which involve interests far more momentous than those which belong to any individual. Principles, which may be brought to bear upon each member of this community, and upon our children's children.

Gentlemen, we are engaged in the first cause of this description, which so far as my knowledge extends, has ever been submitted to a court and jury in 51 any part of these United States. It is an indictment for a seditious libel at common law. There was a brief period in the history of our country, when the whole nation was in a ferment, when we were threatened with foreign war and internal commotion, when party spirit raged throughout the land, and when the impression prevailed among a highly respectable portion of the community, that the circumstances of the times required extraordinary means to protect us from the impending peril;—at that period, believing that the common law afforded no adequate means of repressing seditious publications, and that serious danger was to be apprehended from them, an act of Congress was passed to meet the emergency. The act of July 14, 1798, commonly called the Sedition Act, was enacted, by the second section of which, it was among other things provided, that if any person shall write, print, utter, or publish, &c., any false, scandalous, and malicious writing against the government of the United States, &c., with intent to defame said government, &c., or to bring it into contempt and disrepute, or to excite against it the hatred of the good people

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of the United States, or to stir up sedition within the United States, &c., such person being thereby convicted, &c., shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

This act was the subject of as much acrimonious censure, as much obloquy, as violent denunciation, as any statute which Congress ever passed. It was denounced as tyrannical in the extreme, as a violation of the constitution, as a fatal blow dealt at the freedom of discussion and the liberty of the press. That statute no longer exists. During the brief period of its existence, there were some few instances in which it was enforced by prosecutions against obnoxious individuals. But excepting during that short time, and these few cases, no other prosecutions for seditious libels have been instituted, within my knowledge.

This is a wholly different case. This is an attempt to apply the general well known principles of the common law to this accomplishment of the same end. It is not only a novelty among us, but it is not familiar to the Courts of England.

In this case then, we have all high and important duties to perform. Great principles are to be settled, and upon its result depend consequences which it is impracticable fully to anticipate. I do not profess to be a prophet or the son of a prophet; but without arrogating to myself any extraordinary powers of prescience, I can venture to predict, that if the doctrines you have heard promulgated on behalf of the prosecution, if the proceedings which you have heard, were advised by the District Attorney, and have been justified here by him, shall be recognised as lawful, seeds will have been sown, which will rapidly vegetate and produce a most abundant harvest.

When such doctrines are to be discussed, pregnant with such serious and durable fruits, I cannot but feel that a deep responsibility has devolved upon us all; and I feel how large a portion of it falls to my share in performing the duty upon which I have entered, of

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vindicating against them the principles of liberty and of the constitution in which I have been nurtured, and in which I have thus far lived.

If, gentlemen, upon such a warrant as you have seen was issued against this traverser, based upon such grounds as it alleges, any individual in this community may be arrested, his papers seized and examined, his most confidential correspondence exposed to the public gaze, and this believed to be warranted by the law by which we are governed, then I say, this District is no place for me. Unless my feet shall be staid by a similiar process—if the power of locomotion be allowed me, I would seek some refuge where I 52 should be safe from such horrible outrages. If upon evidence thus wrested from my possession I shall be indictable, without any overt act, for sedition, and subjected, as this traverser has been, to an incarceration for eight months, preparatory to trial, and then denounced before the community in the unmeasured terms you have applied to him, and be told that for such an offence as having in my private custody, under my own lock and key, publications such as he had, or for loaning one to an intelligent friend for his single perusal, I shall encounter such consequences, then to escape such tyranny would I fly to the remotest parts of this once free land.

Gentlemen, this is not and cannot be the law of this District. What is the case? What was the case, when this prosecution was commenced, and this process-issued? Carry back your minds to the 10th of August last, when this warrant was placed by the justice, acting under the advice of the District Attorney, in the hands of the constables who served it. At that time, the only fact which has been given in evidence, and which has served as the foundation for this whole prosecution, was simply this—that Mr. King coming into the office of the traverser, whom he frequently visited, and with whom he frequently conversed, perceived three pamphlets among a great variety of other publications of different sorts and appearances, lying upon a table, just taken from a box where surgical instruments, books, and botanical collections had been packed, and these papers employed for the purpose of packing them. Taking up one of these pamphlets, noticing its title page, and making an observation that this was too far south for things of that description, he asked

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permission of the traverser to read it. This request was acceded to. Up to the 10th of August, this was the only act in proof against Dr. Crandall. His offence “had this extent—no more.”

