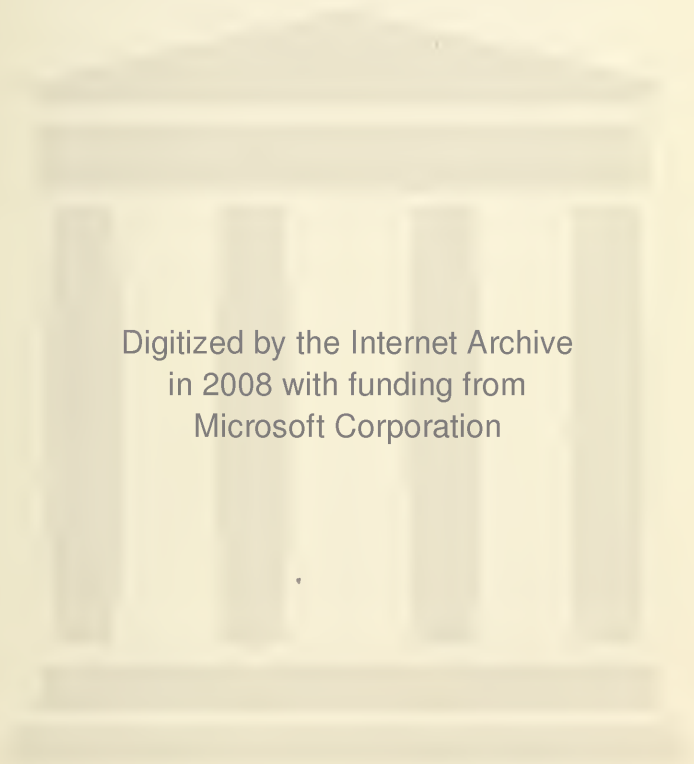

In the Supreme Court of the United States

OCTOBER TERM, 1916

No. 121

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,

against

THOMAS T. SHERMAN, Defendant-in-Error.

BRIEF OF PLAINTIFF-IN-ERROR

JOHN ARMSTRONG CHALONER, *pro se.*

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In the Supreme Court of the United States

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No. 121

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,

against

THOMAS T. SHERMAN, Defendant-in-Error.

BRIEF OF PLAINTIFF-IN-ERROR.

JOHN ARMSTRONG CHALONER, *pro se.*

INTRODUCTION TO APPEAL BRIEF AND ARGUMENT.

STATEMENT.

This action was brought by the plaintiff against the defendant on the 5th day of April, 1904. The trial was held before Hon. George C. Holt, District Judge, and a jury in the United States District Court for the Southern District of New York on the 19th, 20th, 21st and 23d days of February, 1912. At the close of the plaintiff's case, the Trial Court directed a verdict in favor of the defendant. In rendering a decision in favor of the defendant and against the plaintiff, the Court rendered

an opinion orally which is fully set forth in the record. Thereafter and on the 6th day of March, 1912, judgment was entered in the said Court in favor of the defendant and against the plaintiff upon the issues in this action.

Thereafter, by order of the said District Court, a writ of error was issued and allowed to the plaintiff to have reviewed in the United States Circuit Court of Appeals, for the Second Circuit, the said judgment heretofore entered on the 6th day of March, 1912. A writ of error and citation was thereupon duly issued to the plaintiff-in-error who duly served his assignment of errors upon the defendant in this action.

The testimony upon the trial of this case is greatly abbreviated because of the limitations placed upon the plaintiff's counsel by the rulings of the learned Court. Before these limitations were defined by the Court, however, certain evidence was introduced by the plaintiff. The demand made by the plaintiff on the defendant for the property which is the subject matter of this suit was duly proved and received in evidence and marked Plaintiff's "Exhibit 1." It was conceded that there was no delivery under this demand.

The plaintiff's sworn statement before the Tax Commissioner of the City of New York, made by him on April 28th, 1896, was next received in evidence to show that the plaintiff's residence at that date was Cobham, Va.

The testimony of plaintiff's former wife, which was taken by a deposition, was then offered to prove the plaintiff's residence prior to his commitment under the alleged fraudulent proceedings in New York, which we contend upon the admitted perjury of Winthrop Astor Chanler, Chief Petitioner in the 1897 proceedings, were fraudulent; also the plaintiff's condition of health. The condition of the plaintiff's health was excluded by the Court.

A certified copy of the 1897 lunacy proceedings, under which the plaintiff-in-error was confined, was then excluded by the Court, with exception to the plaintiff. All evidence attacking the validity of the contents of the 1897 and 1899 proceedings was excluded by the Court, with exception to the plaintiff. The next evidence in the record attacks the jurisdiction of the Court in the 1899 proceedings. Evidence was introduced by the plaintiff showing that the Commissioners in the 1899 lunacy proceedings were not sworn at the time that a notice instituting same was issued by said Commissioners.

Pedro N. Piedra, the next witness, testified that he was a nurse employed at the Bloomingdale Asylum (falsely so called, its true name being "The Society of the New York Hospital," with hospital and offices in 15th Street, just west of Fifth Avenue, New York), in Westchester County, N. Y., by Dr. Lyon, its superintendent, in 1899. He was engaged in taking care of Mr. John Armstrong Chaloner, the plaintiff in this case. He was daily with Mr. Chaloner from eight a. m. to eight p. m., during the months of May and June, 1899. (Transcript of Record, pp. 30-33, fols. 56-63.)

The Court thereupon excluded all testimony relating to the physical or mental condition of John Armstrong Chaloner, the plaintiff herein, at the very time that the 1899 proceedings were being held in New York County without the attendance of the said John Armstrong Chaloner, named in said proceedings as the alleged incompetent person. The Court refused to permit an examination of this witness in any way about the physical or mental condition of the plaintiff-in-error in May, 1899. *The plaintiff's counsel offered to prove that these proceedings were fraudulent and that the alleged incompetent person was perfectly sane at that time.* The offer

was also made to show by conversations with the physicians who testified at said proceedings that on or about that very day they had admitted to the witness that said John Armstrong Chaloner was perfectly sane.

The plaintiff's counsel next offered in evidence an exemplified copy of certain proceedings had in the County Court of Albemarle County, Virginia, in 1901, where the plaintiff then resided, alleging that the plaintiff had previously been adjudged insane in New York and asking for an examination as to his then condition. Whereupon, said Virginia Court made an inquiry into the sanity of the plaintiff-in-error and found that he was sane and capable of managing his affairs and issued its decree accordingly on November 6th, 1901. This evidence was all excluded by the Trial Court.

Hon. Micajah Woods, a lawyer of Albemarle, Virginia, was called and asked whether or not he represented the plaintiff as attorney in the said proceedings inquiring into the sanity of John Armstrong Chaloner, instituted in Albemarle County, Virginia, by C. Ruffin Randolph on September 20th, 1901, and which was decided on November 6th, 1901. Plaintiff also offered to show by this witness under what procedure and what law C. Ruffin Randolph filed this application in reference to the sanity of this plaintiff in the Albemarle County, Va., proceeding in 1901. The Virginia record was marked Plaintiff's "Exhibit 7" for identification. Exception was duly taken to the refusal of the Court to admit this exemplified copy of the record of these Virginia proceedings. By stipulation it was agreed between counsel in the case that the Virginia record, marked Plaintiff's "Exhibit 7" for identification, should be handed up to the United States Circuit Court of Appeals for the Second Circuit on appeal as if said record were a model exhibit. Micajah Woods also gave evi-

dence as to a certain letter received by him from the plaintiff-in-error, dated July 30th, 1897, which evidence went to prove the plaintiff's sanity at that date. This letter also shows plaintiff's statement as to his residence in Virginia at the date of his commitment to the "Bloomingdale" Insane Asylum. See offer as made by counsel, and the exclusion by the Court with exception to the plaintiff.

John Armstrong Chaloner, the plaintiff-in-error, also gave clear, lucid and convincing testimony in this case by deposition as appears by the record herein.

After dealing with the question of plaintiff's residence, plaintiff offered to prove by the plaintiff himself that he was lured into the State of New York for the purpose of being thrown into "Bloomingdale" Asylum and to show that the proceedings and the testimony upon which they were based, which resulted in his confinement in "Bloomingdale" Asylum, were void and false upon their face. The Court declined to receive this testimony, holding as a matter of law that the defendant is not responsible for the illegal acts of those who placed the plaintiff in "Bloomingdale." The Court said, "I will assume for the purpose of this case that he was lured." The Court also took the position that it was not a question, in this case, as to whether the order of Judge Gildersleeve, of the New York Supreme Court, directing the confinement of the plaintiff to the Asylum, is void. The learned Court, at this point, stated that a proceeding in a civil suit to recover money on a debt would be void if the person on whom service was made was lured into the jurisdiction. But the Court held that a judgment determining a man's sanity is a fact which does not depend on how the respondent was brought into the jurisdiction of the court. The Court also stated that no matter how he comes to a particular

place, how he is brought or by what fraudulent means he is brought there, the Court still has jurisdiction over his person and his property.

Finally, the Court said, "Any testimony that you may wish to offer in regard to the sanity of Mr. Chaloner I shall exclude. Any evidence that you wish to offer tending to show that he was lured into the State I shall exclude if that is the only object of the testimony." Exception was duly entered to the Court's ruling in this regard. It was then conceded by counsel for defendant that the plaintiff's counsel duly offered evidence in the depositions of witnesses to show that John Armstrong Chaloner is sane, and always has been a sane man, which testimony was excluded by the Court on defendant's objection, on the ground that it had no materiality to the issues, with exception to the plaintiff-in-error.

The plaintiff was not permitted by the Court to show the motives back of the conspiracy and the luring which resulted in the plaintiff's confinement in an insane asylum. This testimony was offered in connection with the deposition of Winthrop Astor Chanler, one of the petitioners in the commitment proceedings. For the same reason he was not permitted to show fraud in said commitment proceedings and in particular the false statement alleged to have been made by Arthur A. Carey, one of the said petitioners.

The plaintiff's next offer related to the failure on the part of the defendant at the time of the application for his appointment as committee to give notice to John Armstrong Chaloner of such application; also, that the defendant was aware of the Virginia proceedings at the time of such application and in particular that the defendant knew that John Armstrong Chaloner had been previously adjudged sane in the State of Virginia. The Court said, "I exclude any evidence tending to show

that," to which an exception was duly entered. Also, the Court excluded evidence tending to show that Prescott Hall Butler, the predecessor of Thomas T. Sherman, as committee, was represented by counsel in the Virginia proceedings at which the plaintiff was declared sane. The further testimony of more than twenty (20) other witnesses, all tending to show that the plaintiff was and is sane, was next excluded by the Court, and finally, to summarize, the Court excluded the following:

1.—All proof of the sanity of John Armstrong Chaloner, the plaintiff herein.

2.—All proof of the fact that John Armstrong Chaloner was declared sane by the decree of a Virginia Court prior to the appointment of Thomas T. Sherman as committee of said plaintiff.

3.—All evidence to show that the plaintiff was at all times during the 1897 and 1899 proceedings a citizen of the State of Virginia and that the New York Court was thereby without jurisdiction over him.

4.—All proof that John Armstrong Chaloner was lured into the jurisdiction of the New York Court for the purpose of committing him as an insane person in a New York institution.

5.—All proof of plaintiff's inability to attend, while confined in an insane asylum in Westchester County, the so-called 1899 Sheriff's jury proceedings which were held in New York County in the absence of John Armstrong Chaloner, the subject-matter of that inquiry.

6.—All proof as to the physical disability of the plaintiff at the time of this proceeding going to show that there was no real contest and that there was fraud in their inception.

7.—Proof of the continuing condition of sanity of John Armstrong Chaloner.

8.—Proof of the sanity of John Armstrong Chaloner by his written documents.

To the refusal of the learned Court to receive evidence upon any of the foregoing elements and issues in this case, exception was duly taken by the plaintiff-in-error. Thereupon, the defendant moved for the direction of a verdict for the defendant. The Court, after stating the grounds for its opinion, granted this motion, and on March 6th, 1912, judgment was entered in favor of the defendant. The Court, in directing a verdict for the defendant, ruled in effect that the plaintiff-in-error had no right of recourse to the Federal Court. In denying relief to the plaintiff in the United States Court, the Court held that the plaintiff's only remedy was to apply to the New York Supreme Court. Hence, although the plaintiff is still a resident of another sovereign State, and although the amount involved in this action is more than two thousand dollars ($2,000), he was by the said United States District Court denied the right to a trial by jury in a Court of competent jurisdiction. Because of the ruling above set forth and more specifically set forth in the assignment of errors filed by the plaintiff-in-error, in the United States Circuit Court of Appeals, the plaintiff-in-error, subsequent to March 6th, 1912, procured from the United States District Court for the Southern District of New York a writ of error to review said judgment, and such proceedings were had therein that an order of the United States Circuit Court of Appeals for the Second Circuit was made and entered, confirming in all respects said judgment with costs, and on the 18th day of June, 1914, a mandate was duly issued thereon to the Judges of the United States District

Court for the Southern District of New York, and a judgment was thereon, on the 27th day of June, 1914, duly entered, affirming in all respects the said final judgment of March 6th, 1912.

Thereafter, to-wit, on the 6th day of April, 1915, the plaintiff-in-error procured from the said United States Circuit Court of Appeals for the Second Circuit an order that a writ of error be allowed, to have reviewed in the Supreme Court of the United States the judgment theretofore entered on the 27th day of June, 1914, which affirmed the final judgment therein entered on the 6th day of March, 1912, and a further order that all further proceedings be superseded and stayed until the final determination of said writ of error by the said Supreme Court of the United States, and until the further order of the United States Circuit Court of Appeals for the Second Circuit.

A writ of error and citation was thereupon duly issued to the plaintiff-in-error, who duly served same, and his assignment of errors, upon the defendant in this action.

Because of the rulings of the United States Circuit Court of Appeals for the Second Circuit set forth and more specifically referred to in the annexed assignment of errors, the plaintiff-in-error begs leave to appeal to this Honorable Court.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,

against

THOMAS T. SHERMAN, Defendant-in-Error.

ASSIGNMENT OF ERRORS.

Now comes the plaintiff-in-error, John Armstrong Chaloner, herein by William D. Reed, his attorney, and respectfully submits and presents and files his assignment of errors complained of and says: That in the record of the proceedings in the above entitled cause in the United States Circuit Court of Appeals for the Second Circuit, there is manifest error in this, to-wit:

FIRST: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the judgment of the United States District Court for the Southern District of New York, dismissing the complaint filed by the plaintiff-in-error in said cause.

SECOND: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the Trial Court in holding that the plaintiff Chaloner's present condition of sanity never became an issue in the case and could never become so unless the court below had been justified in collaterally

setting aside the decretal order or unless the defendant had adduced some evidence of present incompetency as an affirmative defense.

THIRD: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in excluding testimony to show the mental condition of the plaintiff, Chaloner, in 1899, and in holding that that issue could not be litigated in this action and was solely for the New York Courts.

FOURTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that whether or not, in 1897, the plaintiff was lured into this State was immaterial.

FIFTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the New York Court had jurisdiction over the plaintiff in the 1899 proceedings, even assuming that the plaintiff was at all times a resident of Virginia.

SIXTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the question of plaintiff's residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated that it cannot be collaterally attacked.

SEVENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the rulings of the Trial Court in excluding testimony offered to show that the testimony in the 1899 proceedings was perjurious.

EIGHTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the plaintiff, Chaloner, failed to appear in the 1899 proceedings after due notice of the order or judgment to appear.

NINTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that care was exercised in serving the various notices of motions and proceedings on the plaintiff, Chaloner.

TENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in its finding that the plaintiff, Chaloner, deliberately failed to appear in the 1899 proceedings.

ELEVENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in finding that full opportunity was afforded to the plaintiff, Chaloner, to appear in the 1899 proceedings.

TWELFTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the propriety and sufficiency of the notice to the plaintiff, Chaloner, of the 1899 proceedings are no longer open to question.

THIRTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that in regard to the failure to give the plaintiff, Chaloner, notice of the resignation of the committee, Butler, and the appointment of Sherman, as committee, that there is no statutory requirement of notice in such a proceeding and that notice to the committee of a proposed removal is the only notice required.

FOURTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if notice were required the failure to give it is an irregularity which must be dealt with by the State Court of original jurisdiction.

FIFTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court was not a void judgment.

SIXTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court must remain valid until reversed or set aside by the Courts of New York.

SEVENTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the Supreme Court of New York remains today in full force and validity.

EIGHTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if the petitioner's sanity is established and even if some of the requirements of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee.

NINETEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that this Federal Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court.

WHEREFORE the said plaintiff-in-error prays that the judgment of the Circuit Court of Appeals for the Second Circuit and the judgment of the District Court of the United States for the Southern District of New York be reversed and such directions be given that full force and efficacy may enure to said plaintiff-in-error by reason of the allegations set up in the complaint filed in said cause.

WILLIAM D. REED,
Attorney for plaintiff-in-Error,
John Armstrong Chaloner.

Office and postoffice address: 45 Cedar Street, Borough of Manhattan, New York City.

(*From Trial Brief* in Chaloner* against *Sherman*, pp. 152-163.)

THE NINETEEN POINTS.

POINTS OF LAW.

POINT 1.—The commitment proceedings were void for the following reasons, to-wit: There was fraud and trickery in luring the plaintiff, John Armstrong Chaloner, a citizen of Virginia, into a foreign jurisdiction for the purpose of depriving him of liberty and property on a false charge of insanity.

POINT 2.—The said proceedings were void for the following reason, to-wit: There was fraud and trickery upon the part of the Medical Examiners in Lunacy in the pay of the petitioners, who, in order to keep plaintiff in ignorance of the acts of the said petitioners, and that he should have no knowledge of the impending action,

*Written by plaintiff-in-error in 1902-1904. Printed and copyrighted, 1905.

upon the part of the said petitioners, to deprive him of liberty and property on the said false charge of insanity, pretended to have an interest in trance-states and requested plaintiff to enter a trance in order, as they alleged, that they might for purely scientific reasons, note the action of a trance. Plaintiff, to oblige said Examiners in Lunacy, who never announced themselves as such, but kept said fact strictly in the background, and appeared in the guise, one of a surgeon, the other of an oculist—entered said trance. While in said trance, plaintiff made some remarks. Said remarks form the main charge against the sanity of the plaintiff. Said remarks were made wholly without the slightest ratiocination or volition upon plaintiff's part, except that, to oblige the said surgeon and the said "oculist," he permitted himself to enter said trance and while in said trance, for purely scientific reasons, temporarily surrendered his reasoning and speaking faculties to the influence of said trance. The said medical men expressed themselves as interested in said trance-phenomena, and thereupon took their departure. They visited plaintiff on one other occasion when the trance was resumed. Thereupon after a discussion of trances in general and plaintiff's in particular, said parties departed. A short time thereafter the "oculist" appeared and brusquely informed plaintiff, who was at his rooms at a hotel in New York City, at which he was temporarily sojourning, and in which rooms the said conversations had taken place, that he was insane and that he must accompany said "oculist," who now, for the first time, disclosed his identity, and said that he was a Medical Examiner in Lunacy, employed by the said petitioners. Plaintiff laughed at the allegations of insanity, and requested said examiner in lunacy to state the grounds upon which said allegation was based. Said medical man thereupon said,

"The things you said in the trance." Plaintiff laughed at this, whereupon said medical man said: "Don't you believe the things you said in the trance?" Upon which plaintiff replied with an emphatic negative. Plaintiff declined to accompany said medical man, whereupon, some twenty hours later, March 13th, 1897, plaintiff was arrested by two policemen in plain clothes in his said rooms, and taken by them to The Society of the New York Hospital at White Plains, Westchester County, New York, falsely known as "Bloomingdale," and there incarcerated for three years and eight months in a barred cell, on a false charge of lunacy; until Thanksgiving eve, 1900, when plaintiff escaped and fled to Philadelphia. Plaintiff was, of course, no more legally accountable for what he said in said trance, under the said circumstances, than he would have been legally accountable for remarks made in his sleep.