The affidavit which is set out in the warrant does not go even to this length in any positive averment. William Robinson, who made that affidavit, deposes, that he has seen in Georgetown a pamphlet of an incendiary character, *bearing upon it the name of Dr. Crandall, and that he has been informed* and believes that Dr. Crandall is distributing and circulating that pamphlet. The only positive averment connecting the traverser with the publication in question, is at least unimportant; and if important, will, I presume, now be admitted to be untrue. Mr. Robinson, on the stand as a witness, has no recollection of it, nor has any other witness who has been examined; and if it be true in fact, as we have every reason to believe, and are fully persuaded, and as Mr. Bradley has, I think, shown clearly from the evidence, that the very pamphlet thus loaned to King is one of those now in evidence before you, it is beyond all question that no such endorsement appeared upon it. As to the information to which this deponent yielded his credence, that Dr. C. was engaged in the circulation and distribution of this pamphlet, it is equally unfortified by any of the evidence before you. If Mr. R. was so informed, he was shamefully imposed upon. I wish he would expose the man by whom he has thus been misled. Mr. King and Mr. Oyster were the only individuals personally cognizant of the only circumstance which had occurred, and it cannot be credited, and it has not been surmised, that either of them was the fabricator of this untruth.

Upon this foundation, flimsy as it is, the learned justice, acting under the counsel and advice of the learned District Attorney, issued the illegal and unconstitutional warrant which I hold in my hand. By this precept the constables were enjoined to search and examine the papers of the traverser, to select such as they might judge to be of an incendiary character, and to 53 bring them, together with the person of the traverser, before some justice of the peace, to be dealt with according to law.

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This process, thus illegally issued, thus illegally executed, has been justified by the District Attorney. He avows his participation in it, and avows himself ready, whenever required, to prove that it is lawful. On the other hand, I pledge myself on all occasions, and whenever the question shall be presented for judicial decision, to brand it as tyrannical, oppressive, illegal, and unconstitutional. The arguments upon this subject need not be again repeated. The fact of its occurrence will, however, it is hoped, induce Congress to do what the House of Commons did, when the same case was presented in England, solemnly to denounce it as oppressive and illegal.

The papers or some of them thus found, thus wrested from the traverser, furnish the next evidence upon which the prosecutor rests his case. About a dozen pamphlets, similar to those supposed to be alluded to in the first and second counts of the indictment, and one alleged to be one of the twelve indicated in the third count, are among these stolen goods. The fact of their being thus found is the evidence of the publication by the traverser. Here again I enter my protest against the doctrines promulgated to sanction this prosecution. The head and front of the offence is not an actual circulation or distribution, or even a handing to a single individual, of the papers included in the second and third counts. It is the single fact that, in the execution of this illegal warrant, they were found in his possession. If this be criminal, where is the man in this community, who is not equally amenable to prosecution? The only overt act is that, at the solicitation of a friend, the traverser permitted him to take a single copy of one pamphlet to read—the only evidence to commit him with the others is, that they were found by the constables in his possession.

Can this be such a publication as the law condemns? I answer unhesitatingly, no. Two things must conspire to bring the traverser within the range of the law, if indeed there be any law to meet the case. The publications themselves must be of such a character as befit means of accomplishing the ends charged. They must be calculated, if seen, to engender insurrection among the blacks, contempt of government among the whites. The mode and manner of the publication by the traverser must be such as to justify the

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conclusion that such was his design and object. If the prosecutor fail in the proof of either of these facts, the traverser is entitled to a verdict of acquittal.

Can it then be pretended that there is any proof of any such publication by him? Admitting, for the sake of argument, that the character of these pamphlets is as incendiary and as injurious as it may suit the District Attorney to represent them, has he brought home to him any malicious, any injurious dissemination of them? Can the loan to Mr. King be considered as of that character?

The District Attorney, in his last speech, has, according to my judgment, and my understanding of his views, made such admissions upon this part of the case as to be equivalent to an absolute surrender of the cause. He has conceded, that the mere fact of having given a copy of these publications to an individual may be innocent. He has conceded, that the traverser, without violating any law, without incurring any criminality or censure, might have placed a dozen of them in the hands of a dozen different individuals. Upon what ground then can he hope to sustain the prosecution? A most dangerous, a most false, a most indefensible one. Had he placed them in the hands of elderly, sober, discreet citizens of this District, not liable to be poisoned by their pernicious influence, all would have been right. The witness, Mr. King, 54 is conceded to be within all these categories excepting one—he was not an elderly man. He is represented and conceded to be intelligent, discreet, having no abolition sympathies, and an established resident among us. The only disqualification then was his age. The District Attorney was compelled to yield what he did, because under the eye of the Court, under your eye, during the whole progress of this trial, he has exposed these incendiary publications to the examination, and permitted them to be read by various individuals in this room. If the traverser was wrong, Mr. Key cannot be right. If yielding a hesitating and reluctant assent to the request of the witness, is to subject one to imprisonment in the loathsome jail in this county for the period it has been endured by the defendant, to indictment, and to such a prosecution as we have witnessed, I ask, how is Mr. Key to expect to escape a similar fate for what he has done? Has he even secured himself by the age of those to whom he has published? No; among

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the numerous individuals who have thus been permitted to read and inhale this dangerous poison, under our immediate view, there have been both old and young. His own sons are of the number. Are they not equally young with Mr. King? Are they not equally warm in their feelings and excitable in their temperaments?

But another ground has been more than insinuated. It seems that the traverser is a northern man, a native of Connecticut, and that he came here through New York. And have we lived to see the day, when in a court of justice, sitting in the District of Columbia, under the very eye of Congress, it shall be urged against an individual arraigned at the criminal bar, either as a ground for suspicion, or as a circumstance of aggravation, that the party comes from the north or from the south, from the east or from the west? But we have been told on the part of the prosecution that the northern men are interlopers among us; intruders, who have no sympathies with us, and with whom we have no sympathies. For one, I enter my protest against such language. It is bad enough to resort to such topics to rouse the local prejudices of men in scenes of political strife. I had hoped courts of justice would ever remain closed against such appeals. Gentlemen of the jury, more particularly does it behoove us to avoid such grounds, either of argument or inflammation. There are doubtless vile fanatics, or men, who under the guise of purity and honest zeal, in the north, are ready to scatter firebrands among us; men who scruple to use no means to accomplish the most nefarious ends; men, who professing love and sympathy with the whole human family, would prosecute designs and employ means, which threaten to involve the south in all the accumulated horror of a servile war. These men are few in number, and possess little or no dangerous influence. On the other hand, there are men in the south, who, knowing the weakness and inconsiderable numbers of these northern fiends, exult at every manifestation of this disgraceful spirit, and with motives no purer than those against which they inveigh, are in truth their most active and efficient auxiliaries. If there are fanatics to the north, are there not also incendiaries to the south? If the one scatters the sparks of discord, do not the other industriously fan them into a flame?

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With neither of this description of people have I any sympathy. With neither of them does this District possess any common interest. If they are determined upon war; if they are bent upon their monstrous objects, let them contend elsewhere. As a citizen of this District, I protest against their making this place the scene of their contentions. With my consent our fair fields shall never be converted into an *aceldama* by these contending factions. Still less can I consent that our halls of justice shall be made the scenes of their unhallowed warfare, and ourselves the ministers of their passions. It is 55 for you, gentlemen, now to resist these first attempts to introduce disorganization and disorder into these hitherto unpolluted places.