Point 3.—The said proceedings were void for the following reason, to-wit: There was fraud upon the Court, as well as upon the party, upon the part of the said Medical Examiners in Lunacy. Said medical men doctored plaintiff's trance utterances; that is to say, said medical men divided said trance utterances into two divisions. The first division said medical men took out of the said trance utterances, and placed by themselves. The second division said medical men mixed; leaving part to be guessed at by the Court, and taking the other part out of said trance utterances. The parts in both instances which were taken out of the trance utterances were stated by said medical men as having been said by plaintiff, leaving it to be inferred that said parts were not parts of said trance utterances but were plaintiff's own views which, upon the evidence, it being admitted by said medical men that plaintiff "frequently went into a

trance-like state," upon said evidence they emphatically were not. Furthermore: Said medical men also swore that plaintiff was "violent" and "dangerous," two allegations profoundly false, and totally disproved by plaintiff's conduct at the time, and during the three years and eight months he was incarcerated at White Plains. In the proceedings in 1899 not one word was said about plaintiff's being dangerous or harmful to himself or anybody else, not one word even by the paid witnesses of the other side, and plaintiff had then been for over two years under observation.

Point 4.—The said proceedings were void for the following reasons, to wit: There was perjury upon the part of the said petitioners who, although at the time the said falsely alleged acts on the part of plaintiff were falsely sworn, of their own knowledge, by said petitioners, to have occurred at plaintiff's home in Virginia, said petitioners were widely separated from plaintiff; one of the said petitioners being in New York, one of the said petitioners being in New England, and the third of the said petitioners being in England.

Point 5.—The said proceedings were void for the following reason, to wit: There was fraud upon the Court as well as upon the party, upon the part of the said petitioners. For the foundation of the commitment proceedings had in New York City, March 10, 1897, was the sworn testimony of the said petitioners who—with the exception of the said medical men—were the only witnesses sworn at said proceedings; and the Court relied upon the truth of the oaths of said petitioners that their said allegations against the plaintiff's sanity were *of their own knowledge*, whereas they were emphatically the reverse.

POINT 6.—The said proceedings were void *in toto,* for the reason that owing to the fact that plaintiff was kept away from Court by perjury and trickery, as aforesaid, there was no real contest.

POINT 7.—The said proceedings in 1899 were void *in toto,* for the reason that owing to the fact that plaintiff, by contrivance, was kept away from Court, there was no real contest. The said contrivance being that instead of setting the hearing in the County Court House of Westchester County, at White Plains, where plaintiff was confined, said hearing was set in Manhattan, over twenty miles away. This was done to keep plaintiff out of Court, for said petitioners were in a position to know of plaintiff's physical disability, aforesaid, at the time. Whereas had said hearing been set at White Plains Court—less than a mile from plaintiff's cell—plaintiff could have been carried there in a carriage without danger of injury to him; or, if that was not done, committees of the said Commission and jury could, in an hour, have visited him and examined him.

POINT 8.—The said proceedings in 1899 were void for the following reasons, to wit:

(a) The only evidence of plaintiff's alleged incompetency came from the said two medical men in the pay of the other side, and from the said Medical Superintendent of The Society of the New York Hospital. Said evidence was on the evidence strictly of two varieties, to wit, frivolous, or perjured. The basis of the allegations of the two said medical men against plaintiff's competency and sanity was the aforesaid trance. At the *special request* of said medical men plaintiff, for scientific reasons, entered a trance in order that he might hear the comments thereon of two medical men

who alleged that they were interested in trances. The only time that plaintiff entered a trance during his stay of three years and eight months at White Plains was in the presence of said medical men. Plaintiff did not hesitate to do this, although the doing of it had already got him in trouble, for the reason that plaintiff being a lawyer knew his rights, and knew that he had a legal right to enter a trance. Said medical men had deliberately lied to plaintiff. Said medical men had deliberately deceived plaintiff. Plaintiff upon the appearance of said medical men, had at once asked them, "Do you represent anybody?" To which they both promptly replied that they represented no one. That the reason for their visit was that a friend of plaintiff's, whom they voluntarily and without questioning upon plaintiff's part named, had requested them to call and see plaintiff as said friend was anxious that plaintiff should get out of "Bloomingdale." Plaintiff later communicated with said friend and found that there was not a word of truth in said medical men's assertion touching said friend's share in said medical men's visit. It developed later that said medical men were sent by the other side to obtain testimony for the other side at said proceedings in 1899. The portions of said medical men's said testimony concerning plaintiff's said trance is, of course, frivolous, from a legal standpoint; a party having—under the said circumstances—a legal right to enter a trance.

(b) A specimen of said medical men's evidence had to do with matter touched on in a letter attached to plaintiff's present affidavit, which letter plaintiff had written to a legal friend on March 26, 1900, requesting him to procure counsel for plaintiff in order to institute *habeas corpus* proceedings to procure plaintiff's release. Plaintiff in said conversation with said medical men,

touched on in said letter, strongly censured the parties directly or indirectly interested in holding plaintiff a prisoner on a false charge, and under void proceedings. Said medical men to whom plaintiff had spoken as freely upon said topics as in said letter, palpably—as will appear upon reading said medical men's sworn evidence at the said proceedings in 1899, and as will appear upon reading in connection therewith plaintiff's said attached letter—said medical men palpably and in a most barefaced and preposterous fashion garbled the substance of said conversation and of said letter. The balance of material allegations are on a par with above for barefaced perjury. Lastly, said medical men palpably perjured themselves on the witness stand at said proceedings in 1899, by swearing in effect that plaintiff was not only hopelessly insane and incompetent, but that plaintiff was increasingly so, and that plaintiff's falsely alleged insanity and falsely alleged incompetency would increase with the lapse of time; all of which palpably perjurious allegations have been abundantly disproved by plaintiff's acts since said trial, and by plaintiff's trial November 6, 1901, in the County Court of Albemarle County, Virginia, the same being a court of record, in which county plaintiff's home is; at which trial plaintiff was declared both sane and competent; said trial having been instituted by a neighbor, upon plaintiff's reappearance at plaintiff's said home after plaintiff's said escape, with a view to ascertaining plaintiff's sanity and competency; plaintiff at this time standing under the said void New York proceedings, in the light of an escaped lunatic, whom it was dangerous to allow at large. Plaintiff has since lived continuously at his said home in Albemarle County, Virginia, undisturbed.

And all of which plaintiff-in-error offered to prove on the trial in the lower Court, but was barred from doing

so by the erroneous rulings of the learned Trial Judge. (pp. 30-33, fols. 57-63; pp. 57-60, fols. 107-112.)

POINT 9.—The said proceedings were void *in toto* for they were without due process of law, and, therefore, unconstitutional, for the following reason: There was lack of notice.

POINT 10.—The said proceedings were void for the following reason, to-wit: They were summary. Lunacy proceedings in New York State are mandatory, in derogation of common law rights, and must, therefore, be strictly observed in pursuance of the statute. While said commitment was, in fact, made to the Society of the New York Hospital, it was not so stated; the term Bloomingdale Asylum being used, an institution unknown to the law.

POINT 11.—The proceedings in New York City in 1899, before a Commission and a Sheriff's jury to declare plaintiff an incompetent person *in absentia,* plaintiff never being before the jury or represented in Court in any way, were void *in toto;* for they were without due process of law, and therefore unconstitutional, for the following reasons: (a) There was lack of proper notice, for the plaintiff being at the time in duress of imprisonment, illegally confined under void proceedings, and without access to counsel, the so-called notice was no notice at all. (b) There was lack of opportunity to appear and be heard. For plaintiff, upon the sworn testimony of the medical men in the pay of petitioners, was incapacitated from coming into Court, plaintiff being in bed with an affection of the spine at the time of said trial, and having been so for more than three weeks previous thereto.

Point 12.—The said proceedings in 1899 were void for lack of due process of law for the following reasons, to-wit: *Said trial was had in absentia.* The Court failed to direct the appearance, before said Commission and said Sheriff's jury, of plaintiff and the Court also failed to direct that, failing this, said Commission and jury or committees made up therefrom should visit plaintiff in his cell in the Society of the New York Hospital, at White Plains.

Point 13.—The said proceedings in 1899 were void for lack of due process of law, for the following reasons, to-wit: (1) Although notice of the said proceedings could have been given days earlier, the order was barely complied with in giving the required five days, and the hearing placed at the unheard of hour of four o'clock in the afternoon in New York City, more than twenty miles away from White Plains, where plaintiff was confined. This would naturally hurry the trial. (2) The constitutional guarantee of due process of law applies to the proceedings at the trial. It compels an orderly, fair, reasonable presentation of the facts, and a legal conclusion therefrom. At the said jury trial in this case there was a most colossal disregard of the rights of liberty and property. When the evidence was in—and there seemed some chance of the appearance of the plaintiff—the foreman of the said Sheriff's jury stated to the said Commission: "It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest. They think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand." And this from the foreman of a Sheriff's jury where the liberty and property of a citizen were at stake, and where said jury had not been employed for weeks or

even days upon said case, but had met for the first time in their lives on said case, at four o'clock that afternoon.

Point 14.—The said proceedings in 1897 and the said proceedings in 1899 were void *in toto* from lack of proper evidence. Unless there is clear proof of insanity a judgment against the party founded thereon runs foul of the constitutional provision. On the maxim that "only the best evidence procurable is admissible" no evidence, short of the alleged lunatic's personal appearance in Court or before a committee of the jury, can be the best evidence procurable of said alleged lunatic's mental and physical condition. Anything short of said personal appearance is purely *ex parte* and therefore void. The sum total of the evidence against plaintiff in the proceedings in 1897 was made up of either purely perjured testimony upon the part of the said petitioners, or purely bought and paid for testimony upon the part of the said medical examiners in lunacy hired by the said petitioners. The sum total of the evidence against plaintiff in the proceedings in 1899 was made up of the aforesaid evidence, perjured testimony, upon the part of the said medical examiners in lunacy, who, as in the first instance, were in the pay of the other side. The bulk of the evidence in both said proceedings had to do with the purely frivolous charge that plaintiff entered upon occasional trances, and trance-like states. Not one word was uttered at either of the said proceedings against plaintiff's business capacity, or business judgment, or business foresight, or business prudence. And this fatal omission was in the teeth of the fact that plaintiff was, at the time the said proceedings in 1897 were instituted, actively engaged in large business operations, in which plaintiff had been engaged for four years past, and was holding the position as a member of the Board of Direc-

tors in two large corporations at the time of plaintiff's said arrest and imprisonment upon a false charge of lunacy (pp. 36-37, fols. 69-71; pp. 46-47, fols. 87-89). Not a single one of plaintiff's associates upon said Boards was called as a witness against plaintiff's sanity. In short the whole evidence in plaintiff's case goes to prove plaintiff's permanent and unbroken sanity and competency through life. (See Plaintiff's Exhibit 3, and Plaintiff's Exhibit 7 for identification.)

POINT 15.—Plaintiff's sanity at the time of arrest is proved by plaintiff's letter to Hon. Micajah Woods, dated July 3rd, 1897, upon Mr. Justice Harlan's opinion in the Runk case, which holds that a written instrument by a person accused of insanity may successfully offset *prima facie* evidence of insanity. (See Plaintiff's Exhibit 6 for identification.) This document, written by the plaintiff in July, 1897, was erroneously excluded by the Trial Court. (pp. 60-61, fols. 113-116.)

POINT 16.—The said proceedings in 1899 were void for the reason that the only evidence of plaintiff's alleged incompetency came from two medical men in the pay of the said petitioners, and from the medical men in charge of the Society of the New York Hospital where plaintiff was confined, and to whose pecuniary interest it was therefore—plaintiff being the highest pay (falsely alleged) "patient" in said hospital—to keep plaintiff in said hospital as long as he could; and said paid for, or otherwise pecuniarily interested, evidence, standing uncontradicted—for the reason aforesaid that plaintiff was by said contrivance aforesaid kept out of Court and therefore was unable to contradict said evidence—said evidence standing uncontradicted was not a valid foundation for the judgment which followed.

POINT 17.—Even if the judgment of the New York State Courts in 1897 and 1899 aforesaid, were not totally null and void for the reasons aforesaid, the said judgments are now *functus officio* for the reason that they have nothing to feed upon, a judgment in insanity self-evidently—since insanity is not always incurable—not being a continuing one, and plaintiff having been found to be both sane and competent, as well as a citizen of Virginia, by the said judgment rendered November 6, 1901, by the said Virginia Court (Plaintiff's Exhibit 7 for identification).

POINT 18.—Upon the above grounds of fraud, want of jurisdiction, lack of due process of law, unconstitutionality, illegality, nullity, and *functus officio* the said New York proceedings may be attacked collaterally; and T. T. Sherman, the so-called committee of plaintiff's person and estate, who is merely a Trustee *ex maleficio* may be assailed as a trespasser upon plaintiff's property.

POINT 19.—Plaintiff being a citizen of Virginia, and the said alleged committee of plaintiff's person and estate being a citizen of New York and doing business in New York City, and the amount in controversy being over three thousand dollars, the Federal Circuit Court for the Southern District of New York has jurisdiction.

The foregoing nineteen points of law are discussed in detail and at length hereinafter.

WHAT WE SHALL PROVE.

Upon the accompanying authorities we shall establish the above points of law. In particular:

First.—That Point 9 proves the constitutional right to notice.

Second.—That Point 11 proves the constitutional right to opportunity to appear and be heard.

Third.—That Point 12 proves that trials *in absentia* are illegal.

Fourth.—That Point 15 proves that an instrument written by a person accused of insanity may successfully offset said charge.

The evidence offered by the plaintiff-in-error on the trial of this case, but excluded by the Court with exception to the plaintiff, would have shown:

(1) That plaintiff has always been sane and competent (Transcript of Record, pp. 57-58, fols. 107-113.).

(2) That plaintiff was lured into a foreign jurisdiction under false pretenses for the purpose of depriving him of liberty and property upon a false charge of insanity (pp. 46-49, fols. 87-92.)

(3) That plaintiff and petitioners had, for a long period, been on unfriendly terms; and that interested motives had to do with the said lunacy proceedings being instituted.

(4) That facts were purposely withheld from the Court, and proceedings taken, which, if known to the Court, would have prevented the judgment received. (pp. 30-33, fols. 56-63.)

(5) False statements upon the part of the petitioners and others in connection with said case (p. 25, fols. 47-49; pp. 26-30, fols. 50-57).

(6) Conspiracy in connection with said case. (pp. 30-33, fols. 56-63.)

(7) And generally, that the Court was scandalously used as a machine for achieving a criminal purpose.

Upon the accompanying authorities we shall establish the above points of law.* The documents annexed to plaintiff's affidavit and the documents annexed to this brief will show that we shall prove in this case:

(1) "That plaintiff has always been sane and competent."

Said letter of July 3rd, 1897, and said Trial Brief prove said contention: Supported by Mr. Justice Harlan's said opinion in the Runk case aforesaid, which maintains that a written instrument by an alleged lunatic can successfully offset medical evidence against the writer's sanity.

(2) "That plaintiff was lured into a foreign jurisdiction under false pretenses for the purpose of depriving him of liberty and property, upon a false charge of insanity."

The said statement of facts proves said contention.

(3) "That plaintiff and petitioners had, for a long period, been on unfriendly terms; and that interested motives had to do with the said Lunacy Proceedings being instituted."

The said letters from plaintiff's family annexed to plaintiff's affidavit aforesaid as well as plaintiff's allegations thereanent in said letter of July 3rd, 1897, to Captain Micajah Woods corroborated by said letter of the late Hon. James Lindsay Gordon, aforesaid, prove said contentions (page 134, Trial Brief on file in *Chaloner* against *Sherman*).

(4) "That facts were purposely withheld from the Court, and proceedings taken, which, if known to the Court, would have prevented the judgment received."

The said statement of facts proves said contention.

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*1905 Trial Brief, third line foot page 537.

(5) "We shall show false statements upon the part of the petitioners and others in connection with said case."

The said commitment papers and plaintiff's examination of the testimony of the proceedings of 1899 prove said contention.

(6) "We shall show conspiracy in connection with said case."

The said statement of facts proves said contention.

(7) "And generally, we shall show that the Court was scandalously used as a machine for achieving a criminal purpose."

The said statement of facts proves the said contention.

EPITOME.

The plaintiff in said case being a citizen of Virginia, while being interested in a law business in New York City and a manufacturing business in North Carolina, occasionally visited New York. Upon one of said occasional trips to New York an altercation of a business nature arose between plaintiff and a certain party who later assumed the role of one of the three petitioners in a proceeding to have plaintiff declared and locked up as a lunatic. Shortly after said altercation plaintiff returned to plaintiff's home in Virginia.

It might be as well to observe that besides the aforesaid occupations plaintiff, a Master of Arts of Columbia University, had more or less kept up an interest in psychology after graduating therefrom, and had for some four years previous to March, 1897—the time of the bringing of the said proceedings in lunacy—spent much spare time—after business hours—in carrying on investigations in experimental psychology which, strangely enough, resulted in plaintiff's developing mediumistic

or psychic powers a few months before March, 1897. It should be borne in mind that plaintiff, though being a so-called medium, is and always has been strongly anti-spiritualistic in plaintiff's bent, attributing said mediumistic phenomena, such as automatic writing, and trances, and trance-like states, to purely psychological forces.

Said party with whom plaintiff had had said business altercation, hearing of plaintiff's said experiments in experimental psychology, saw an opportunity. Said party thereupon sent an emissary, accompanied by a physician, totally unannounced, to plaintiff's home in Virginia in February, 1897, with the purpose thereby of enticing plaintiff to the City of New York, with the purpose of there incarcerating plaintiff for life upon a trumped-up charge of lunacy based upon plaintiff's utterances while in said trance-like states. Said emissary, being a very old and very intimate friend of plaintiff—albeit said emissary and plaintiff's relations were at said time a trifle strained from a rather abusive letter said emissary had written plaintiff recently—plaintiff yielded to the urgent appeals of said emissary to accompany said emissary to New York. Plaintiff was further led to do so as plaintiff had some business in New York at said time which needed looking after.

Upon reaching New York City plaintiff was approached by said emissary and said physician with regard to favoring said parties with the sight of plaintiff in a trance. Plaintiff readily complied in the privacy of plaintiff's rooms in the hotel at which plaintiff was stopping in New York City.

Shortly thereafter said physician brought a perfect stranger into plaintiff's said rooms without announcing said stranger. Plaintiff expostulated with said physician thereupon, but finally to oblige said physician, complied with said physician's request and entered a trance-

like state before said stranger. It might be as well to observe that said stranger presented himself under false colors, since said stranger pretended to be an oculist while in reality said stranger was a medical examiner in lunacy.