But is it true, that there are no common sympathies between the north and the south, and that the citizens of the northern states are to be denounced as aliens and enemies? Gentlemen, no such feeling existed during the critical periods of our history, when it is a matter of honorable contest who first set in motion the ball of the revolution. No such feeling pervaded any section of our land, when, at the commencement of that revolution, the father of his country, then known only as a Virginian, assumed the command of our first army before beleaguered Boston, and caused the evacuation by a foreign foe of that cradle of American liberty. No such feeling existed when the northern Greene, second only to Washington in that momentous struggle, leading on the gallant chivalry of the south, first turned back the tide of victory upon Cornwallis. No such feeling will, it is hoped, exist, when the measures for our own especial relief, now pending before Congress, shall be brought up for final decision in the House of Representatives. Of all men, throughout this land, we should be the last to feel, to foment, to give countenance to such doctrines.

But we are told of the excitement which pervaded this District. Gentlemen, I shall demonstrate from the evidence that, in producing this excitement, the unfortunate traverser had no part. He was not the cause, even innocently, of what occurred. What was the character of that excitement? Was it of that description which, judging from the language of this indictment and the tone of this prosecution, would be supposed? Was

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there any insurrection existing, threatened, or apprehended, among our slaves? any among the free negroes? Has there been an hour when any alarm pervaded us from either of these classes? None that I ever knew, none that I ever heard of. Not a night has passed over our heads, in which we could not lay our heads upon our pillows with a sense of the most perfect security from all such dangers.

True it is, there was excitement; but of a totally different character, pervading a totally different portion of our people. An excitement, of which, from the evidence, I shall show you the origin and show you the author. It was such an excitement as that which originated this prosecution, which finds in this prosecution its food and aliment.

Go back with me again to the famous 10th August, when this traverser was arrested upon this charge. Up to the evening of that day, not a symptom or trace of excitement appears from the testimony. On the evening of that day it first began to exhibit itself. It was an excitement got up against Dr. Crandall, not by him. When three constables went to his lodgings, or his office, to execute the most illegal and tyrannical warrant with which they had been entrusted, all was calm and quiet. But for them, it might and would have remained so. They made public, in the streets of Georgetown, the motive and object of their visit, and a few individuals assembled with a natural curiosity to learn the result. What was then the course of Jeffers? Leaving the office of traverser, he goes to Dr. Linthicum's shop, and there proclaims to the persons who had assembled, that "their hopes were more than realized." Had he stopped there, all might yet have been well. Knowing that something more than accusation is necessary to constitute guilt; knowing that our law presumes every man innocent till criminality is established; that it is or ought to be the wish of every individual, that the accused should be able to establish his innocence, these words alone might have been well understood in the only sense in which truth would have warranted their expression; in 56 the only sense in which any man connected, however humbly, with the administration of justice, could, with propriety, have uttered them, as an assertion of the innocence, thus far, of the traverser;—but the constable added, they had

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found a large quantity of incendiary publications in his possession: as many as a hundred and fifty or a hundred and sixty.

Then came the excitement. A cry was at once heard, carry him across the street and hang him to the tree! Such, gentlemen, was the origin, such the author, and such the character of the excitement which pervaded our community. And who can, who dare, in the face of this evidence and the truth, to implicate the traverser in any degree with it? Shall he now be made the victim, through the forms of law, of that excitement against which he could, in this District, find no other refuge than a jail? Is he now to be drawn from that loathsome refuge, to be immolated as a victim on this altar?

To return, gentlemen, to the more immediate merits of this case. The testimony is silent as to any act of publication by the traverser of more than one of the publications which are referred to in this indictment, or have been the subject of comment by the prosecutor. In what part of his conduct do you perceive any trace of improper motive or of improper design?

We are told, however, that he could not have been in possession of them as he was, with any other than criminal designs. We are thus brought to the consideration of this part of the case.

Gentlemen of the Jury, is it to be endured, that under color of law, in the face of all law, and in the very teeth of the constitution, a warrant shall be issued under which the papers of an individual shall be searched and examined; and that papers thus wrenched from his most private custody, shall be produced as proof of his crime. Still more monstrous is it that these shall be held evidence of a malicious and seditious publication of such papers.

In every prosecution for a libel, it is incumbent on the prosecutor to establish the fact of a malicious publication. In cases where libels are calculated injuriously to affect an individual, such malice may be inferred from a single act of publication to a single individual. The law does not measure the extent of the injury; its duty is fulfilled when it

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ascertains its existence to any degree. But in cases of seditious publications, of libels which are injurious, and can only be injurious by the application of the exciting spark to the inflammable material, it is, according to my apprehension of the law, essential that the publication, to be criminal, should be made to such persons as could or might be injured. This case is then destitute of such proof, and in its absence the traverser is entitled to your verdict.