Shortly thereafter said stranger reappeared in plaintiff's rooms after dark, and ordered plaintiff to get up—plaintiff was in bed at said time—and accompany said stranger to an unnamed destination. Said stranger promptly warned plaintiff that resistance would be useless since said stranger had another man in the next room and two other men outside the door. Plaintiff perfectly quietly and without the slightest show of force, as promptly convinced said stranger that said stranger had failed to bring enough men to carry off plaintiff that night. Next day two police officers in plain clothes presented themselves at plaintiff's said hotel, and plaintiff, without unnecessary argument, permitted said policemen to escort plaintiff to the Society of the New York Hospital, at White Plains, New York.

It turned out that said party joining with two other parties had run plaintiff into an insane asylum upon a false charge of lunacy, in order to get plaintiff out of the way. It might be as well to state that plaintiff was on exceedingly bad terms with said two other parties, who therefore readily joined said party in said conspiracy.

After efforts, extending over a period of nearly four years, plaintiff abandoned all hope of ever getting out of said insane asylum alive and thereupon decided to escape therefrom, and did escape therefrom, thereupon.

After six months' voluntary stay in a private sanitorium in Philadelphia, whither plaintiff had fled to safety, and to have plaintiff's sanity and competency tested as a set-off to the nearly four years aforesaid of false imprisonment upon said trumped-up charge of

lunacy and incompetency, plaintiff spent six weeks at another private sanitorium in Delaware County, Pennsylvania, after the summer-closing of said Philadelphia sanitorium; and while plaintiff was waiting for plaintiff's Virginia counsel to get through said counsel's legal engagements sufficiently to together meet plaintiff in conference in Virginia. Thereupon plaintiff set out for Virginia. Thereupon plaintiff landed in Lynchburg, Virginia, where plaintiff remained until the twentieth of September, 1901, when plaintiff, accompanied by plaintiff's said counsel, put in an appearance at Charlottesville, Va., the county town of the county in which plaintiff's home is situated. Thereupon plaintiff was tried—November 6th, 1901—in the County Court of said Albemarle County, Virginia, situated at Charlottesville, aforesaid, in a proceedings brought by a neighbor of plaintiff in said county, in order to ascertain whether or not a Committee for the person and property of plaintiff should be appointed, since plaintiff was regarded as a dangerous escaped lunatic upon the strength of plaintiff's said nearly four years' imprisonment in said insane asylum. Thereupon plaintiff was fully acquitted of said charge of being a lunatic and said Court dismissed said petition for a Committee of plaintiff's person and estate. Thereupon plaintiff and plaintiff's New York counsel have been at work upon plaintiff's case. Plaintiff has written this entire brief, since plaintiff, being a psychologist as well as a member of the New York Bar of more than twenty years' standing, was equipped therefor. The delay in getting to Court is amply accounted for in said brief.

From

APPEAL BRIEF.

In *Chaloner* against *Sherman*

To

The United States Circuit Court of Appeals for the Second Circuit.

Your petitioner respectfully suggests that a word of explanation may not be out of place concerning the unusual circumstances of your petitioner's drawing up his own brief on appeal.

Briefly the circumstances are these:

The entire substance-matter making up said brief on appeal is taken from books or documents already copyrighted or written by your petitioner.

For example. The entire list of authorities is drawn from the fifteen hundred page law book, copyrighted by your petitioner in 1905—after requiring two full years of incessant and arduous toil and research upon your petitioner's part to write—and in the evidence at the trial of this case entitled "*Brief and Appendix in Chaloner against Sherman," containing Brief and Argument-in-Writing.

The assignment of errors hereto annexed was drawn by your petitioner.

Lastly. The argument in the shape of parallels—and so designated—in which the rulings of the United States Circuit Court of Appeals for the Second Circuit, in 162

*Described hereafter as Trial Brief.

Federal Reports, 19, are paralleled by those of the learned Trial Court and where the more than a score of instances in which said learned Trial Court reversed the rulings of the learned Appellate Court, are briefly set forth for the convenience of this learned Court in the form of parallels, to save labor and time in this most voluminous case; said parallels were drawn up by your petitioner.

The statement of facts and the law of this case cannot be more comprehensively or succinctly put than by the learned United States Circuit Court of Appeals for the Second Circuit, in its opinion handed down May 11th, 1908, and entitled 162 Federal Reports, 19. Your petitioner therefore inserts said 162 Federal Reports, 19, *in extenso.*

162 Federal Reports, 19.

Chanler v. *Sherman.*

(Circuit Court of Appeals, Second Circuit.)

May 11, 1908.

No. 201.

In error to the Circuit Court of the United States for the Southern District of New York, W. D. Reed, for plaintiff-in-error; Evarts, Choate and Sherman (J. H. Choate, Jr., and George L. Kobbe, of counsel), for defendant-in-error.

Before Lacombe, Coxe and Noyes, Circuit Judges.

Noyes, Circuit Judge:

"This appeal is from the denial of a petition for

an auxiliary order in the nature of a writ of protection, in an action at law for conversion.

"The situation as disclosed by the record in the action and by the affidavits upon the petition may be thus briefly stated.

"(1) In 1897 the petitioner—being the plaintiff in said action—was adjudged insane by a Justice of the Supreme Court of New York, and ordered committed to 'Bloomingdale' Asylum, an institution for the custody of the insane, to which he was duly taken and from which he escaped in 1900 and went to Virginia.

"(2) In 1899 an order was made by the Supreme Court of New York finding that the petitioner was of unsound mind, and appointing a committee of his person and property, which office is now held by the defendant in this action.

"(3) In 1901 upon an application made to the County Court of Albemarle County, Virginia, where the petitioner then resided, alleging that he had previously been adjudged insane in New York and praying for an examination as to his then condition, said Court found that he was sane and capable of managing his affairs.

"(4) In 1904 the petitioner brought this action in the Circuit Court as a citizen of Virginia averring that he was sane, and had so been declared by the Virginia Court, and that said orders of the Supreme Court of New York and of the justice thereof were void for want of jurisdiction, and demanding damages from the defendant upon the theory that he had converted the property of the petitioner in his hands as committee.

"(5) The defendant in his answer, not only re-

lied upon said New York orders but went further, and alleged that the plaintiff—the petitioner—was and had been in fact insane, and that the judgment of the Virginia Court was collusive and void.

"(6) The time for the trial of said action approaching, the plaintiff filed the present petition, stating that his presence as a witness at the trial was imperatively required, but that in case he returned to New York he was threatened with reincarceration in the asylum, notwithstanding the Virginia decree.

"He therefore prayed for an order protecting him while coming into the State of New York, attending the trial and returning.

"It is apparent from the record that upon the issues as they stand, the attendance of the petitioner at the trial is necessary. His case cannot be presented without him. And it is also most probable that, if the petitioner return to New York without protection he will be apprehended and retaken to the asylum, as an escaped patient. Without relief he is in this predicament. He must abandon his action for the recovery of a quarter of a million dollars in order to retain his freedom, or must abandon his liberty in order to try his case. The Constitution of the United States vests in its Judicial Department jurisdiction over controversies between citizens of different States. The petitioner as a citizen of the State of Virginia in bringing his said suit in the Circuit Court of the United States, was availing himself of a right founded upon this constitu-

tional provision.* And he came into that Court with a decree of the Court of the State of which he was a citizen, declaring his sanity.

"We cannot disregard that decree. In considering it we do not ignore the orders of the Courts of New York. Insanity is not necessarily permanent. For the purpose of this petition—laying aside jurisdictional questions—we may properly consider that the petitioner was insane when so declared in New York, but that he had recovered his sanity when he was declared sane in Virginia.

"The question, then, is whether a circuit court of the United States has power to protect a person in the situation of the petitioner while attending the trial of his cause therein. It is objected at the outset that the Circuit Court has no power to grant a protective order because it would have the effect of restraining proceedings in a State Court. Section 720 of the Revised

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*Mr. Justice Harlan in

Arrowsmith v. *Gleason*, 129 U. S.
and
Marshall v. *Holmes*, 141 U. S.

But this Court, observing that *the Constitutional right of the citizen of one State to sue a citizen of another State in the Courts of the United States, instead of resorting to a State tribunal*, would be worth nothing, if the Court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress, said: "*We have repeatedly held that the jurisdiction of the Courts of the United States, over controversies between citizens of different States, cannot be impaired by the laws of the States which prescribe the modes of redress in their Courts, or which regulate the distribution of their judicial power. Arrowsmith* v. *Gleason*, 129 U. S."

Is it true that a Circuit Court of the United States, in the exercise of its equity powers, *and where diverse citizenship gives jurisdiction over the parties, may not, in any case, deprive a party of the benefit of a judgment fraudulently obtained by him in a State Court*, the circumstances being such as would authorize relief by the Federal Court, if the judgment had been rendered by it and not by a State Court? *Marshall* v. *Holmes*, 141 U. S.

Statutes prohibits the granting of writs of injunction to stay proceedings in any Court of a State, except when authorized in bankruptcy proceedings. But, assuming that the order at present prayed for would have injunctive effect, our attention has been directed to no proceeding pending in a State Court which it would stay.

"It appears that ten years ago a judge of a State Court signed an order committing the petitioner to an asylum, and that the order was complied with. It does not appear that those proceedings are still pending, or that resort to them would be necessary to recommit the petitioner to the asylum. The Statutes of New York apparently provide that patients escaping from insane hospitals may be returned by peace officers and by designated hospital attendants.

"No proceedings in Court seem necessary or to be provided for. The only other proceedings in New York—those in which a committee was appointed —if still regarded as pending would not be stayed by a protection order, because it was not the object of those proceedings to commit the petitioner to an asylum. He was already in one when they were instituted.

"The next objection is that the petitioner ought to apply to the Courts of the State of New York for the recision of the orders committing him to the asylum and appointing a committee of his person and property. We have not the slightest doubt that full justice would be done the petitioner should he submit himself to the jurisdiction of the State Courts.

"But to assume that he was under any obligation to resort to them is to beg the whole ques-

tion at issue. To say that the orders in question were valid and must stand until set aside by the tribunal which granted them, is to assert that the petitioner has no cause of action in the Circuit Court. But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void, they were of no effect, and the petitioner had a right to assert their invalidity in any Court.

"We now come to the broad question of the power of the Circuit Court to grant a protective writ.

"Such writs have been issued since early times to protect witnesses and parties coming from one State into another to attend a trial, from arrest and detention upon civil process. It is true that if the petitioner were retaken as an escaped insane patient, it would not be upon civil process. But whatever the form of process—if any at all were necessary—the power exercised to retake him would be that of the police. With the exercise of the police power of a State a Court of the United States should not lightly interfere. But we have no doubt of its right to interfere when necessary for the efficient exercise of its own jurisdiction and where the threatened act under the police power must rest for its justification upon the validity of the very matter which the Court is called upon to determine.

"The petitioner was given the right, under the laws of the United States, to try his case in the Courts of the United States. He is not permitted to exercise that full right, and the Court in effect is not permitted to exercise its full jurisdiction, if, while attending the trial and perhaps

before he can be heard, he may be seized and taken to an asylum—and so seized for the reason that he had been previously committed under an order which the petitioner in the very case was asserting to be wholly void. Under such extraordinary conditions, we think the Circuit Court had the power to grant the protective writ.

"Having determined the question of power, we come to the propriety of exercising it.

"Notwithstanding the fact that the petitioner is at liberty in other States, it is suggested that it would be unsafe for him to be brought to New York. If any danger were to be apprehended it would furnish a good reason for refusing the writ. There is, however, nothing in the record to indicate the probability of any such danger and the petitioner's prayer for relief is based upon the express condition that he remain in the custody of United States Marshals during his entire sojourn in the State.

"For these reasons we think a writ of protection should issue if the pleadings in the case remain as they are. The defendant joins issue upon the fact of sanity after the New York orders were made, and also sets up that the Virginia decree was obtained by collusion and is void. With respect to these questions the presence of the petitioner upon the trial would be imperatively required. If, however, the defendant as a committee appointed by the Supreme Court of New York, stood squarely upon the decree of that Court as justifying his acts and asserted that such decrees while unreversed, constituted a complete defense regardless of the fact whether the petitioner had since recovered his sanity, the question

upon the trial in the Circuit Court would simply relate to the validity of those decrees.

"That question would be principally a question of law. Practically the only facts involved would be as to notice given the petitioner—if notice is necessary—and perhaps as to his residence.

"With respect to these questions, the proof would necessarily be within narrow limits, and the petitioner's testimony, if required, might be taken by deposition. Upon such issues we think the personal presence of the petitioner not so necessary that he should be granted the extraordinary relief prayed for here.

"The order of the Circuit Court is reversed, with costs to the petitioner, and the matter is remanded to the Court with instructions in case the issues remain as at present, to issue a writ of protection to the petitioner prohibiting any person from apprehending or taking him for the purpose of returning him or committing him to an insane asylum while attending the trial of this said action, and for such reasonable time before and after the trial as said Court may determine is necessary for him to come into the State and return, provided that he shall submit himself during such time to the custody of one or more United States Marshals, shall obey their directions and shall pay the expenses of their employment. But that in case all the issues, except with respect to the validity and effect of the said orders of the Supreme Court of New York and of the Justice thereof, be eliminated within sixty days, then said writ of protection do not issue."*

*Said issues remain *in statu quo*.

FROM

APPEAL BRIEF.

IN *Chaloner* against *Sherman*

TO

THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

THE PARALLELS

In the following paper your petitioner has paralleled the rulings of Judge George C. Holt* with the ruling of this Appellate Court, namely; the United States Circuit Court of Appeals for the Second Circuit, handed down May 11th, 1908, entitled *Chanler* against *Sherman* (Circuit Court of Appeals, Second Circuit), 162 Federal Reports, 19.

For the sake of clearness your petitioner describes each pair of parallels thus: First reversal of the Appellate Court by the Court below; second reversal of the Appellate Court by the Court below, etc., etc.

First reversal of the Appellate Court by the Court below:

"Second assignment† That the said Court erred in ruling that the matter of the plaintiff's commitment had nothing to do with the case, and to which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 40, *supra*):

"But that in case all the issues except with respect to the validity and effect of *the said orders* of the Supreme Court of New York *and of the Justice thereof*, be eliminated within sixty days, then said writ of protection do not issue."‡

*Of the United States District Court for the Southern District of New York, handed down, February 23, 1912, in *Chaloner against Sherman*.

†In the Assignment of Errors to the United States Circuit Court of Appeals for the Second Circuit.

‡Said issues remain *in statu quo*.

By "*The said order of the Justice thereof*" is meant the commitment proceedings, in which the order for your petitioner's commitment to "Bloomingdale" Insane Asylum was made by Mr. Justice Henry A. Gildersleeve, Justice of the Supreme Court of New York, fully described in 162 Fed. Rep., 19. The following language is from this United States Circuit Court of Appeals, p. 38, *supra,* to-wit:

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

Second reversal of the Appellate Court by the Court below:

"F o u r t h assignment: That the said Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission in evidence on the part of the plaintiff-in-error of a certain certified copy of the 1897 lunacy proceedings to which ruling of the learned Court, counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 40, *supra*):

"But that in case all the issues except with respect to the validity and effect of the said orders of the Supreme Court of New York, and of the justice thereof, be eliminated within sixty days, then said writ of protection do not issue."*

By "*The said order of the Justice thereof*" is meant the 1897 Commitment Proceedings, in which the order for your petitioner's commitment to "Bloomingdale" Insane Asylum was made by Mr. Justice Henry A. Gildersleeve aforesaid, fully described in 162 Fed. Rep., 19, under the caption "(1)" p. 34, *supra*.

Further supported by the following language of the learned United States Circuit Court of Appeals, p. 38, *supra*, to-wit: "But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary that fraud is jurisdictional.

The present Princess Amelie Rives Troubetzkoy

*Said issues remain *in statu quo*.

is the former wife of your petitioner, who was his wife until September, 1895.

The said Commitment Proceedings alleged that the petitioner's falsely alleged attack of insanity began in November, 1896.

By "the certificate," First Question under "Fifth," p. 45, *infra*, is meant the Certificate of Lunacy contained in said Commitment Proceedings of 1897.

By "in these proceedings" Second Question, is meant said Commitment Proceedings of 1897.

By "this petition," Third Question under "Fifth," p. 45, *infra*, is meant the petition for the commitment of your petitioner as an insane person contained in said Commitment Proceedings of 1897.

Third reversal of the Appellate Court by the Court below:

"Fifth assignment: That the said Court erred in sustaining the objections of counsel for defendant-in-error, Thomas T. Sherman, to the following questions read from the deposition of Amelie Rives Troubetzkoy and put to the said witness by counsel for plaintiff-in-error."

"Q. In the certificate, commencing at line 205, it is stated that there was one previous attack, presumably referring to lunacy; do you know anything about this charge?

Q. In these proceedings, under the statement of facts alleged against the plaintiff, were the following: 1st. That 'Mr. J. A. Chanler has, for several months, while at his home in Virginia, been acting in a very erratic manner'—this refers to his conduct presumably for the several months preceding the trial in New York in 1897? Please state whether or not you have any information concerning this allegation?

Q. It is then alleged in 162 Fed. Rep., 19 (p. 40, *supra*):

"But that in case all the issues except with respect to the validity and effect of the said orders of the Supreme Court of New York and of the justice thereof, be eliminated within sixty days then said writ of protection do not issue."*

By "*The said order of the Justice thereof* is meant the 1897 Commitment Proceedings in which the order for your petitioner's commitment to "Bloomingdale" Insane Asylum was made by Mr. Justice Henry A. Gildersleeve, aforesaid, fully described in 162 Fed. Rep., 19, under the caption "(1)," p. 34, *supra,* further supported by the following language of the learned United States Circuit Court of Appeals, p. 38, *supra,* to-wit: "But he states a cause of action. He asserts that the order was wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

*Said issues remain *in statu quo.*

this petition in these proceedings that he has limited himself to a peculiar diet— during the period that you knew and were married to him please state what, if anything, was peculiar about his diet?

Q. During that period the chief or only peculiarity about his diet was the fact that he was a vegetarian?

Q. It is then alleged that 'he gives as a reason for these and other acts that he is inspired by a spirit which directs him.' What do you know of this allegation?

Q. Have you any reason for saying that you can't think of him as having said that?

Q. Did he ever do anything to suggest to you that he had delusions?

Will you please state what was his general temperament — excitable or otherwise?

Q. Is he any more excitable or high strung than the others?

Q. Have you ever heard any rumors that affected his sanity?

Q. It is next alleged that he was confined at Neuilly, near Paris, France, some years ago, for a short time;

please state whether or not this is true?

Q. Will you explain what, if anything, could have been a basis for this charge?

Q. Then you state that he was only at Neuilly once and that time to see a friend?

Q. Was he, or not, a very energetic man?

Q. In this certificate of lunacy they state that he was excited, armed, threatens people, is dangerous; during the period that you knew him did he, or not, ever do anything to indicate that he was dangerous?"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

Fourth reversal of the Appellate Court by the Court below:

"Sixth assignment: That the learned Court erred in ruling that it has nothing to do with the case whatever, 'that she (Amelie Rives Troubetzkoy) was with him at that time (Neuilly, near Paris, France, some years ago, for a short time), and knows all the facts and circumstances and that that is a false statement in the papers that committed him' (to-wit: 'that he was confined at Neuilly, near Paris, France, some years ago for a short time.')."

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Fifth reversal of the Appellate Court by the Court below:

"Seventh assignment: That the said Court erred in sustaining the objections of counsel for the defendant-in-error, Thomas T. Sherman, to the following questions put by counsel for the plaintiff-in-error, to the witness Pedro N. Piedra."*

"Q. Was Mr. John Armstrong Chaloner at any time when you were serving in that capacity with him, an insane person?

Q. Have you attended upupon other insane men?

Q. How many of them?

Q. What was his physical condition at that time?

Q. Did you have any conversation with the doctor in charge?

Q. About the condition of Mr. Chaloner?

Q. Did you have any conversation with the doctor in charge over there about Mr. Chaloner's being heard or examined anywhere?

Q. Did you observe his actions?"

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

*A trained nurse in the Asylum in charge of your petitioner, *at the time* the 1899 proceedings were had against your petitioner's sanity. (Transcript of Record, pp. 30-33, fols. 57-61.)

Sixth reversal of the Appellate Court by the Court below:

"Eighth assignment: That the said Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission of any evidence by the witness, Pedro N. Piedra, concerning any physical or mental condition of Mr. John Armstrong Chaloner at or about the time of his confinement at 'Bloomingdale' Asylum, in May, 1899."

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Seventh reversal of the Appellate Court by the Court below:

"Ninth assignment: That the said Court erred in ruling that the sanity of the plaintiff-in-error after the New York orders were made, was not in issue."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Furthermore (p. 36, *supra*):

"And he came into that Court with a decree of the Court of the State of which he was a citizen declaring his sanity. We cannot disregard that decree."

(Marked Plaintiff's "Exhibit 7" for identification by the Court below; an exemplified copy of the 1901 Proceedings in the County Court of Albemarle County, Virginia.)

Eighth reversal of the Appellate Court by the Court below:

"Tenth assignment: That the said Court erred in sustaining the objection of counsel for defendant-in-error, Thomas T. Sherman, to the admission in evidence on the part of plaintiff-in-error, of a certain exemplified copy of the record of proceedings in the State of Virginia, entitled 'In the matter of John Armstrong Chanler' and referred to in the evidence as 'The Virginia Decree of Sanity.'"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Furthermore (*et seq.*, *supra*):

"And also sets up that the Virginia decree was obtained by collusion and is void."

Furthermore (p. 36, *supra*):

"And he came into that Court with a decree of the Court of the State of which he was a citizen, declaring his sanity. We cannot disregard that decree."

Vinth reversal of the Appellate Court by the Court below:

"Eleventh assignment: The learned Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission of the order, that is the decree of the Virginia Court as to the sanity of the plaintiff-in-error, offered by counsel for the plaintiff-in-error."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Tenth reversal of the Appellate Court by the Court below:

"Twelfth assignment: The learned Court erred in ruling that 'the question of whether he is sane or insane now, or has been at any time in the past, is an abstract question and entirely immaterial to this case.' "

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Eleventh reversal of the Appellate Court by the Court below:

"Thirteenth assignment: The said Court erred in ruling 'that the Supreme Court of New York State is the only Court that can supersede the inquisition and restore the money and property to Mr. Chaloner.'"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

Thus the following occurred in the Court below:

"The Court: You offer to prove that the man is sane. Now, I say I will admit no evidence on that subject. You take your exception. You offer to prove that he was declared sane by this Court in Virginia.

"I refuse to take any evidence on that subject, as immaterial, and you take your exception." (Transcript of Record, fol. 110.)

162 Fed. Rep., 19 (p. 37, *supra*):

"The next objection is that the petitioner ought to apply to the Courts of the State of New York for the recision of the orders committing him to the asylum and appointing a committee of his person and property. We have not the slightest doubt that full justice would be done the petitioner should he submit himself to the jurisdiction of the State Courts. But to assume that he was under any obligation to resort to them is to beg the whole question at issue."

Furthermore (p. 35, *supra*):

"The Constitution of the United States vests in its judicial department jurisdiction over controversies between citizens of different States. The petitioner, as a citizen of the State of Virginia, in bringing his said suit in the Circuit Court of the United States was availing himself of a right founded upon this constitutional provision."

Furthermore (p. 38, *supra*):

"The petitioner was given the right, under the laws of the United States, to try his case in the Courts of the United States. He is not permitted to exercise that full right, and the Court in effect is not permitted to exercise its full jurisdiction."

Twelfth reversal of the Appellate Court by the Court below:

"Nineteenth assignment: The learned Court erred in excluding any and all evidence offered or to be offered tending to show the sanity of the plaintiff, and any and all evidence offered or to be offered tending to show that the plaintiff was lured into New York State."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Furthermore: In offset to the fraud and trickery employed by the late Stanford White, at the instigation of, and in collusion with the entire Chanler family, male and female, in luring your petitioner from his then home in Virginia, into the foreign—and, as events proved, hostile—jurisdiction of the State of New York, as offset to said palpable fraud, your petitioner respectfully submits the following language of the learned United States Circuit Court of Appeals, page 38, *supra*, to wit: "But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Thirteenth reversal of the Appellate Court by the Court below:

"Twenty-second assignment: The learned Court erred in excluding the offer of counsel for the plaintiff-in-error to show that the whole proceeding which embodies both records, the 1899 proceeding is void on its face, 'for twenty-odd other reasons which involve due process of law.'"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void they were of no effect, and the petitioner had a right to assert their invalidity in any Court."

This Brief contains nineteen points of law, the four following of which are basic, to wit: 9, 11, 12, 17, and will be found under caption, "The Nineteen Points of Law": *infra*, entitled, respectively: Notice; Constitutional Necessity for Opportunity to Appear and be Heard; Illegality of Trials *in absentia;* and Insanity Judgment not a continuing one.

Fourteenth reversal of the Appellate Court by the Court below:

"Twenty-third assignment: The learned Court erred in excluding all the evidence to show that all the proceedings against the plaintiff-in-error were by virtue of fraud and conspiracy."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void, they were of no effect, and the petitioner had a right to assert their invalidity in any Court."

It is, of course, elementary, that fraud is jurisdictional.

Fifteenth reversal of the Appellate Court by the Court below:

"Twenty-fourth assignment: The learned Court erred in sustaining the objection of counsel for the defendant-in-error to the following question read from the deposition of John B. Dickinson, M. D., and put to the witness by counsel for the plaintiff-in-error:

"Q. Please state what is the present color of the plaintiff's eyes?"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary that fraud is jurisdictional.

Sixteenth reversal of the Appellate Court by the Court below:

"Twenty-fifth assignment: The learned Court erred in excluding evidence to show that the evidence of the alienists upon which the plaintiff-in-error was committed, was false and perjurious and fraudulent bearing upon the *bona fides* and that it deceived and misled the Court and in ruling that said evidence should have been given on the trial of the case (meaning on the trial of the New York State proceedings)."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void they were of no effect, and the petitioner had a right to assert their invalidity in any Court."

It is, of course, elementary, that fraud is jurisdictional.

Seventeenth reversal of the Appellate Court by the Court below:

"Twenty-sixth assignment: The learned Court erred in ruling that the Court could not try over there, the question which was tried before the Sheriff's Jury.*

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 37, *supra*):

"The next objection is that the petitioner ought to apply to the Courts of the State of New York for the recision of the orders committing him to the asylum and appointing a committee of his person and property. We have not the slightest doubt that full justice would be done the petitioner should he submit himself to the jurisdiction of the State Courts. But to assume that he was under any obligation to resort to them is to beg the whole question at issue."

Furthermore (p. 35, *supra*):

"The Constitution of the United States vests in its judicial department jurisdiction over controversies between citizens of different States. The petitioner as a citizen of the State of Virginia in bringing his said suit in the Circuit Court of the United States was availing himself of a right founded upon this constitutional provision."

Furthermore (p. 38, *supra*):

"The petitioner was given

*The 1899 Proceedings (Transcript of Record, pp. 66-146, fols. 126-279).

the right under the laws of the United States, to try his case in the Courts of the United States. He is not permitted to exercise that full right, and the Court, in effect, is not permitted to exercise its full jurisdiction."

Eighteenth reversal of the Appellate Court by the Court below:

"Twenty-seventh assignment: The learned Court erred in excluding the testimony of Winthrop Astor Chanler, taken by the defense in this case, tending to show fraud in the commitment of the plaintiff-in-error, and tending to show that the plaintiff-in-error was lured into the jurisdiction of the State of New York.

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Nineteenth reversal of the Appellate Court by the Court below:

"Twenty-eighth assignment: The learned Court erred in sustaining the objection of counsel for defendant-in-error to the following question read from the deposition of Winthrop Astor Chanler, and put to said witness by counsel for the plaintiff-in-error.

'Q. How long is it that you have been estranged?'

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Twentieth reversal of the Appellate Court by the Court below:

"Twenty-ninth assignment: The learned Court erred in sustaining the objection of the counsel for the defendant-in-error to the following question read from the deposition of Winthrop Astor Chanler, and put to said witness by the counsel for the plaintiff-in-error.

'Q. You have had quarrels with your brother, haven't you?' "

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Twenty-first reversal of the Appellate Court by the Court below:

"Thirtieth assignment: The learned Court erred in sustaining the objections of counsel for the defendant-in-error to the following questions read from the deposition of Winthrop Astor Chanler, and put to said witness by counsel for the plaintiff-in-error.

'Q. Was there an altercation between you at that meeting at which he kicked you out, as you say?'

Q. Well, wasn't there some quarrel between you with reference to a suggestion that plaintiff made about an examination of the books of your father's estate?

Q. And this was about the time of this meeting?

Q. Well, now, will you tell us what you remember of that?

Q. Lewis is the other petitioner (L. S. Chanler)?

Q. Wasn't there really a good deal of ill feeling between all the members of your family on the one hand, and John Armstrong Chanler on the other hand, ever since his marriage?

Q. Wasn't there considerable complaint among your brothers and sisters that they were not invited to his wedding?

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

The fraud in the above is further heightened and accentuated by the fact that Winthrop Astor Chanler, and the two other petitioners, namely, Lewis Stuyvesant Chanler and Arthur Astor Carey, had never set foot in your petitioner's then home, "The Merry Mills," Cobham, Va., where said falsely alleged actions by your petitioner were *sworn to have occurred*. N. B. *As of their own knowledge*, that the said three petitioners *witnessed* the said falsely alleged actions, *and heard* the said falsely alleged sayings, falsely alleged to have been done and said by your petitioner. Said Winthrop Astor Chanler swore upon cross-examination *that he had never visited a certain place wherein they had previously sworn that they had seen and heard certain things.*

Q. Well, how many of you felt that way?

Q. Then you owe your presidency to the votes given by Mr. Sherman as committee?

Q. Did he tell you what he raised this money for?

Q. Well, did you criticise his raising money to buy out your brother Robert?

Q. Under those circumstances why didn't you send Lewis Chanler down there to investigate your brother's condition of health, instead of going there yourself — wasn't Lewis more friendly to him than you?

Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of the commitment?

Q. Now, why I ask you that is, because you probably remember that in your application for your brother's commitment, you and Mr. Lewis Chanler and Mr. Carey signed a petition in which you state that 'Mr. John A. Chanler has, for several months, while at his home in Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet; has burned his hands by carrying hot coals in them; he has devised many peculiar schemes such as a roulette scheme to beat

Monte Carlo, and he has given as a reason for these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions, has neglected his health, has injured his person and has been at times wildly excited.' And then all three of you sign an affidavit stating that you knew the contents of the foregoing petition, and that the same was true of your own knowledge, except as to matters therein stated to be alleged on information and belief, and there are no matters in the petition which are stated on information and belief; now, how did you come to make that affidavit that you knew these facts of your own knowledge?

Q. And that the statements contained in this petition were very solemn statements?

Q. And that you considered very carefully this statement, didn't you, 'Mr. J. A. Chanler has, for several months, while at his home in Virginia, been acting in a very erratic manner?'

Q. And you know what home means?"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

Twenty-second reversal of the Appellate Court by the Court below:

"Thirty-first assignment: The learned Court erred in excluding the offer of counsel for the plaintiff-in-error to put the whole deposition of Winthrop Astor Chanler in evidence.

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Twenty-third reversal of the Appellate Court by the Court below:

"Thirty-second assignment: The learned Court erred in excluding evidence to prove lack of jurisdiction, conspiracy, fraud, want of due process of law."

"and to prove the sanity and competency of the plaintiff-in-error"

"and to prove that he was lured into the State of New York;"

"and to prove that the plaintiff-in-error was unable through physical disability to attend the 1899 proceedings; that said proceedings were had *in absentia*, that there was no real contest, and that there was fraud."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void, they were of no effect, and the petitioner had a right to assert their invalidity in any Court."

Supported by the fact that *conspiracy and fraud are jurisdictional.*

(p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

(p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Twenty-fourth reversal of the Appellate Court by the Court below:

"Thirty-third assignment: The learned Court erred in sustaining the objection of counsel for the defendant-in-error to the offer made by counsel for plaintiff-in-error of the letter* from John Armstrong Chaloner to Hon. Micajah Woods, dated July 3, 1897."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Furthermore (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

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*Written by your petitioner while in captivity, of 5,000 words or more, now on file in said Judge George C. Holt's Court, in New York, proving the plot—since fully established on the said evidence of the said three petitioners, Messrs. Winthrop Astor Chanler, Arthur Astor Carey and ex-Lieutenant-Governor Lewis Stuyvesant Chanler—against your petitioner's liberty as well as his sanity, which letter was written within four months of the very inception of your petitioner's captivity, which lasted nearly four years thereafter, and which was intended by petitioner's family to last for life. But your petitioner escaped at the end of said four years, and thus frustrated the plot of his loving brothers and sisters to seize your petitioner's property of a million and a half or more, which letter fully establishes the plaintiff-in-error's sanity at the time of his incarceration; on the strength of Mr. Justice Harlan's opinion in the Runk case, *infra*.

Twenty-fifth reversal of the Appellate Court by the Court below:

"Thirty-fourth assignment: That the said Court erred in sustaining the objection of counsel for the defendant-in-error to the following question read from the deposition of John Armstrong Chaloner, and put to said witness by counsel for plaintiff-in-error.

'Q. Was the work of building up the Town of Roanoke Rapids completed under your supervision in 1896?'*

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

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*The allegation in the Commitment Papers being that your petitioner's falsely-alleged attack of insanity began in November, 1896. During which time your petitioner was the "Resident Director," of the Board of Directors, of the Corporation building said manufacturing town—as the Court records prove (Transcript of Record, pp. 36-37, 51-52, fols. 69, 97-98).

UNPARALLELED ASSIGNMENTS

Your petitioner respectfully submits that as no *exact* parallels existed between the rulings of the Honorable Judge George C. Holt in the Court below, and the decision of the Appellate Court, to wit, this Honorable Court, as to assignments of error, numbers 1, 3, 14, 15, 16, 17, 18, 20, 21, 35, 36, 37 and 38, your petitioner respectfully makes the following comments on said assignments of error, to wit:

"*First.*—That the learned United States District Court for the Southern District of New York erred in sustaining the objection of counsel for defendant-in-error, Thomas T. Sherman, to the following question read from the deposition of Amelie Rives Troubetzkoy and put to the said witness by counsel for plaintiff-in-error:

> "Q. What was the condition of the plaintiff's health during his marriage to you?

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

The condition of plaintiff's health while married to his former wife had an important bearing on plaintiff's sanity, and this Honorable Court declared, in 162 Fed. Rep., 19: "The defendant joins issue upon the fact of sanity after the New York orders were made."

"*Third.*—That the said Court erred in sustaining the objections of counsel for defendant-in-error, Thomas T. Sherman, to the following questions read from the depo-

sition of Amelie Rives Troubetzboy and put to said witness by counsel for plaintiff-in-error.

"Q. Please state what, if any, sickness he had during that period?

"Q. What was the condition of his health generally (Transcript of Record, p. 26, fol. 49)?

"To which rulings of the learned Court counsel for plaintiff-in-error duly excepted."

The condition of plaintiff's health while married to his former wife had an important bearing on plaintiff's sanity, and this Honorable Court declared, in 162 Fed. Rep., 19: "The defendant joins issue upon the fact of sanity after the New York orders were made."

"Fourteenth.—The said Court erred in holding that as a matter of law, that if the plaintiff, John Armstrong Chaloner, was in fact in the city of New York when the proceeding for the appointment of a committee was begun, the Supreme Court had jurisdiction whether he resided there or did not reside there.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Thaw case in New Hampshire.* Fraud, trickery and

*Thaw Case.

A parallel case is found in New York against H. K. Thaw, in New Hampshire. Thaw escaped from Matteawan into New Hampshire and was there arrested and held by the State authorities, and the Governor of New Hampshire was about to turn him over to the New York authorities on extradition, when said Thaw's lawyers stepped in, procured an injunction from the Federal District Court and prohibited the Governor of New Hampshire from turning him over to the New York authorities. The Federal Court then took said Thaw into its custody and appointed a Commission in Lunacy to determine his sanity and whether or not it would be dangerous to grant him bail. The said Commission found said Thaw sane and safe to receive bail.

luring cases. Federal authorities as well, in Trial Brief.

"*Fifteenth.*—The said Court erred in holding as a matter of law that 'It is not necessary to discuss it (that he was lured into the State for the purpose of being thrown into "Bloomingdale"), Mr. Sherman is not responsible for the acts of those who put him in "Bloomingdale."'

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Said Sherman holds through their acts—it was through their acts alone that the Supreme Court of New York gained custody over him; and said Sherman is the appointee of the Supreme Court of New York.

"*Sixteenth.*—That the said Court erred in holding as a matter of law that it is immaterial whether or not the plaintiff was lured into the jurisdiction of the State of New York for the purpose of taking commitment proceedings against him, and in holding that thereupon a proper proceeding was begun in the Supreme Court which resulted in a judgment that the plaintiff is insane, and in holding that that judgment is perfectly valid, no matter how the plaintiff, John Armstrong Chaloner, was brought into the jurisdiction of the Court.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

The learned Court did not differentiate between an *alleged* and *adjudicated lunatic*. With an adjudicated lunatic, trickery, fraud, and luring are permissible, but not so with an *alleged* lunatic who, *ipso facto*, has all the rights thrown around any other non-criminal citizen (U. S. *v.* Throckmorton, *infra*).

"Fraud vitiates everything, and a judgment equally with a contract, that is, a judgment obtained directly by fraud."

"*Seventeenth.*—The learned Court erred in holding as a matter of law that the judgment rendered in the 1899 proceedings *determined* the status of the plaintiff, John Armstrong Chaloner, and *determined* the condition of the plaintiff's sanity or insanity, and that such determination is a fact which does not depend on how the plaintiff was brought within the reach of the Court, as determining the question of sanity or insanity.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Only if properly brought before the Court, which was not the case. Fraud and trickery and luring cases.

"Insanity judgment not necessarily permanent" (162 Fed. Rep., 19).

"*Eighteenth.*—That the learned Court erred in holding as a matter of law that no matter how John Armstrong Chaloner, the plaintiff, came to any particular place, or how he was brought or by what fraudulent means he was brought there, if it was *claimed* that he was insane or had lost his reason, that the Court had jurisdiction over his person and property.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

See Thaw Case in New Hampshire, footnote, p. 74, *supra*.