As to the criminal intent inferrable from the naked fact that the papers in question were in his possession, it would have been sufficient to answer, that had he originally obtained, and preserved, and subsequently brought them to this District, with intent to publish and disseminate them, until such illegal dissemination be proved, the crime consists wholly in insertion. It is unnecessary for me to remind you of the principle which pervades our whole criminal code, that a criminal intent must be combined with an illegal act to constitute legal guilt.

But slender as is such a foundation for any criminal prosecution, I am not disposed to concede that even such exists. The evidence in the case shows that the papers found in the office of Dr. Crandall were in his possession, or in that of the family in which he resided at Peekskill, two years before he came to this District; that they were used by him merely to preserve his botanical specimens; that they were an inconsiderable portion, as to numbers, of a large mass of papers; that they were placed by a lady, who has testified before you, at her own suggestion, in the box, from which they were taken in Georgetown, in the presence of other witnesses, without any view on the part of either to bring them into this District; that they were used only as packing papers, and drying papers. [Mr. Coxe here went into a minute examination of the evidence to illustrate each of these points.] As to the package found in his trunk, it is also in evidence that they were placed in his hands in New York, in June, by a person from whom he had purchased a book: that he had no knowledge of their contents; that the package remained unopened in his trunk till the witness, who has detailed the transaction herself, opened it; that it remained undiminished

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up to the period of his arrest. [Mr. C. examined the evidence here in detail to establish these grounds.]

It is, gentlemen, from such evidence as this, that you are asked to infer that the apparently innocent act of yielding to Mr. King's request, that he might be permitted to read one of these publications, was fraught with evil, and indicated the most criminal and atrocious designs. No mischief has been accomplished—no insurrection has been raised—no human being except the unhappy traverser himself has been injured; but from such circumstances you are to presume guilty designs; and although evidenced by no one overt act—though never accomplished, or attempted to be accomplished—you are to find the accused to be in fact guilty.

It is, gentlemen, preposterous—it is monstrous. It has no foundation in any principle of law—it can find no support in any dictate of reason. It is a reproach to our community—it is a slander upon our institutions, that an intelligent and highly accomplished individual, should, under such circumstances and upon such grounds, have suffered what has already been inflicted upon him. True, he is a stranger. But among the brightest and the most attractive characteristics of the south, has hitherto been her generous hospitality. Thousands of southern men have partaken of the liberal hospitality of the north. If this be the mode in which it is to be reciprocated—if stranger and enemy are to be with us convertible terms—if to come from the north be evidence of guilt, or even cause of suspicion, all the kindness which many of us have witnessed, must be at an end, and upon our own heads must rest the consequences.

Gentlemen, from the review of the testimony, can a question exist as to the entire freedom from guilt of every act which has been proved upon the traverser? He came into possession of the papers innocently, they were retained innocently, they were never distributed by him.

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Again, you have been told that the character of the publications themselves carries with it the strongest evidence of a malicious and seditious intent. I cannot concur in the principle of law as thus assumed. Had the testimony shown a distribution of incendiary pamphlets among our negroes, or among that portion of the community likely to be prejudicially affected by them; had they been industriously disseminated by the traverser, a character might have been given to such acts by showing the nature of the papers published. But the whole publication pretended here is merely an inferential one—in point of fact, none actually occurred. It is an inferred fact, not an existing one, which is then to be characterized. It is not an overt act to which you are to assign a motive; you are to presume both fact and purpose.

But had the fact of a general, a wide, an indiscriminate distribution been positively established by direct proof, it would remain incumbent upon the prosecutor to show from the tendency and nature of the publications themselves 8 58 that the ends which he attributes to the traverser, were really his, and that the character of the papers thus disseminated is such as to warrant the inference of illegal motives and criminal intent. This is not the stage of the cause in which we can with propriety argue the question, whether there be any libellous matter set forth in the indictment, or any violation of any criminal law charged in the indictment. It may, perhaps, become necessary to discuss that point hereafter. At present, I shall examine it purely as a question of fact for the jury, and unless I am much deceived, shall establish, beyond all doubt, the position, that in the quotations from the publications which are incorporated into the indictment, there is nothing from which a criminal intent or motive can be inferred.