The learned Court did not differentiate between an alleged and adjudicated lunatic. With an adjudicated

lunatic trickery, fraud and luring are permissible, but not so with an alleged lunatic who, *ipso facto,* has all the rights thrown around any other non-criminal citizen. U. S. *v.* Throckmorton, *infra.*

"*Twentieth.*—The learned Court erred in ruling as a matter of law that 'the question that he was a resident of another State, so far as the validity of the proceedings to have him adjudicated a lunatic is concerned, is in my opinion entirely immaterial.'

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

The plaintiff's constitutional right to go into a Federal Court was denied him by keeping him away from counsel, as shown by the letter to Captain Micajah Woods written by plaintiff within four months of his incarceration, July 3rd, 1897. 162 Fed. Rep., 19.

"*Twenty-first.*—The learned Court erred in excluding all the evidence offered to show that John Armstrong Chaloner was not at the time of his commitment to 'Bloomingdale,' a resident of New York State.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Fraud, trickery and luring. Thaw New Hampshire Case. (See footnote, p. 74, *supra.*)

"*Thirty-fifth.*—That the said Court erred in sustaining the objection of counsel for the defendant-in-error, and in striking out the answer thereto, read from the deposition of John Armstrong Chaloner, and put to said witness by counsel for plaintiff-in-error.

"Q. What was the amount of your investment?

"A. The amount was actually in cash $13,000.00, the balance which was on interest was $12,000.00, the interest being $720.00 a year.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

The question and the answer thereto were offered to prove the sanity of the plaintiff through his good business judgment in a large real estate investment, described on pages 38-39 of the Transcript of Record beginning at folio 71, line 5, etc.

"The defendant joins issue upon the fact of sanity after the New York orders were made." 162 Fed. Rep., 19.

"Thirty-sixth.—That the said Court erred in holding as a matter of law that the defendant, Thomas T. Sherman, is not responsible for the acts of those who put the plaintiff, John Armstrong Chaloner, in the 'Bloomingdale' Asylum nor in any way accountable therefor.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Said Sherman holds through their acts—it was through their acts alone that the Supreme Court of New York gained custody over him, and said Sherman is the appointee of the Supreme Court of New York.

"Thirty-seventh.—That the learned Court erred in holding as a matter of law that testimony going to prove that John Armstrong Chaloner was not at the time of his commitment to 'Bloomingdale' Asylum a resident of the State of New York, so far as the validity of pro-

ceedings to adjudicate him a lunatic was concerned is immaterial, and that the Court erred in sustaining the objections of counsel for the defendant-in-error to the admission in evidence on the part of the plaintiff-in-error of all testimony as to the residence of the plaintiff-in-error in another State at the time of his commitment to 'Bloomingdale' Asylum.

"To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

The plaintiff's constitutional right to go into a Federal Court was denied him by keeping him away from counsel, as shown by the letter to Captain Micajah Woods, written by plaintiff within four months of his incarceration, July 3rd, 1897. 162 Fed. Rep., 19.

"*Thirty-eighth.*—That the learned Court erred in directing a verdict for the defendant-in-error upon the trial herein, and to which ruling the plaintiff-in-error excepted.

"If the learned Trial Court erred in the foregoing 37 points, it follows that it erred in Point 38."

ANALYSIS OF MAYER, J'S., OPINION IN APPEAL OF *CHALONER* against *SHERMAN*

(A) Mayer, J., says: "Known as Bloomingdale Insane Asylum"—Transcript of Record, p. 185, fol. 363.

This is inexact. Its legal name is: "The Society of the New York Hospital." This irregularity is gone into in Transcript of Record, p. 172, fols. 337-338. It also forms Point 10 of the Nineteen Points in the Trial Brief—the original printed Brief and Appendix, written by plaintiff-in-error in 1902-1904, and published by plaintiff-in-error in 1905.*

(B) Mayer, J., says: "This order was in accordance with the Insanity Law of New York (Laws of 1896, chapter 545), which permits a commitment without notice, and that statute has been held to be constitutional," p. 185, fol. 363.

Lack of notice is specifically declared unconstitutional in *Windsor* v. *McVeigh*, 93 U. S., supported by *Simon* v. *Craft*, 182 U. S., in which Chief Justice White says: "*The essential elements of due process of law are notice and opportunity to defend.*" Supported by the following cases, *infra*. *Matter of Georgiana G. R. Wendel*—King's Special Term, 1900. Marean, J., said: "She had no notice of the application, either personal or by substituted service—and there was no hearing at which she was either present or represented by any other per-

*In evidence. See Stipulation as to Exhibits. Transcript of Record, p. 154, fol. 301. "It is hereby stipulated and agreed that said Depositions, plaintiff's Brief and Appendix and all Exhibits marked for identification * * * may be and hereby are treated upon the appeal herein as model exhibits." Said Brief will in future be described herein as plaintiff-in-error's Trial Brief.

son. She had been finally adjudged insane, and committed to perpetual restraint, without notice or hearing. She is deprived of her liberty, therefore, without due process of law. The Insanity Law, so far as it permits this, is in violation of the Constitution. *People ex rel. Elizabeth Ordway* v. *St. Saviour's Asylum*, 34 Ap. Div. The Court said: "No matter what may be the ostensible or real purpose in restraining a person of his liberty, whether it is to punish—or to protect the person—such restraint cannot be made permanent or of long continuance (plaintiff-in-error's restraint was from 1897—March 13th—to May 1st, 1899—without notice—and from then till his escape Thanksgiving Eve, 1900, WITHOUT OPPORTUNITY TO DEFEND) unless by due process of law. A hearing or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this. *What reason exists why a person alleged to be incompetent or dangerous should not have an opportunity* * * * *to contest the charge as much as a person accused of crime?* The *rights of one are* as sacred and inviolable as the other. Shall *ex parte* proof that would only avail *to hold an alleged criminal for trial* be regarded as conclusive proof against a supposed unfortunate? Acts of the Legislature which go beyond the allowance of *temporary confinement* and restraint *until trial or hearing* may be had, and the accused person have this day in court in some way customary or adequate to enable him to present his case, are invalid exercises of legislative powers. It surely cannot be said that the procedure authorized by the act under which this relator was committed and which created the wrong is due process of law simply because the Legislature chose to authorize that procedure."

(C) Mayer, J., continues: "It was further ordered that the commission be executed in the County of New York," p. 185, fol. 364.

Chaloner being in Westchester County, 20 miles away, and on the oath of Dr. Samuel B. Lyon, Medical superintendent of "Bloomingdale" in bed at the time and for three weeks previous thereto, complaining of trouble with his spine and knee. Dr. Lyon on the stand in the 1899 Proceedings: p. 114, fol. 225, *ibid.* "Q. When did you last see John Armstrong Chaloner? A. Last Wednesday or Thursday, about three days ago. * * * I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine—and he also said his knee was affected in the same way, and he would be unable to come." p. 115, fols. 225-226. "Q. Did that infirmity really exist or was it a delusion? A. I think he has pain in his spine,—he did not feel as if he could stand up, he has kept his bed for over three weeks, at least." p. 118, fol. 231. "I gave him the parole of our grounds on his honour—he is a very honourable man; he went out by himself an hour or so—and then he ceased to go out because he was physically unable."

The only inference from the above Proceeding—the serving of the summons at such a time and at such a place—is that Chaloner's family—who were kept informed by Dr. Lyon of his condition from day to day—chose such a time and such a place—20 miles away from where he lay bed-ridden *and had been* for three weeks prior to the receipt of the summons. Dr. Lyon on the stand, p. 115, fol. 226: "A. He has kept his bed for over three weeks at least." And Chaloner, therefore, could *not* have taken to his bed as a malingerer, to sham sickness to avoid being present, since there was *no possible way* of his knowing of the plans of his enemies before-hand, he not being a prophet—Chaloner's family chose this time when they *knew* he was incapacitated from leaving his cell and had been for some three weeks, in order to set Proceedings 20 miles off. *Otherwise*, if

they had meant fairly by him, they would have set the trial in the Court House of Westchester County within a short mile of his cell, at White Plains. They wanting to at least *attempt* to cure the gross illegality of incarceration for two years without notice—attempt to, at least—by a *bogus* Proceedings in which notice would be served on him, STRIPT, HOWEVER, OF ALL OPPORTUNITY TO BE HEARD—which the United States Supreme Court in *Windsor* v. *McVeigh,* 93 U. S., denounces as a *sham and deception,* and adds that if notice is not to be followed by opportunity to appear and be heard, *the notice had better be omitted altogether.* For these bogus Proceedings would enable a Judge—like the learned Julius M. Mayer—to say in his opinion, aforesaid, p. 188, fol. 367: "The record shows that scrupulous care was exercised in serving the various notices of motions and proceedings on Chaloner." "Scrupulous care was exercised in serving the various notices" on Chaloner because scrupulous care had been exercised by the Chanler conspirators and their allied doctors and lawyers *to ascertain that Chaloner was physically incapacitated from availing himself of the notice. It was like breaking a man's leg and then serving notice on him that he must come to court for redress while suffering with a broken leg and unable to walk; that otherwise he would lose his day in court. No such "scrupulous care" was exercised in the Commitment Proceedings, March,* 1897, *when Chaloner was well, and able to avail himself of same.* The Chanler family well knew that Chaloner was of athletic build and given to much exercise. They knew that this was the first illness he had had in all the two years he had been confined in "Bloomingdale," and that it behooved them therefore—if they intended to *attempt* to cure the 1897 Proceedings by a bogus *apparent* fair trial—to be sharp about it; as Chal-

oner might recover and then would be surely on hand at any cost to put out his side of the case.

(D) Mayer, J., continues: "It was further ordered that the Commissioners might, in their discretion, *dispense with Chaloner's attendance.*" p. 185, fol. 364.

Highly suspicious proviso, considering the foul play shrouding these entire Chaloner proceedings, we respectfully submit.

(E) Mayer, J., continues: "The Medical Superintendent testified that Chaloner said he was physically unable to be present. But the jury stated that they did not desire his production—thereafter the Medical Superintendent was again called and stated that to produce Chaloner would temporarily do him harm mentally and that Chaloner 'said he did not want to come down.' Dr. Carlos F. Macdonald then testified that to call Chaloner would 'tend to aggravate his mental condition." p. 186, fol. 364.

It was only upon being recalled that Dr. Samuel B. Lyon vouchsafed the remark that Chaloner "*said he did not want to come down.*" When he *first* took the stand, Dr. Lyon said Chaloner merely stated the bare *physical* reason which prevented his being present (*supra*). "The Medical Superintendent testified that Chaloner said he was physically unable to be present." Also vide (C), *supra.* In this particular, Chaloner's examination of the fluctuation of the testimony of Drs. Lyon (Appendix, pp. 717-721), Flint and Macdonald (*ibid.,* pp. 728-769) *re* his ability to be present, makes interesting reading rather, we respectfully submit.

(F) Mayer, J., continues: "Chaloner claims that * * * he was lured into the State of New York in 1897 and was committed improperly without notice," p. 186, fol. 365.

The learned Judge then proceeds to tabulate all Chal-

oner's claims *re* the invalidity of the 1897 Proceedings *but* the learned Judge *sinks the most important claim re the res gestae* which was that the entire testimony *re* Chaloner's alleged insanity was by *interested parties,* and *perjured on the evidence* and *admitted under cross-examination at that,* pp. 53-54, fols. 101-102.

Furthermore. (F) "That *re* the inquiry *de lunatico* in 1899—all the Proceedings were void, among other reasons because he was not present before the Commissioners and the Sheriff's Jury; that he always was and now is sane and was so declared in 1901 by a Court of competent jurisdiction in Virginia and that, therefore, the appointment of Sherman was void."

Once more the learned Judge while appearing to sum up the allegations of Chaloner against the validity of the 1899 Proceedings *sinks the most important allegation of all,* namely, because his constitutional right to an opportunity to be heard in his own defense was denied him, from the fact of his trouble with his spine and knee. *Windsor* v. *McVeigh,* 93 U. S., and *Simon* v. *Craft,* 182 U. S.

(G) Mayer, J., continues: "Insanity is, of course, not necessarily a continuing condition, but the trial court was right in holding that Chaloner's present condition never became an issue in the case," p. 186, fol. 365.

This reverses this Court by its own members—*Chanler against Sherman,* 162 Fed. Rep., *held the precise contrary.* See *"Seventh* reversal of the Appellate Court by the Court below," The Parallels, *supra. First* reversal of the United States Circuit Court of Appeals by itself.

(H) Mayer, J., continues: "The trial court was likewise right in excluding testimony to show the mental condition of Chaloner in 1899 for that issue could not

be litigated in this action and was solely for the New York Courts," p. 187, fol. 365.

This reverses this Court by its own members a second time. *Chanler against Sherman,* 162 Fed. Rep., held the precise contrary. See "*Sixth* reversal of the Appellate Court by the Court below." The Parallels, *supra.* Second reversal of the United States Circuit Court of Appeals by itself.

(I) Mayer, J., continues: "Whether or not in 1897 plaintiff was lured into this State was immaterial, because defendant was appointed not by virtue of the 1897 Proceedings, but as successor to the Committee appointed in the 1899 Proceedings," p. 187, fol. 365.

But the fraud and irregularity of the 1897 *Proceedings tainted those of* 1899. In fact—and of record—they were part and parcel of the same identical Proceedings, as a glance at the Transcript of Record will show. The 1897 Proceedings were specifically joined to and made art and part of the 1899 Proceedings. *AS MUCH AS A FOUNDATION FORMS PART OF AN EDIFICE SO MUCH DO THE* 1897 *PROCEEDINGS FORM PART OF THOSE OF* 1899. The 1899 Proceedings DEPEND UPON AND CARRY ON those of 1897. Lastly had it not been for the 1897 Proceedings there could have been no Proceedings in 1899—it was the 1897 Proceedings that made those of 1899 possible—that lured the plaintiff into the State of New York. *The* 1897 *Proceedings also* were the *cause* of the illness which prevented his presence at those of 1899—the nervous shock induced by *two years* illegal confinement in a Madhouse.

(J) Mayer, J., continues: "Even assuming that plaintiff was at all times a resident of Virginia, the question of his residence was one of the facts in issue in the 1899 Proceedings and having been there adjudi-

cated cannot be collaterally attacked," p. 187, fols. 365, 366.

Except for fraud. It was so conclusively proved that Chaloner was a resident of Virginia that in the record of the trial before the learned Judge Holt in February, 1912, THE COURT FROM THE BENCH OBSERVED THAT IT WAS CONCLUDED THAT CHALONER'S RESIDENCE ALWAYS HAD BEEN IN VIRGINIA. (Transcript of Record, pp. 38-42, fols. 73-81.)

In short the evidence at said trial was overwhelming thereanent. *And yet it was sworn in the* 1899 *Proceedings that Chaloner's residence was in New York,* as it was likewise so sworn in the 1897 Proceedings. Hear Mr. Justice Miller of the United States Supreme Court in *United States* v. *Throckmorton,* 61 U. S., on the subject of collateral attack through the avenue of fraud: "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents and even judgments. In cases where, by reason of something done by the successful party to a suit, there was, in fact, no adversary trial or decision of the issue in the case—these and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing. *In all these cases and in many others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the Court.*" By the "fraud practiced directly upon" Chaloner as shown *supra*—he had "been prevented from presenting all of his case to the Court" among other things the fact that his residence was Virginia and *not*—as sworn to by the other side in 1897 and 1899—New York.

(K) Mayer, J., continues: "But, in any event the New York Court had jurisdiction in view of the fact that plaintiff was within the State and had property therein when the Proceedings were commenced," p. 187, fol. 366.

But not when enticed within the confines of the State by fraud. Carpenter v. *Spooner* (N. Y. Sup. Ct. Rep.), 717 *infra:* "This Court will not sanction any attempt by fraud or misrepresentation to bring a party within its jurisdiction." Again in the *Olean Street Railway Company* v. *Fairmount Construction Company*, 55 App. Div. 1900, p. 292 *infra.* Held "service secured by such means should not be permitted to stand. For the Court will not sanction any attempt by fraud or misrepresentation to bring a party within its jurisdiction." *Wyckoff* v. *Packard,* 20 App. N. C. 420 (N. Y. City Court Special Term 1887, *infra.*) Held per Ehrlich, J.: "The decisions are uniform that such deceit vitiates the source of legal process, *but if there were no precedent exactly in point the Court would not hesitate to make one of the case at bar.*" *Snelling* v. *Watrous*, 2 Paige (Ct.) 314 (1830) *infra:* "Where a party has not in fact been guilty of any crime, this Court will not permit the complainant to resort to any unfair and inequitable method to enforce the process of attachment." *Baker* v. *Wales*, 14 App. Pr. Rep. (N. Y.), 331 N. Y. Sup. Ct. 1873, Gen. Term *infra*, Freedman, J., said "that deceit had been used for the purpose of bringing defendant within the jurisdiction of this Court —the service of the summons was therefore properly vacated and set aside." *Lagrave's Case, ib.* p. 333 (Supreme Ct. Speel. Term, 1873) *infra*, held: "a party brought within the jurisdiction by requisition on a criminal charge is not liable to arrest in a civil suit brought by those at whose instance the criminal Pro-

ceeding was started." *Metcalf* v. *Clark,* 41 Barb. 45 (1864) per Bocks, J., *infra:* "He was enticed within the jurisdiction of the Court for a purpose to which the Court will not give its sanction—the Proceeding was a trick."

"Analogy holds good in law," is a maxim of the law. If Chaloner had property in China, and had been enticed there by interested parties who wished to get him out of the way and obtain control of that property by means of a Chinese Commission-in-Lunacy; and upon arrival certain Chinamen had sworn that Chaloner was a resident of China—though in fact of Virginia and that they had seen him do certain insane things in Virginia—*where it afterwards developed none of the Chinamen had ever been*—whereupon Chaloner was sentenced for life to a Chinese Madhouse; and his Chinese property put into the hands of a Chinese Committee—how *long would such a state of things obtain, once the United States Government got wind of the situation?* So far as residence is concerned Virginia is as foreign to New York as China, and the analogy set forth above regarding China is precisely what took place in New York.

(L) Mayer, J., continues: "The venue of a Proceeding is entirely within the control of a State in respect of subject-matter over which a State Court has sole jurisdiction, and the fact that Chaloner had real property in New York County was enough to satisfy the Statute," p. 187, fol. 366.

But *not* when *enticed* into the State by *fraud. See the half dozen authorities just above cited.* The learned Trial Court Judge appeared to lose sight of the fact that when Chaloner was enticed to New York he was not an adjudicated lunatic. *Had* he been that, enticing would have taken on a very different colour—the same colour indicated in *Snelling* v. *Watrous, supra,* "Where a party

has not, in fact, been guilty of any crime" the Court will not permit him to be enticed within a jurisdiction; but where he *has* been guilty of crime the Court will, when the accused is not merely said to be guilty by conspiring relatives, but is actually guilty. Had Chaloner been legally found a lunatic in Virginia it would have been perfectly legitimate to entice him—under proper conditions and for cause proper—into a foreign jurisdiction. But until so found legally no such right exists. The learned Trial Court Judge admitted that it would *not be lawful to entice Chaloner into the jurisdiction of New York in order to collect a twenty-five dollar debt from him;* but *that it would be* to imprison him for life, provided the charge was lunacy made by his worst enemies and perjured at that. (pp. 38-42, fols. 73-81.)

(M) Mayer, J., continues: "The trial court was also correct in excluding testimony offered to show that the testimony in the 1899 Proceedings was perjurious. The question whether the alleged perjurious testimony was true was necessarily adjudged by the New York Court in finding the plaintiff incompetent. This Court cannot determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Court decided when it made the decretal order complained of. It is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack," p. 187, fol. 366.

The learned Judge Mayer evidently did not, at this point, bear in mind that "THE QUESTION WHETHER THE ALLEGED PERJURIOUS TESTIMONY (in the 1899 Proceedings, as well as in the original Proceedings in 1897) WAS TRUE" COULD *NOT* have been—as the learned Judge says it was—"NECESSARILY ADJUDGED BY THE NEW YORK COURT IN FINDING THE PLAINTIFF INCOMPETENT," for three

reasons. *First:* Because the plaintiff was kept away from both said Proceedings by the machinations of his family; in 1897 by not being vouchsafed notice of same, and in 1899 by being kept away from same by his family having craftily set same when plaintiff was—and had been for some three weeks previous thereto—bed-ridden, and also because plaintiff was not represented at either of said Proceedings by counsel or—as in *Simon* v. *Craft*, 182 U. S., March 12, 1901, *Opinion by Chief Justice White—by a guardian ad litem.* Hear the language of the learned Chief Justice thereanent: "The Judge of the Probate Court, where the Proceedings in Lunacy were heard, since that Court, upon the return of the Sheriff and the failure of the alleged lunatic (Yetta Simon) to appear either in person or by counsel, in order to protect her interest, entered an order appointing a guardian *ad litem* in the matter of the Petition to inquire into her lunacy; and an answer was filed by such guardian denying all the matters and things stated and contained in the Petition and requiring strict proof to be made thereof according to law." As said already, *First:* "because the plaintiff was kept away from both said Proceedings by the machinations of his family; in 1897 by not being vouchsafed notice of same, and in 1899 by being kept away from same by his family having craftily set same when plaintiff was—and had been for some three weeks previous thereto—bed-ridden; and also because plaintiff was not represented at either of said Proceedings by counsel, or—as in *Simon* v. *Craft*, *supra*, by a guardian *ad litem*—for the said sundry and various reasons, *plaintiff was utterly estopped and absolutely debarred from getting his allegations concerning the said "the alleged perjurious testimony" before the Court, either* at the 1897 Proceedings, or those of 1899. Never having been brought before the Court, they never *were*

before the Court; never having BEEN BEFORE THE COURT THEY COULD *NOT* HAVE BEEN "NECESSARILY ADJUDGED BY THE NEW YORK COURT IN FINDING THE PLAINTIFF INCOMPETENT."

A further proof of the foregoing is that the proof that the testimony of the *only* lay witnesses against plaintiff's sanity, namely, that of the three Petitioners in the 1897 Proceedings, the *two first* of whom also joined in bringing the 1899 Proceedings to-wit, said Winthrop Astor Chanler, Lewis Stuyvesant Chanler, and a cousin, namely, Arthur Astor Carey—the proof that the testimony of the *only* lay witnesses against plaintiff's sanity in either Proceedings—*all the other witnesses* being hired alienists, paid out of plaintiff's own pocket—by Court order—to find plaintiff insane (see affidavit of E. L. Winthrop, Jr., pp. 140-142, fols. 273-277—the *proof* that the testimony of these aforesaid three gentlemen was *profoundly tainted with perjury* is furnished, *by one of their own number.* Said PROOF OF PERJURY COMING OUT OF THE *VERY MOUTH, OUT OF THE VERY LIPS OF THE CHIEF PETITIONER, SAID WINTHROP ASTOR CHANLER,* in these very Proceedings of 1899 brought by himself, to-wit: p. 132, fol. 255. Winthrop Astor Chanler on the stand being examined by his own counsel, Flamen B. Candler, as to value and extent of plaintiff's property. Mr. Candler: "WHAT NEXT? DO YOU KNOW ANYTHING OF HIS OTHER PROPERTY, ABOUT THE VIRGINIA PROPERTY?" Answer: "I KNOW VERY LITTLE ABOUT THAT. I KNOW THAT HE HAD IT, BUT I HAVE NEVER SEEN IT."

Whereas said three gentlemen all and severally solemnly swear of their own knowledge as to certain falsely alleged acts and falsely alleged utterances, irrational in nature upon the part of plaintiff as having occurred and been uttered in their presence at "The

Merry Mills," Cobham, Albemarle County, Virginia, the home of said John Armstrong Chaloner. Said gentlemen swear in said Petition that the plaintiff "has for several months, while at his home in Virginia, been acting in a very erratic manner," p. 109, fol. 213. As a glance at the said Petition collectively sworn to by said three gentlemen (pp. 108-110, fols. 212-215, inclusive) proves; said *entire* affidavit is made as "true to the knowledge of deponents." And yet said three gentlemen do not hesitate to swear concerning alleged acts and utterances having occurred "to the knowledge of deponents" in a place concerning which the chief Petitioner swears "I HAVE NEVER SEEN IT." As will be shown later, said Winthrop Astor Chanler fully corroborates his aforesaid damaging admission in the 1899 Proceedings, by admitting under cross-examination in the Deposition *de bene esse* brought by himself on or about November, 1905, on the occasion of his wintering abroad, that not only had HE never set foot inside "The Merry Mills"—the home of plaintiff in Virginia—*but neither of the other two Petitioners had either.*

Here follows the preamble aforesaid, to said affidavit of Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey, pp. 109-110, fols. 214-215.

"W. A. Chanler, Lewis S. Chanler and A. A. Carey, being duly sworn, depose and say that they have read the foregoing petition and know the contents thereof, and that the same is true to the knowledge of deponents —except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true.

(Signed):

WINTHROP A. CHANLER,
LEWIS S. CHANLER,
ARTHUR A. CAREY.

Subscribed and sworn to before me this tenth day of March, 1897.

(Signed):

H. A. GILDERSLEEVE,
Justice Supreme Court."

Said proof of perjury coming out of the very mouth, out of the very lips of the chief Petitioner, said Winthrop Astor Chanler, in these very 1899 Proceedings, no allegation concerning "THE QUESTION WHETHER THE ALLEGED PERJURIOUS TESTIMONY WAS TRUE" could by any human possibility be "ADJUDGED BY THE NEW YORK COURT IN FINDING THE PLAINTIFF INCOMPETENT" in these very 1899 Proceedings; since there was no one who could and would bring forward said allegations concerning "*perjurious* testimony"; since, naturally enough, Mr. Winthrop Astor Chanler's own counsel, said Flamen B. Candler, would not push forward any such unflattering and unnecessary charges—from his point of view, at least—said Flamen B. Candler would be the last man on earth to *impeach the testimony of his own witness*—and there was no earthly way in which plaintiff could prefer said charges, he being kept away from court as aforesaid, by being bed-ridden, and unrepresented by counsel or—as in *Simon* v. *Craft, supra*,—by a guardian *ad litem*, appointed by the Court to defend the interests of the alleged incompetent at the said inquisition *de lunatico*, by whom an answer was filed "DENYING ALL THE MATTERS AND THINGS STATED AND CONTAINED IN THE PETITION AND REQUIRING STRICT PROOF TO BE MADE THEREOF ACCORDING TO LAW."

Second: The second reason why "THE QUESTION WHETHER THE ALLEGED PERJURIOUS TESTI-

MONY (in the 1899 Proceedings) WAS TRUE could not, as the learned justice says it was, have been "NECESSARILY ADJUDGED BY THE NEW YORK COURT IN FINDING THE PLAINTIFF INCOMPETENT"—was that the perjurious testimony in the 1899 Proceedings was of two kinds. First, direct; Second, indirect. The first was committed by the other alienists; the second by Dr. Lyon. By which is meant said Dr. Samuel B. Lyon innocently repeated falsehoods which had been told to him by members of the Medical Staff of the Society of the New York Hospital—falsely known as "Bloomingdale."

Dr. Samuel B. Lyon, Medical Superintendent of said Hospital, on the stand in said 1899 Proceedings said in reply to the question of a Juror, p. 118, fol. 231: "DID HE SHOW ANY HOMICIDAL MANIA?" Answer: "HE THREATENED TO KILL US—TO KILL ME; HE NEVER MADE ANY ATTEMPT UPON ME."

It will be noticed that Dr. Lyon does not say "HE TOLD ME THAT HE WOULD KILL ME." In other words, this indirect, and therefore innocent, perjurious statement was honestly believed by Dr. Lyon *because it was reported to him* by one of his Staff. In a word, it was mere hearsay as regarded Dr. Lyon. But that saving fact could not well be brought out; seeing that nothing but cross-examination could possibly bring it out, and, for reasons already fully gone into, cross-examination was totally out of the question in said Proceedings. In an excerpt from plaintiff's voluminous Deposition said absurd falsehood—reported to Dr. Lyon—is fully explained *infra*. It was a mere jocularity upon the part of plaintiff, who remarked to one of the said Hospital Staff that when he got out he was going to have Dr. Lyon and all of them sent to jail for false imprisonment, and he was very much afraid that the confinement of a

jail would kill Dr. Lyon. It was this perfectly innocent and legitimate remark which was distorted into "He threatened to kill us—to kill me" by the time it reached Dr. Lyon's ears. Had the plaintiff had his day in court at the 1899 Proceedings, he has no doubt but that Dr. Lyon, upon cross-examination, would have frankly admitted that this and the other material allegations made against plaintiff's sanity by Dr. Lyon were mere hearsay. Since plaintiff showed on the stand, at his said Deposition, *that Dr. Lyon was a man of the strictest veracity as regarded his dealings with plaintiff while at said Hospital; and had, moreover,* treated plaintiff with the greatest kindness and consideration, consistent with his position as head of the Asylum illegally detaining him in custody. Had said two reasons aforesaid been in the mind of the learned Judge Mayer, we respectfully submit that the learned Judge would not have said "THIS COURT CANNOT DETERMINE WHETHER OR NOT THE TESTIMONY IN QUESTION WAS PERJURED WITHOUT TRYING OVER AGAIN THE VERY SAME ISSUE WHICH THE NEW YORK COURT DECIDED WHEN IT MADE THE DECRETAL ORDER COMPLAINED OF."

Lastly, in this connection, the learned Judge says: "IT IS WELL SETTLED THAT THE FACT THAT A JUDGMENT IS PROCURED BY FALSE TESTIMONY DOES NOT OPEN IT TO COLLATERAL ATTACK." *This is the case only when the issue of false testimony has been made, brought and litigated in the same identical proceeding in which the said judgment was procured.* In *U. S. v. Throckmorton, supra*, 98 U. S. 61, we read further, Mr. Justice Miller said: "Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced upon him by his opponent, as by keeping him away from court, a false

promise of compromise, or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff * * * are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing." The learned Justice Miller continues: "On the other hand, the doctrine is equally well settled that the Court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, *or for any matter which was actually presented and considered in the judgment assailed.* Mr. Wells, in his very useful work on *Res Adjudicata*, says, Sec. 499: 'Fraud vitiates everything, and a judgment equally with a contract; that is, a judgment obtained directly by fraud.'" The principle and the distinction here taken was laid down as long ago as the year 1702 by the Lord Keeper in the High Court of Chancery in the case of *Tovey* v. *Young Prec.* in Ch. 193. This was a bill in chancery brought by an unsuccessful party to a suit at law, which was at that time a very common mode of obtaining a new trial. One of the grounds of the bill was, that complainant had discovered since the trial was had that the principal witness against him was a *partner in interest with the other side.* The Lord Keeper said: "New matter may in some cases be ground for relief; but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial, unless it appears by deed or writing, *or that a witness, on whose testimony the verdict was given, were convict of perjury* or the jury attainted." As has just been said, "Fraud vitiates everything, and a judgment equally with a contract;" *note the only exception* except when the fraud "was actually presented and considered in the judgment assailed." And this is further sustained by the words of the Lord Keeper *supra* showing that per-

jury on the part of a witness—discovered *after* the judgment was rendered—upon whose testimony the verdict was given, was ground for a new trial thus: "Nor will I ever grant a new trial unless it appears—that a witness, on whose testimony the verdict was given, were convict of perjury." Since said Winthrop Astor Chanler was "convict of perjury" by his said testimony *supra*, and his fellow Petitioners in the 1897 Proceedings, and his brother Petitioner in the 1899 Proceedings—which conviction is reinforced by said Winthrop Astor Chanler's testimony under cross-examination by the attorney for plaintiff in the Deposition *de bene esse* of said Winthrop Astor Chanler upon the occasion of his departure for Europe in the year 1905, aforesaid, pp. 53-54, fols. 101-102.

Q. "You probably remember that in your application for your brother's Commitment, you and Mr. Lewis Chanler and Mr. Carey signed a Petition in which you state that 'Mr. J. A. Chanler has for several months, while at his home in Virginia, been acting in a very erratic manner'—and then all three of you sign an affidavit stating that you knew the contents of the foregoing Petition, and that the same was true of your own knowledge, except as to the matter therein stated to be alleged on information and belief; *and there are no matters in the Petition which are stated on information and belief;* now I ask you how did you come to make that affidavit of these facts of your own knowledge?" And since said three gentlemen were the only lay witnesses, by which is meant the only witnesses not alienists *employed by them in the* 1897 *Proceedings*, and since the plaintiff was incarcerated as a dangerous maniac upon the said perjurious testimony of said three gentlemen in 1897—and since *the only new allegations of insanity in the* 1899 *Proceedings were supported purely and solely by alien-*

ists in the employ of the other side—by Messrs. Austin Flint, Sr., Carlos F. Macdonald and Samuel B. Lyon, Medical Superintendent of said Asylum, the Society of the New York Hospital; and since the plaintiff was prepared—had he had his day in Court in 1899—to prove the said three alienists guilty of either *direct or indirect perjury—as described above—and since plaintiff's family obtained the* 1899 *verdict against Chaloner solely by means of the said perjury*—either direct or indirect upon the part of the said alienists—the two former of whom Chaloner charges in his said Deposition with perjury explicit and unqualified—*therefore the condition precedent, demanded by the Lord Keeper, supra, before granting a new trial, is disclosed. to-wit*: "Unless it appears—*that a witness, on whose testimony the verdict was given, were convict of perjury.*"

(N) Mayer, J., continues: "The failure of a person affected by an order or judgment to appear after due notice, cannot, of course, affect the validity of an adjudication," p. 188, fol. 367.

A parallel is sought to be instituted by the other side here between the case of *Chaloner against Sherman* and *Simon* v. *Craft*, 182 U. S. No slightest parallel exists as will be shown in an exhaustive discussion of said two cases in Brief-in-Rebuttal *infra*. Let us hear Mr. Chief Justice White on the subject. "*At the trial below there was no offer to prove by any form of evidence that Mrs. Simon was in fact of sound mind when the Proceedings in Lunacy were instituted;* or that she desired to attend and was prevented from attending the hearing; *or was refused opportunity to consult with and employ counsel to represent her.* The entire case is thus solely based on the inferences which are deduced, as stated, from the face of the return of the Sheriff. The writ was duly returned, with the following indorsement: 'Received

January 31, 1889, and on the same day I executed the within writ of arrest by taking into my custody the within named Yetta Simon and handing her a copy of said writ, and as it is inconsistent with the health or safety of said Yetta Simon to have her present at the place of trial, and on the advice of Dr. H. P. Herstfield, a physician whose certificate is hereto attached, she is not brought before * * * the honourable Court, Halcomb, Sheriff.'" Mr. Chief Justice White continues, "And upon the assumption thus made it is contended that the statute, as well as the proceeding thereunder, were violative of the clause of the 14th Amendment to the Constitution of the United States, which forbids depriving anyone of life, liberty, or property without due process of law.

It is not seriously questioned that the Alabama statute provided that notice should be given to one proceeded against as being of unsound mind of the contemplated trial of the question of his or her sanity. As a matter of fact, a copy of the writ containing notice of the date of the hearing of the Proceedings in Lunacy is shown by the Record to have been served on Mrs. Simon. Hence it cannot be presumed *in the absence of all proof or allegation to that effect that the sheriff in the discharge of this duty, after serving the writ upon the alleged lunatic, exerted his power of detention for the purpose of preventing her attendance at the hearing, or of restraining her from availing herself of any and every opportunity to defend which she might desire to resort to, or which she was capable of exerting.*"

Per contra.

In *Chaloner against Sherman*, applying the exact language of the learned Chief Justice—"At the trial below (in 1912) *there was every offer to prove by every form of evidence that Chaloner was in fact of sound mind*

when the Proceedings in Lunacy were instituted (in 1897) *and that he desired to attend and was prevented from attending the hearing" by being kept in ignorance of said hearing and receiving no notice thereof.* Also, regarding the *Proceedings in* 1899, "He was refused opportunity to consult with and employ counsel to represent him." The entire case of *Chaloner against Sherman* is *thus solely based upon admittedly perjured affidavits, and perjured testimony, offset by written and other acts of Chaloner* indicating continued sanity for over fifty years—for Chaloner's *entire life*—as well as Court Records of the States of Virginia and North Carolina establishing same. In a word, there was no hint of foul play in *Simon* v. *Craft*, whereas in *Chaloner against Sherman* there was every indication—besides every possible claim by Chaloner of foul play upon the part of Sherman against him.

Moreover, there was a guardian, *ad litem*, appointed in *Simon* v. *Craft* to represent Mrs. Simon. *There was no such safeguard thrown around the liberty and large property rights of John Armstrong Chaloner in either the* 1897 *or* 1899 *Proceedings.*

(O) Mayer, J., continues: "The record shows that scrupulous care was exercised in serving the various notices of motions and Proceedings on Chaloner," p. 188, fol. 367.

No notice whatever was served on Chaloner in the initial Proceedings of 1897. In 1899 scrupulous care was indeed taken in serving notice upon Chaloner which his family well knew was of no avail to him at that time, owing to his then physical illness—from the anxiety they proved they one and all felt lest he should get a hearing in open court, as shown by their care and foresight in hiring lawyers and alienists *years before Chaloner's escape from said hospital in* 1900 as shown in the

affidavit aforesaid of said Egerton L. Winthrop, Jr., of the firm of Jay and Candler, Attorneys, 48 Wall Street, New York, setting forth a claim for a fee of one thousand dollars—*to be paid, be it understood, by John Armstrong Chaloner's estate*—in return for the "great care and much attention" bestowed by said Winthrop in carrying out the wishes of his clients, the Chanler family! p. 140, fol. 273.

It is therein also shown that said Winthrop marshaled the various alienists arrayed against Chaloner in the 1899 Proceedings, thus (p. 141, fol. 274): "After receiving the reports of Doctors Carlos F. Macdonald and Austin Flint, deponent had long interviews with Doctors Lyon, Macdonald and Flint, it being expected that any time John Armstrong Chanler might take proceedings for his release" (all this began in December, 1897—fol. 273) "subsequently (fol. 274) in the month of August, 1898, deponent had a long conference with Mr. Lewis S. Chanler, one of the Petitioners, and had some correspondence with Doctors Macdonald and Flint *in reference to the condition of Mr. Chanler and arranged with these doctors to be prepared to testify at any moment.* That subsequently, in the month of April, of this year, 1899, the family commenced their Proceedings for the appointment of a Committee for Mr. Chanler, and before these proceedings were started deponent had a cable correspondence with both the Petitioners herein, and also with Stanford White, who represented the alleged incompetent person, and thereupon, Lewis S. Chanler, one of the Petitioners, came over from Europe to attend to the matter, and subsequently Winthrop Chanler also came over from Europe for the same purpose." (fol. 274) "And also deponent had a number of conferences with Winthrop Chanler (fol. 275), one of the petitioners, and with Mr. Henry Lewis Mor-

ris" (the lawyer for the Chanler family generally—see fol. 276). "Deponent further says that the expert physicians examined before the said Commissioners (Messrs. Ogden, Fitch and Sherman, fol. 275) and Jury herein, were Dr. Samuel B. Lyon, Dr. Carlos F. Macdonald, and Dr. Austin Flint, and they have certain claims against the estate of said John Armstrong Chanler for their compensation herein, and in the opinion of deponent the order to be made herein should contain a provision in substance leaving the payment of these claims to the discretion of the Committee to be appointed in this Proceeding. Egerton L. Winthrop, Jr." (fols. 276-277).