In examining this point of the case, I must request your particular attention to the extracts from the papers which are charged to be libellous, as they are spread upon the record. If there be no criminal matter there, there is no crime charged. In reference to this, I undertake to show, that there is not one sentiment or one expression bearing upon the subject of slavery, or upon slave-holders, describing the condition of the slaves,

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denunciatory of the system, pointing out its fruits, or foretelling its results, which I shall not show you to have been uttered by slave-holders; by the statesmen and the legislators, the divines, the lawyers, and philosophers of the south. I shall compare passage with passage, place them in juxtaposition before you, and call upon you to task your utmost powers of discrimination to distinguish between them. I shall select these passages not only exclusively from southern men, but from southern men possessing and deserving the highest consideration. I shall quote language which has not been uttered carelessly and incautiously, but that which has been deliberately promulgated in legislative halls, in philosophical treatises, in the most grave deliberative bodies. Gentlemen, let me not be misunderstood. I am not about to justify one libel by quoting another. I mean not to vindicate the authors or the publishers of the alleged libels, by showing that others have employed language equally offensive, and equally obnoxious to punishment. My object is to show, that it cannot possibly be criminal, even for a northern man, to express himself upon this subject in the same language which we daily hear and daily read among ourselves. I shall quote from public speeches made by the District Attorney himself, in large and promiscuous assemblies of people of all ages, of both sexes, and from all quarters of our land—from speeches delivered by his friends and associates at such meetings, and published under the direction and supervision of the Board of Managers of the Colonization Society, of whom he is one, and has been one for years.

[Mr. Coxe here proceeded minutely to compare the language alleged in the indictment to be libellous with analogous passages from the speeches of Mr. Key, Mr. Archer, Mr. Custis, Bishop Smith, General Harper, and others, at meetings of the Colonization Society; of Patrick Henry, in the Virginia Convention, of Mr. Pinkney, in the Legislature of Maryland, from Mr. Jefferson's Notes on Virginia, from Tucker's Blackstone, and other publications, pointing out the identity of sentiment, and almost of expression between them.]

Gentlemen, neither you nor I, nor even the District Attorney, can distinguish the language of one of these parties from the other, for no distinction exists. If any can be found, it will consist merely in this—that the northern gentlemen are somewhat less fervid in

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their eloquence, somewhat more temperate in their use of epithets, somewhat less denunciatory than their southern friends. Where the one is deserving of praise, the other cannot be the subject of just censure.

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What, then, has given birth to this proceeding? Why, gentlemen, a controversy has grown up between the two rival societies, the Colonization and the Abolition Society. Both profess a warm interest in the welfare of the blacks; both denounce the system of slavery as a great moral evil; they concur in thinking it ought to be eradicated from our political system;—but they differ somewhat as to the means by which these objects shall be accomplished—they disagree as to the rapidity with which the goal shall be reached. One accuses the other of being too rapid, and is itself charged in turn with being too languid. With the respective merits or demerits of these societies we have at present no concern. Whether both be right, or both wrong, or the one right, and the other wrong, is not a matter in issue upon this trial. The highly estimable secretary of the Colonization Society has eulogized in terms of high, and probably just praise, the personal excellence, the sincerity, the religious zeal of the abolitionists. Mr. Gerrit Smith speaks of them as his highly-valued friends. But their controversies are becoming embittered; and I trust you will feel disposed, as I am, to allow them to settle them as they please, without our interference.

The District Attorney has denounced the Abolition Society in terms similar to those which the abolitionists apply to the slave-holders. In this, he deviates somewhat from the language of his colonization friends. But he asserts that the traverser is a member of the American Abolition Society. This assertion is like many others of the prosecutor, wholly gratuitous. It is not sustained by the evidence, nor has it any foundation in fact. One of the constables, it is true, has stated that during that exciting evening of Dr. Crandall's arrest, he admitted that he was a member of that society. But this is disproved by all the other testimony in the case; and the District Attorney well knows, that the only positive evidence,

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upon this subject, which could be produced, has been exhibited to him, wholly disproving this assertion.