It is plainly visible from a careful examination of the above that the Chanler family were thoroughly concerned lest John Armstrong Chaloner should, by hook or crook, have his day in Court. They began their machinations in 1897, in the month of December—when Egerton L. Winthrop, Jr., was employed to marshal the alienists and have them and the Petitioners *ready to bring the Proceedings before the Commission and Sheriff's Jury when Chaloner should begin physically to* succumb *to the frightful strain of his environment*—a Madhouse. They dared not do it before Chaloner's nervous system had begun to sustain injury, for they very well knew that he could state his case as easily on the witness stand as he did in the letter of some five thousand words, to Commonwealth's Attorney Micajah Woods (Plaintiff's Exhibit 6 for Identification, pp. 154-173, fols. 303-339) written in July,* 1897—within four months of his incarceration. Therefore, although said Egerton L. Winthrop, Jr., was employed as early as December, 1897, he did not strike—did not bring

*"July 30" is a stenographer's error for "July 3." See affidavit of Captain Micajah Woods *in re* receipt of same, p. 154, fol. 303.

the Proceedings—until the *Spring* of 1899—*Why not?* Because Chaloner was in perfect physical and mental condition during all that entire time: *There is no mention by any one of the three said alienists when on the stand of Chaloner's having to be treated for anything during the more than two years he had been in "Bloomingdale"* when said Proceedings of 1899 were brought. *Not one of them testified that Chaloner had taken so much as an ounce of medicine during that entire time.* But although Chaloner's physical health was superb, still his strength first began to be affected in the *Fall* of 1897 *about the time* that said Egerton L. Winthrop, Jr., was called in. Chaloner had all summer been taking rather long walks, with a keeper about the grounds. He gradually shortened them through increasing physical weakness—the first sign of the nervous attack which culminated in the physical attack on his spine described by him in the 1899 Proceedings. Therefore, so soon as the Chanler family knew that he had *begun* to succumb to the physical pressure of his environment, *they took steps to be ready to have Proceedings brought 20 miles off in New York City*, so soon as his nervous affection—brought on by his environment—should break out *and confine him to his bed.* Chaloner was still holding his own, when said Winthrop sent his alienists, said Flint and Macdonald, up to Chaloner's cell to spy out the land (p. 141, fol. 27, and also p. 120, fol. 234). Dr. Carlos F. Macdonald, on the stand: "I first visited John Armstrong Chanler at the Bloomingdale Asylum for the insane, on March 16th, 1898, in company with Dr. Austin Flint of this city. Doctor Flint and myself * * * again visited Mr. Chanler on April 9th, 1898. He cordially invited us to walk into his room at once," (p. 122, fol. 238). "There was no sign of the want of muscular power to direct his movements, and no sug-

gestion of paralysis about him. He stated that he slept well, and that his bowels were regular, and that he was in *perfect* mental and *physical* health," p. 123, fol. 240.

There is, therefore, no possible sign of the hypochondriac in Chaloner, thirteen months after his incarceration. One year later, however, the trouble which had shown itself in loss, gradual loss of strength for outdoor exercise, came to a head and (p. 114, fol. 225, Dr. Lyon on the stand, in the 1899 Proceedings) : "I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine—he also said his knee was affected in the same way and he would be unable to come," p. 115, fols. 225-226.

"Q. (folio 675) : Did that infirmity really exist, or was it a delusion?

A. I think he has a pain in his spine, but I do not think it would incapacitate him from coming here. I think he felt some pain—he was sincere in that, but it was not an incapacity that would prevent an ordinary person from going out; he did not feel as if he could stand up; he *has kept his bed for over three weeks, at least.*"

How much did Dr. Lyon's handsome fee have to do with this statement—a fee so substantial (p. 142, fol. 276) presumably, that though said Egerton L. Winthrop, Jr., did not hesitate to ask a thousand dollars of Chaloner's money for having Chaloner declared insane for life, yet *did* hesitate to name said Dr. Samuel B. Lyon's fee, and suggested that it be left to the Committee to be appointed by the Sheriff's Jury Proceedings in 1899; (p. 142, fols. 276-277) said "Committee" being no less a personage than a *brother-in-law of Stanford White*, the man who had *lured* Chaloner from Virginia to New York; and said "Committee" being also a *partner* of Joseph Hodges Choate, Sr., who was, at said

time—and is to this day—senior partner of the firm of Evarts, Choate and Beaman,* of which law firm said "Committee," said Prescott Hall Butler was a member, as is Thomas T. Sherman, today. Moreover, said Joseph Hodges Choate, Sr., was at said time—and for all Chaloner knows to the contrary is today—is now—one of the Board of Governors of said Society of the New York Hospital, said "Bloomingdale," falsely so-called, which Institution is not a State, or public, Institution, or an eleemosynary Institution, but is a purely money-making Institution, *which did not hesitate to make some twenty thousand dollars out of Chaloner, by charging* him one hundred dollars per week—*not counting extras*—as appears from the back of the cover of the Commitment Papers of 1897, for a two-room cell for three years and eight months, and over. (*We are unable to find reference to the back of said Commitment Papers*† *in the Transcript of Record.*)

If Chaloner were a hypochondriac he would have kept his bed, *and been there yet,* instead of practicing walking such great distances of an afternoon that he was able to *walk away* Thanksgiving Eve, 1900, and make, thereby, his *escape.*

Dr. Samuel B. Lyon was Chaloner's jailor at the time, at the time of the 1899 Proceedings. Dr. Samuel B. Lyon stood in the same relation to Chaloner that the Sheriff did to Mrs. Simon, in *Simon* v. *Craft, supra. But no hint or whisper even, ever was made that the Sheriff received a fee for holding Mrs. Simon, or having her declared insane. Whereas said Egerton L. Winthrop, Jr.'s affidavit, supra* (p. 140, fol. 273) *shows that said Dr. Samuel B. Lyon was one of the experts*

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*Now Evarts, Choate and Sherman.

†Since found p. 114, fol. 224. "Legal Status. (State whether indigent, public or private). Private. Price per week, $100.00."

in the employ of the Chanler family to declare Chaloner insane and incompetent for life, and moreover, a patient at one hundred dollars per week in the Hospital of *which said Dr. Lyon was the Medical Superintendent.* (Dr. Lyon on the stand, p. 117, fol. 229): "Q. Is the disease progressive? A. The disease is *a permanent* disease and progressive in the stages I have mentioned." (p. 117, fol. 230). "Q. What disease is he suffering from? A. Paranoia; by some it is called systematized delusional insanity."

(P) Mayer, J., continues: "If the trial judge had received in evidence the excluded letter written in July, 1897, by Chaloner to Woods, a Virginia attorney, it would have appeared that he then wrote: "It is unnecessary for me to say that nothing but the most unexpected and dire necessity could induce me to go before a 'Sheriff's Jury' the usual manner in the State of New York of carrying out a Habeas Corpus Proceedings for a man who has been declared insane by a Judge—because it is not the right way to go about it. I am not a citizen of the State of New York, and therefore the Sheriff's Jury does not apply to my case."

Chaloner admits frankly that it *could* come about so unfortunately for him—as a lawyer knowing his constitutional rights—that he *might* be forced "to go before a Sheriff's Jury." He emphatically does *not* say "NOTHING COULD EVER INDUCE ME TO DO SO." HE ADMITS FRANKLY THAT HE COULD BE INDUCED TO DO SO UNDER THE FOLLOWING CIRCUMSTANCES, NAMELY, UNDER STRESS OF "THE MOST UNEXPECTED AND DIRE NECESSITY."

Now, when one considers that said Micajah Woods admits in his affidavit (p. 154, fol. 303) that (he) "I received the appended letter addressed to me, under

date July 3, 1897, in October, 1897, that the said letter is in the handwriting of John Armstrong Chanler and signed by John Armstrong Chanler"—when one considers that said Woods received said letter praying him to bring *habeas corpus* Proceedings in a Federal Court, in company with the late United States Senator from Virginia, John Warwick Daniel, in October, 1897; and, in the Spring of 1899 said Micajah Woods had not *yet* made the first move to bring said Proceedings, we respectfully submit that the contingency which would open the doors of a New York State Court to Chaloner—as outlined by him in said letter to said Woods—had arisen, namely, "*the most unexpected and dire necessity*" aforesaid. Therefore the implication by the learned Judge Mayer that Chaloner "absented himself from the 1899 Proceedings by his own choice," we respectfully submit, is not borne out by the extract from said letter, of July 3rd, 1897, from Chaloner to Commonwealth's Attorney Micajah Woods of Albemarle County, Virginia.

Moreover. The learned Judge Mayer appears to lose sight entirely—we respectfully submit—of the salient fact that in said letter to said Captain Micajah Woods, Chaloner was outlining the commencement of a Proceedings to be secretly brought by said Woods. Upon the other hand said learned Judge Mayer appears to lose sight entirely—we respectfully submit—of the fact that in 1899—*two years after* said letter of July 3, 1897, to said Woods—the *conditions had utterly changed;* and *instead* of their being Proceedings brought by said Captain Micajah Woods and the Senator John Warwick Daniel —they were *now—in* 1899—*Proceedings brought by the hostile Chanler family.* Therefore said learned Judge Mayer appears to lose sight entirely of the fact that—as in a game of chess—the situation is entirely changed,

and that all Chaloner *now* has to do—in order to be true to his plan of campaign in a Federal Court as aforesaid—is to—by his said attorneys—*have the action removed* from a State to a Federal Court on the ground of diverse citizenship. See *Chanler against Sherman*, 162 Fed. Rep., 19, *supra.*

(Q) Mayer, J., continues: "And it further appears from Chaloner's Deposition excluded by the trial Judge that he absented himself from the 1899 Proceedings by his own choice. If, therefore, he knew at that time what he was doing, he deliberately failed to appear when full opportunity was afforded to him so to do." p. 188, fol. 367.

If the trial Judge had received in evidence the excluded Depositions made in 1908, and 1911-1912 by Chaloner, it would have appeared that he showed that it was impossible for him to get the confidence of any lawyer, from the fact that he was in an Insane Asylum. He had attempted to employ the late Senator David B. Hill, but to no avail. He had later attempted to employ Commonwealth's Attorney Micajah Woods, and Senator John Warwick Daniel, but to no avail. Therefore Chaloner knew that to get a lawyer he must see him face to face. Therefore when Dr. Lyon says (p. 119, fol. 232) in reply to the question "The only reason for not producing him is his own wish. A. That was his decided wish, I gave him the opportunity, and to employ counsel or anything he wanted to do," there was no possible hope held out to Chaloner in that offer. *A glance at p.* 160, *fol.* 314, *will show from the following paragraph in said letter of July* 3, 1897, *what Dr. Lyon's alleged offer "to employ counsel" amounted to. It requires no argument to support the statement that a client should be allowed to approach his counsel at first hand*, that is to say *before anybody else has got his ear and poisoned*

it against him. "This is the first opportunity which I have had of posting a letter unbeknown to the authorities here. The rule is, that all letters and telegrams must be sent through the authorities here; who have the legal right to suppress or forward to the Commission in Lunacy at Albany, who have again the legal right to suppress or destroy them. You can readily understand that I would not send a letter under such conditions. Hence my having to wait four months to write you and ask your aid."

An examination of the brief of Joseph H. Choate, Jr., counsel for the defendant, Sherman, before the Circuit Court of Appeals, throws a light upon the above mentioned language of the learned Judge Mayer (p. 188, fol. 367) that "It further appears from Chaloner's deposition—that he absented himself from the 1899 Proceedings by his own choice." The learned Judge evidently did not have time to read the section, alluded to, of Chaloner's Deposition and relied upon the statement thereanent to be found in said brief of said Joseph H. Choate, Jr., to-wit: "From the plaintiff's own testimony in his colossal Deposition, it abundantly appears that he absented himself from the 1899 hearing by his own choice."

We regret to observe that said statement by said Choate is entirely unsupported by fact. We shall presently produce the said selected portion of Chaloner's Deposition to sustain said Choate's contention—selected by said Choate in his brief—before doing so we must draw this learned Court's attention to another wholly unwarranted assertion by said Choate, relating to Chaloner's position. To wit, said Choate says (page 14, of his brief on appeal in *Chaloner against Sherman*): "The plain fact is, of course, that one who is physically unable to attend a trial is by no means denied an op-

portunity to be heard if he is able to retain and consult freely with counsel." Said Choate here states a truism, practically, but *utterly without foundation in fact* as regards Chaloner's situation. He goes on, "The fact that plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel, appears not only from the fact that he wrote long and full letters (sic) to at least one of his counsel" (fol. 335-6, Letter printed as Exhibit 6 for Identification, fol. 914).

Said Choate starts out by saying that Chaloner "wrote long and full letters (sic) to at least one of his counsel" and proceeds to support the assertion concerning "long and full *letters*" BY ONE SOLITARY LETTER. This type of inaccurate statement in said Choate's brief—which we shall show more than one specimen of as we proceed—is undoubtedly the cause of the learned Judge Mayer's aforesaid statement—*he relied upon the accuracy of said Choate's claims.* How, moreover, said Choate could honestly and truthfully found such a statement as that Chaloner "was entirely at liberty to retain and consult with counsel" upon one sporadic letter which, from its addressee's own admission, REQUIRED SOME FOUR MONTHS—see *supra* —p. 154, fol. 303: "I, Micajah Woods, Commonwealth's Attorney for Albemarle County, Virginia * * * received the appended letter addressed to me, under date July 3, 1897, in October, 1897"—for Chaloner to SNEAK THE LETTER OUT—so to speak—"UNBEKNOWN TO THE AUTHORITIES HERE," *surpasses our comprehension.*

Referring now to the testimony of said Micajah Woods concerning his receipt of said letter (p. 60, fol. 113) "I received a letter from the plaintiff (Chaloner) in about October, 1897. The letter was brought to me by a New York lawyer by the name of Philip, Mr. Philip." This

proves beyond cavil the inaccuracy of said Choate's said statement, *supra*, that Chaloner "was entirely at liberty to retain and consult with counsel;" when he, Chaloner, was so far debarred from the use of the mails that instead of posting a letter in the ordinary manner, or even registering the same for extra security, he was in such a plight that for safety he had to intrust said letter to a New York lawyer. It further appears—as will be fully gone into *infra*—from Chaloner's Deposition excluded by the trial Judge, that said Philip—said "New York lawyer"—played false with Chaloner, and that upon handing said letter to said Woods, had said, in effect: "Do nothing in this matter without consulting me." This had so alarmed said Woods that he let the matter drop then and there.

Said Choate continues, p. 14, *ibid:* "But also from the testimony in the 1899 Proceedings (fol. 695) which shows that at the time in question he was on parole and at liberty to go where he pleased within large limits (fol. 692)." This statement of said Choate is highly deceptive. For though Chaloner was undoubtedly *just then* placed on parole, yet, *by the mouth of Dr. Samuel B. Lyon said Choate's own alienist, together with Drs. Flint and Macdonald, it is proved that Chaloner was bed-ridden and unable to make use of said parole:* (p. 114, fol. 225). Said Dr. Lyon on the stand in said 1899 Proceedings:

"Q. When did you last see John Armstrong Chanler?

A. Last Wednesday or Thursday, about three days ago.

Q. Did you see him in regard to attending before this Commission and Jury today?

A. Yes, sir. I knew this case was approaching and I visited him and asked him what he wanted to do in regard to it; whatever he wanted to do I wanted to carry

out. I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine—(and p. 115, fol. 225). A little subsequently to that I received a request from him to come over again.

Q. In what place?

A. To his room. He did not wish me to represent him, but I should come in his place, or say that he could not come on account of his infirmity, (and fol. 226)—he has kept his bed for over three weeks at least."

And again from Dr. Lyon (p. 118, fol. 231): "I gave him the parole of our grounds—HE WENT OUT BY HIMSELF AN HOUR OR SO—AND THEN HE CEASED TO GO OUT BECAUSE HE WAS PHYSICALLY UNABLE."

How a man can truthfully say that such citations as the above "show that at the time in question he was on parole and at liberty to go where he pleased within large limits" passes our comprehension.

When it is further borne in mind that Dr. Lyon said at the same Proceedings of 1899—on the very same day—(p. 114, fol. 225, *supra.*) Q. "When did you last see John Armstrong Chaloner? A. Last Wednesday or Thursday, ABOUT THREE DAYS AGO" and again (p. 115, fol. 226) on the same occasion "He has kept his bed for over three weeks at least" *there can be no further doubt but that said Choate was deliberately aiming to deceive the Court; by trusting that the Court would believe that he was stating the truth and not look up each and every reference made by him, most naturally.* How, we respectfully submit, can a man "be at liberty to go where he pleased within large limits" when he is confined—and has been for three weeks—except for "an HOUR OR SO AND THEN HE CEASED TO GO OUT BECAUSE HE WAS PHYSICALLY UNABLE?" *How*

can a man "be at liberty to go where he pleased within large limits" when he is—and has been for "over three weeks at least"—confined to the narrow limits of his bed?

Said Choate continues: (p. 14 of his said brief) "There is no suggestion in the case at Bar that the plaintiff even suggested a wish to be present or to have the trial at a later day. On the contrary, it appears from the testimony in the 1899 Record that he deliberately and of his own preference, refused to attend (fols. 674, 695)." Turning now to said Choate's supports for the above statement (fol. 674) (p. 114, fol. 225) Dr. Lyon on the stand: *"I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine—and he also said his knee was affected in the same way, and he would be unable to come."* Said Choate stops short in his citation, for in the very next sentence Chaloner gives a respectful instruction to Dr. Lyon *to carry a specific message from him to the Commission and Jury, explaining his physical condition precisely*, and leaving it to them as honourable and humane men to do their legal and official duty, namely, postpone the hearing until his indisposition should pass, or send a Committee appointed by them to visit him and pass on his case. It was not for him, a prisoner, to instruct the Court—the Commission and Sheriff's Jury—he simply and respectfully stated the truth, and left it to their sense of honor and propriety and judicial sense of duty to take the only steps possible to cure the evil of the situation. To-wit: either postpone the Proceedings to a later day—the Record shows Chaloner walking about once more and *fully able to attend Court inside of ninety days from said time*—or appoint a Committee from the members of the Commission and Jury to visit Chaloner and view him face to face. If

the distance was not too great for Chaloner to go to the Commission and Jury, we respectfully submit it was not too great for the said Committee to visit Chaloner, since he—a prisoner without counsel—was not in a position to do anything else.