Gentlemen, I have no disposition to defend the Abolition Society. I know nothing of it, and care as little. But from one of the works on the table, I will read one or two articles of its constitution, which professes to state the objects at which it aims, and the means by which those objects are to be accomplished. [Mr. C. here read from Judge Jay's work two clauses of the constitution of the society.] If this be a correct exhibition of the principles of the society, there is but a small difference between them and their colonization friends.

After the labors we have all endured in this case, gentlemen, you must participate with me in the fatigue which is necessarily the result. In the observations I have submitted to you, I have endeavored to avoid going over the same ground which had been already occupied with so much ability by my friend and associate. Much yet remains to be said; but your patience and my strength are both well nigh exhausted.

In conclusion, I will remark, that if the smallest portion of practical injury shall result from the visit of the traverser to this place, it cannot be attributable to him. He was pursuing peaceably and quietly the even tenor of his way; his mind occupied in professional pursuits, and his time devoted to innocent and scientific objects. Not a single individual ever heard from his lips a word having the remotest tendency to disturb the peace of the community, or to outrage the feelings of a single citizen. His books and papers were harmlessly reposing in his trunk and his office, neither injuring nor calculated to injure any one. From this quiet repose, both have been snatched by the lawless violence which has characterized the proceedings against him: language imputed to him which he never uttered, and bruited forth to rouse 60 into action, and to stimulate to deeds of ferocity, a ruthless mob. These publications, which have been denounced as so inflammatory that to allow Mr. King to read one of them is held up as conclusive evidence of the most heinous guilt, have been publicly exhibited by the prosecutor, and read with all the rich pathos of his eloquence to the large and promiscuous assemblage which has witnessed this trial,

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and laid open to the inspection from day to day of all who might choose to gratify their curiosity by a perusal of them. If the danger apprehended be real, what consequences may not be anticipated from the dissemination of this dreadful poison!—what scenes of insurrection and of tumult may not be acted among us! But upon whom must the fearful responsibility rest? Not upon the innocent man who has never breathed them to the world, but upon the prosecutor himself, who has preached them to this excited and excitable community, and who has darkened even the gloomiest horrors which his fancy could imagine, by the eloquent language in which he has clothed them.

Returning you my thanks and those of my client for the patient attention to his case, I submit him and his fate with entire confidence into your hands.

MR. KEY'S SPEECH.

Mr. Key closed for the prosecution.

He said he had supposed it possible, that it would have been admitted that the publications were libellous; but the counsel for the defence had stood on no such ground. They had not felt secure in that admission, and had taken the bold ground, that the publications were justifiable throughout, and upon this issue the jury had the sacred rights of the south to self-protection, before them. There were two questions: Are the publications charged in the indictment libellous? and, is the man guilty of circulating them? The papers had been said over and over again to be harmless; to be no more than what southern men had said, and that brought into the question the right of the south to self-protection.

Mr. Bradley denied that any such justification had been made.

Mr. Key went on to argue, at great length, upon the character of these abolition pamphlets, and in defence of the Colonization Society, for the purpose of showing an essential difference in the meaning and object; and he urged the dangerous character and tendency of such papers as those in court, which, he said, were not addressed to the reason of

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discreet men, but to the sense and passion of the slave. He commented upon the law, and maintained the justice and necessity of punishing such disturbers of society, who endeavor, in so reckless a manner, to excite an ignorant class of the population to commit the most horrible outrages. He then read the passages charged in the indictment, and said no one could doubt their tendency or design; and no one could read the libel in the second count, without feeling his blood boil at the cold and heartless sneers at “the beauty and chivalry of the south.” The pictures, presenting slavery in some of its worst aspects, he said, were not appeals to the reason of slave owners, but to the slaves themselves, who could not read, but who could be addressed in this manner. He insisted that this was the work of vile men, who, for bad purposes, wished to 61 instigate tumult and violence. He had admitted that there might be honest men among the northern abolitionists; but the honest men were not sensible, and the sensible men were not honest. And it was not to be endured, that the common men, who have no ties with our society or its institutions, should be allowed to come among us to circulate these papers, and to “whisper their principles in chimney-corners and in by-ways;” and who come to the south in a cold-blooded manner, to deluge the country with blood, and give the dwellings to the flames, in order to carry into effect their abstractions, regardless of all consequences.

Mr. Key then went on to consider the evidence of publication. He alluded to Crandall's former professions, and to his admissions that he was a member of the Abolition Society. The pamphlets which were left by Dennison, he endorsed with the words “read and circulate,” showing his views and feelings; and when he came here, it was without any apparent business, a stranger to tho habits and interests of the south. He had given one to Mr. King, to be sent, under the request of his endorsement, to every body who would take it; and it was even then, probably circulating in secret to accomplish its intended work of mischief. He alluded to the contradictory statements given by the prisoner, when he was arrested; arguing, that he said at one time, the pamphlets were sent round by water, and at another, that they were given him at New York, on his way here. He also said, that they were all there, and at another time admitted he had distributed about a dozen. He also

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spoke of the vast number of such papers sent all over the country, and of great quantities of Emancipators circulating, the sentiments of which Crandall admitted he approved; and he read passages from the papers to show the declamations of the abolitionists, and to fix the intent with which the publications were made. He contended that the works were not harmless, as the counsel for the defence had argued; and that the man who brought them here could have been actuated by no good motives, but must have intended to circulate them, according to their purpose, and to give full effect to their dangerous and incendiary purposes.

He then went on to examine the evidence in exculpation; and referred to the testimony of Mrs. Austin, that the bundle in the trunk had not been untied. He said she could not have known, but that Crandall might have opened it every day, and tied it up again, so that no one could know it; nor could she tell how many had been taken out. She had been brought to show that he did not distribute one; but she is contradicted by his own admission. He says he distributed a dozen. Nor ought he (Mr. Key) to be called upon to show to whom he had given them. He would naturally give them to such persons as would not or could not tell of it; but if he had given them to persons, to whom it was proper and safe to give them, he could bring those persons to show it.

He went on to comment upon the manner in which the pamphlets were found in the prisoner's shop, where he kept them exposed to view, and ready to be distributed, whenever he could find a chance, in which he was not likely to be exposed; and said there was not a particle of evidence to show, that he ever took back, as was pretended, the one he gave to Mr. King; or that that pamphlet was then in court. He said if Crandall had been actuated by good motives, when he found that it was dangerous to circulate these papers in such a community, instead of keeping, and hiding, and saving them, he would have burnt the whole. The story he had authorized his counsel to tell, that he went and got that pamphlet, made against him either way. If true, then it showed that ho wanted to use it

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to accomplish his own purposes; 62 if false, it showed that he was ready to resort to any subterfuge to screen himself from the punishment he deserves.

Mr. Key replied to the observations of the counsel for the defence, in relation to the testimony of Mr. Jeffers, who, with the other officer, he said, had taken proper measures to shield the prisoner from injury that might accrue from an excited people; and contended that his conduct and testimony was fair and correct throughout. And after some remarks, respecting the conversations with Colclaiser, and that heard by Tippet, he concluded by saying, that if the jury thought the publications were not libellous, and had no tendency to excite insurrection; if they thought men could be allowed to come here and circulate such papers, then there was an end to all protection for the lives and property of the people of the south. One of the gentlemen says that there is no danger here; that we stand on middle ground; that there will be no excitement or insurrection here. Then he differs from Crandall, for he has said the excitement was too great already; and every one knows there has been danger and excitement. But if there is none here, have we no sympathies for those differently situated, who are more critically exposed than we are to the horrible results of these abolition operations? He thought such sympathies existed; and this was a proper occasion for their exercise. He had only to say, that if the jury had conscientious convictions of the prisoner's innocence, they should acquit him. He thought he had conclusively demonstrated the opposite opinion.

The jury retired, and after a deliberation of about one hour, agreed upon a verdict of not guilty; and the next morning Dr. Crandall was discharged.