Chaloner went so far as to send for Dr. Lyon a little later, and *reinforce* the statement that "he was physically unable to be present on account of pain in his spine"—*which in itself carried a respectful suggestion to a Commission and Jury alive to their duty to postpone the case*—not satisfied with this implied request, Chaloner *sent* for Dr. Lyon. Said Dr. Lyon says *supra* (p. 115, fols. 225 and 675): "A little subsequently to that I received a request from him to come over again." Q. "In what place?" A. "To his room. He did not wish me to represent him, but I should come in his place or say that he could not come on account of his infirmity." Said Choate further cites above, folio 695 (p. 118, fol. 232): Said Dr. Lyon on the stand. Q. "The only reason for not producing him is his own wish? A. That was his decided wish." Naturally, a man with an afflicted spine and knee, *which had, and still did, pin him to his bed for three weeks*, and still would for some three months more, does not wish to undertake a 20-mile railway journey. But, we respectfully submit, there is much more in this apparently artless question upon the part of the artful Candler—of Jay and Candler—who, with said Egerton L. Winthrop, Jr., of the same firm, were the lawyers employed by the Chanler family to bring said 1899 Proceedings. Said Candler evidently desires to instill into the minds of the Jury that *nothing but willfulness prevented Chaloner's presence before the Commission and Jury.* Note the craft in said Candler's question aforesaid, to wit: "The *only reason* for not producing him is his own wish?" The *"only reason."*

Dr. Lyon innocently falls into the trap thus set by the crafty Candler and at once and honestly replies: "That was his decided wish."

There is no hint here upon said Candler's part of an ill man, suffering with spinal trouble and an ailment in the knee. Which two *ailments* were the *reason* for Chaloner's absence from said Proceedings and NOT the WISH, not to be tortured unnecessarily by being forced to journey 40 miles—20 miles each way—to Court on Manhattan Island—in his present bedridden condition. The ailments aforesaid are the cause of Chaloner's non-appearance—not the *ex post facto* "WISH" aforesaid arising directly from and out of said *ailments.*

Bearing the above in mind, how far indeed from the facts appears the following statement of said Choate, page 14, *ibid.:* "The utmost extent to which the offer of proof went was to proffer evidence to show that the conditions imposed upon the plaintiff-in-error by his confinement and illness may have made the conduct of his defence inconvenient." "Impossible" is the only word a careful man would dream of employing in the premises—"inconvenient" in the premises is an absurdity.

In conclusion, touching this particular, Mr. Choate's erroneous statements are cumulative. *The following is the climax* for which there is actually *no justification.* He says, page 15 of his said brief: "From the plaintiff-in-error's own testimony, in his colossal Deposition, it abundantly appears that he absented himself from the 1899 Hearing by his own choice, being free to attend and to consult counsel. (Plaintiff's deposition, Vol. V, pp. 122-142)." "The passages referred to seem to us to demonstrate the fact so completely that no amount of evidence to the contrary could convince the Court that the plaintiff-in-error's failure to appear at the 1899 Hear-

ing was because opportunity to be heard was denied him. It is to be remembered that the plaintiff is himself a lawyer, to whom, if sane, the importance of the 1899 Proceedings was doubtless evident." We now insert said passage upon which said Choate bases the above statement.

DEPOSITION, VOL. V, pp. 121-142.

Q. You think the disease will terminate soon in death?

A. No, sir; there is no likelihood of that.

By a Juror: Has he ever made any attempt to escape?

A. No. He has no desire to escape—he has made no attempt to escape. I granted him the privilege of all the grounds—I gave him the parole of our grounds on his honor—he is a very honorable man; he went out by himself an hour or so—then he ceased to go out because he was physically unable to on account of his unlikelihood. Q. "What have you to say to this?"

A. I reply to that, in the first place, this showed my healthy condition. Dr. Lyon says without equivocation or hesitation, when asked if I am likely to die soon: "No, sir; there is no likelihood of that." That was after I had been two years in "Bloomingdale" under the most frightful conditions as above described, and during that time I had never touched any medicine of any sort, kind or description; as I may have stated, I never took anything but quinine from time to time to keep off malaria, with the exception of Stearns Wine of Cod Liver Oil, which I took for the first few weeks of my incarceration as a tonic, largely

to help me stand the extra terrible strain of my hideous surroundings, dropped it after a few weeks and never recurred to it, because I was perfectly healthy, with the exception of quinine, which is a tonic and not a medicine, and porous plasters for my spine, which again are not medicine, but plasters—I never bought five cents worth of medicine of any description. Now, one of the first things in lunacy is the effect on the liver. *Bona fide* lunatics' livers are sluggish and I would see trays going up with medicine, with cathartics, for my various lunatic colleagues. That is something I never took when in "Bloomingdale"; I never took a pill, and I never took any salts or anything of the sort; my liver was in perfect condition, and that is one of the proofs that I was absolutely sane. The liver being one of the first things to be attacked in case of *bona fide* lunatics; second, a sleeping draught. On these trays containing medicines which went by my door to other cells there would be sleeping draughts, sometimes a regular thing; it is well known that lunatics frequently do not sleep well, and they have to have sedatives to induce sleep; I never had anything whatever to make me sleep; I slept like a log for nine to ten hours a night after I conquered my environment, dominated my environment in the fear, the dread, the horror of assassination by lunatics by strangulation; after I dominated that I slept like a top; it took me about a year because the cause of the danger was there for a year, before the newspapers I took had accumulated in sufficient numbers to make columns high enough to act as a barrier to the opening of my hall door of my cell, aforesaid; (the cell doors were always unlocked).

My bills, paid while in "Bloomingdale," will show—my accounts—that I never bought anything. Of course, it is possible they have faked up accounts now and have accounts to put before a jury that I bought this or that; the jury can draw their inferences; *they can't draw accounts of course.* Now, as regards my not wanting to escape: Dr. Lyon says in answer to the question: "Has he ever made any attempt to escape? A. No, he has no desire to escape—he has made no attempt to escape." Now, that is a fact. I had no desire to escape. Escape was repugnant to me. I wanted to get out by legal means; I wanted to get out through the means of lawyers bringing *habeas corpus* proceedings to get me out, as my letter to Micajah Woods of July 3rd, 1897, shows. I wanted him and the late United States Senator John W. Daniel, of Virginia, to go to New York and get out a *habeas corpus* writ and get me out, sue out a *habeas corpus* writ to get me out. The letters that I have put in exhibition here, put in evidence, prove beyond cavil that I had no intention whatever; that Dr. Lyon is perfectly frank when he says, "He had no desire to escape."

I only escaped when the ill-advised acquaintance of mine, Mr. H. H. Frost, Jr., a lawyer of New York City, took the responsibility of taking the game in his own hands without consultation with me and saying that he would not visit me without the knowledge of the authorities at "Bloomingdale"; that meant the death and destruction of my hopes and eventual death to me—I would certainly have died suffering a physical decline—not a mental decline—if I had continued in

"Bloomingdale" for a number of years. I escaped on a night's notice on reading this calamitous letter.

I don't blame Mr. Frost; I simply don't agree with his judgment; that is all in this particular. He meant well. I was forced to escape. Had I not it required no talk to show that Mr. Frost would have gone on, had he been as good as his word, which I have no doubt he would have been, communicated with the authorities and they would thereby have known that I was communicating with the outer world and stopped my privileges of walking without a keeper; they would know that I was communicating with the outer world, because it would be the part of common sense to say, "Why did Mr. Frost wait for two years before communicating with the authorities and desiring to see Mr. Chaloner?" The next natural line of reasoning would be that: *"Mr. Chaloner must be communicating by letter with the outside world. This is against the rule, and his privilege of walking must be withdrawn."* Then I would truly have been in a desperate situation. My record in "Bloomingdale" and after writing this book—law books, etc.—history, "Four Years Behind The Bars," shows that I am as interested, to put it mildly, in reforming Lunacy Laws as I am in the repossession of my own property; that I am willing to sacrifice years of my life, be in poverty—I was in poverty after the first years of this escape from "Bloomingdale" —accept poverty, suffer poverty—and nobody knows what poverty is until they have suffered it—suffer poverty in preference to obtaining riches by practically the stroke of a pen, by simply

having my case briefed on enough law to get my property. I would not do that, however. The record shows that; the record shows that I declined to accede to Senator John W. Daniel's stand; that he would brief one or two points of lack of notice and lack of opportunity to appear and be heard, in my case, but not go any further on the trial by jury-rights of alleged lunatics before indefinite incarceration sets in—and the illegality of the trials had *in absentia.* I have been fully sustained, as these law reviews show, that have criticized the "Lunacy Law of the World," and it is unnecessary, of course, to touch on them here. I was absolutely determined to live up to my Hannibal oath aforesaid in "Bloomingdale," registered on the margin of a page of Stormonth's Unabridged English Dictionary; that I would sacrifice every year of my life, and every dollar of my property that was necessary to cleanse the Augean stable of lunacy legislation throughout, as it turned out, about fifty per cent of the States of this great Union; as I had that duty which chance had thrust in my grasp decidedly against my will—I had been lugged to "Bloomingdale" and chucked behind the bars; I had not gone there willingly on the record—this duty which had come to me by pure chance, which, if I were to be true to my oath as a member of the Bar of New York State—not of the City of New York or the County of New York—I was admitted in Poughkeepsie as a member of the State Bar, quite a different proposition from the bar of the City of New York, and the Bar Association of the City of New York—which oath says, in effect, that I will protect the Constitution

of the United States and of the State of New York, and I know that both Constitutions are being ruptured, and are being outraged and raped by these villainous lunacy laws of 1896, passed by the Republican Legislature which sat in 1896—if I were to be true to the said oath and also to my duty as an officer of the Court, because lawyers are officers of the court, and if I were to live up to the legal maxim "It is a fraud to conceal a fraud," if I were to follow the road which was pointed out to me so clearly by this oath, by my being an officer of the court, and by the said legal maxim, *I was bound to stick at nothing which could prevent the airing of this hideous crime against the Constitution of the United States and the State of New York and the* Declaration of Independence, and the absolute rights of the individual as laid down by Sir William Blackstone in his Commentaries—I must stick at nothing which raised itself as a barrier between me and my day in Court—I must stick at overcoming nothing which raised itself as a barrier between me and my "day in court"; I was willing, and the record shows that I was willing, to risk my life to that end; I will show that further on another occasion, another day, I will show that I was offered my *release* from "Bloomingdale," but with a string to it, with a string of "hush up," with a string of "Don't say a word," with a string of "Nothing doing against 'Bloomingdale'." I politely——.

Mr. Duke: Mr. Chaloner, I beg your pardon. Are you reading from a book?

The Witness: No, sir; I am not.

Mr. Duke: You know that would not be proper.

The Witness: Oh, no; not at all. It is nothing but the record in the proceeding, not a word else.

Mr. Duke: Oh, well, go ahead; that is all right.

The Witness: (Continuing): I politely declined this offer, by which I mean that I *did not* decline it, but said nothing when it was offered to me and simply kept silent without allowing any expression to enter my countenance, whereupon the proposer of this proposition asked me again what I thought of the proposition, and I then said, "This is the first time it has been presented to me." I then paused. The Ambassador of the other side who made this offer (I flag the Does)* when I say the Ambassador, I don't mean that he was Minister Plenipotentiary of the United States—the Ambassador of the other side then said, in effect: "Will you let me know—you will consider it?" I then said nothing. He then said, "Will you let me know *when you have considered it?*" I said, "Yes." My "politic" denial of it—denial of his request, or rather my refusal of his request, was contained in the fact that I never notified him, because I never "considered it"; I never notified the Ambassador, because I never considered it in the shape of weighing the proposition with a view to whether I ought to take it or not. That will be referred to at another time, but in the interim, I trust, when I say that I was offered an opportunity to escape—not escape, but leave ("Bloomingdale") quietly, but with the knowledge of the authorities on condition that I hush the whole matter up and brought no charge against anybody and made no com-

*This phrase is elucidated, Appendix, pp. 377-378.

plaints of any nature whatever. The experience I had in "Bloomingdale"—the visit from this gigantic maniac I had at night—prowling in my cell—and the murderous attack on me by this strapping six-foot Irish keeper—suggests the fact that "Bloomingdale" is not a healthy residence for a person whose death would benefit certain other people who are his "heirs at law, next of kin, and inheritors of his entire estate"; and I took this risk of daily fighting for my life, nightly fighting for my life, with either maniac or keeper for years, in order that I might get out of "Bloomingdale" according to law, and get out of it with the slate cleared of my charges against illegal lunacy laws of New York and the rest of the States of the Union which have illegal lunacy laws.

Having made this voluminous explanation, the jury can understand that I did not escape until I was forced to escape by the unfortunate decision of Mr. H. H. Frost, in my regard aforesaid. I was willing to suffer anything short of death; I was willing to suffer the risk of death, the daily risk of it and nightly risk of it, of the torment of "Bloomingdale" of the pain in my spine brought on and continued by my presence in "Bloomingdale," the deprivation of everything that makes life worth living, my living in a hell on earth, cut off from my property, from my budding affairs which held out another fortune to me beside my own. As has been shown on the record, by the letters of Albert Legg, I received an offer—as one of his letters shows—a bona fide offer of—in round numbers—five hundred thousand pounds —$2,500,000—for my self-threading sewing machine attachment, patented, known as the *Self-*

Threading Sewing Machine Company, which took a prize—or the highest award—at the World's Fair at Chicago, and for which forty thousand dollars worth of orders were booked during that Fair's duration; besides my patent pavement which I patented myself, which also received the highest award at the said Fair, and for which I received an offer from the Mayor and Syndic of Marseilles, France, for the paving, ultimate paving, of the City of Marseilles, if my paving proved durable; a fact which had already been proved by its having been laid down in England for years in a private place where the public would not know it, or see it, but where it had steam rollers and heavy steam English machinery, farm machinery, pass over it daily. The business men of the jury will readily recognize the parental interest and care that I would naturally feel in a patent of which I was the controlling stockholder, a one hundred thousand dollar patent, paid up; and another patent in which I had put thousands of dollars for patent rights—all in a lapse of years, certainly $25,000 for the patent rights—without which patent rights I would never have received the Marseilles order, which I did, so that the jury will see that I showed business acumen, judgment and foresight in investing my money in patent rights, because I would have gotten a return from them had I been able to close the Marseilles deal.

The jury will readily recognize the parental care I had for my two said business infants, one the offspring of my business judgment—the sewing machine attachment—and the other the offspring of my very brain, a patent which I had

myself invented; the jury will readily recognize the parental agony (I flag the Docs) from a business point of view I suffered, and from being separated from these children of mine, (I flag the Docs), these business products of my brain and business judgment, whom I knew, whom I daily knew when I was in "Bloomingdale," were being starved to death, were dying, because, like real people, live children, they only had a limited number of years to live, seventeen years being the life of a patent; I need not expatiate to the jury what I went through as a business man, and as an inventor, *agonies*, and that is not too strong a word, I assure the jury, under oath, for what I suffered from this business agony, this business tragedy—it is nothing else. I have refrained from touching on this before in this long deposition—I did not want to appear to work on the sentiments or emotions of the jury, and I do not want to now, but it is absolutely necessary for me to show that I only escaped from "Bloomingdale" because I *had to;* it is necessary for me to show that, unless I am willing to allow my reputation as a man of honor to be smirched, and I say, and my record stands for it, that honor is more with me than money or success or anything else, and I would rather have poverty and an honorable name than riches and rascality. My various acts and utterances on paper in every publication prove that to any honest and intelligent mind; and it is a very dear and precious thing to me as a man of honor, it is the dearest thing to me on God's earth. It is dearer to me than the fact that I am an American citizen; it is the dearest possession that I have got that I have an

unsmirched honor, unsmirched by the record, unsmirched *on* the record, proved to be unsmirched on the record of the fifty years coming the 10th of October, 1912; for that reason I want the jury thoroughly to understand the temptation I was under to compromise if the dollar cut any actual ice in my scheme of existence when opposed to what I thought was right; the jury will remember that my patents were dying daily when I was thrown into "Bloomingdale," the jury will remember that I was offered this Marseilles paving, the paving of a certain portion of the streets of Marseilles, before I was hurled into "Bloomingdale," and within a year after my being lodged in that den of vice and iniquity—its proprietors are vicious; I do not mean that vice takes place in "Bloomingdale" — its proprietors — the said "Forty Thieves of Bloomingdale"—are vicious, and what they own is vicious thereby; they are proprietors of a den of iniquity because *they* are iniquitous themselves on the record in turning me into a galley slave, and in robbing me of thousands of dollars a year as aforesaid—within a year after my waking up and finding myself in a madhouse for life on a perjured charge of lunacy, the sewing machine attachment, that sewing machine adjustment owned by the said Self-Threading Sewing Machine Company reached fruition, and was adjusted to the Singer Machine, as aforesaid, which fulfilled the conditions offered me, laid down to me by the London capitalists, that they would give me one hundred and fifty thousand dollars for the rights of the British Isles, possibly the British Colonies also thrown in; the jury will see the terrible temptation I was under

from the very day I got into "Bloomingdale" to get out in any way I could, even at the price of "hush up" aforesaid, offered to me by the Ambassador of the other side; nothing but a sense of duty—iron-bound and rock-ribbed—held me in that cell when the offer was made to me that I could get out of it: the doors would swing open, swing open with the knowledge of Dr. Lyon, but quietly; not to the knowledge of the press, not to the knowledge of the Medical Profession, there was a seal to be placed on my lips forever—hideous as that proposition was, it was made to me, and nothing, I respectfully submit to this Court and Jury, but a certainly working sense of duty, a mobilized sense of duty, enabled me to resist that offer; that offer was made years before my escape; even after I was given the privilege of walking about, I did not escape until eighteen calendar months, there or thereabouts, to be absolutely exact, seventeen months; I was given permission to walk about alone in June, there or thereabouts, 1899, and I escaped Thanksgiving Eve, 1900, seventeen months later. The jury can well imagine that when I was walking the by-ways and hedges of Westchester County, when I was climbing the mountains, or rather the certainly high hills of that section of Westchester, the temptation to keep on climbing presented itself more than once, climbing towards the South, climbing for liberty and home. "Home, Sweet Home," so to speak, hummed itself in my ears in the breezes, in the summer's zephyrs and wintry blasts; it rode wintry blasts and whispered to me (I am telling the truth), "You are a damn fool to stay here"; that was the way the temptation came to

me—"You are a damn fool to stay here; walk away; you have got the strength to do it; keep on moving"; and I never in my life had a severer temptation, I am frank to say, than to resist the whispers and yells of the said temptation. And yet I did it, on the record. I did not go until Mr. Frost made his little "break," until Mr. Frost was as good as his name, and threw a *frost* into my affairs, threw a very bad, hard, black frost in my affairs, with the best intentions in the world. Frost is an old college classmate of mine, and I have nothing but the kindest recollections of our acquaintanceship. He used to tutor me; he taught me law and coached me when I was "cramming" for examinations, and we never had so much as a hard word between us, Frost and I, so I absolve him from an innocent "break" in this record. Furthermore, this parole that Dr. Lyon gave me was a parole with a string to it. It was just exactly like a cheque which a highway robber forces a citizen to draw for him at the point of a pistol, and then says, "I rely on your honor not to stop the payment of this cheque between now and noon tomorrow, when I let you go." The ethics in both situations were identical. I had been kidnapped by Stanford White, perjured into "Bloomingdale." I was up against a very tough proposition. I was in very malodorous company through no fault of mine. They were holding me contrary to law just as much so as though they were actually brigands, professional brigands, *honest* brigands, frankly admitting they were brigands, instead of the double-faced brigands that they are, pretending that they are pillars of the Church and State and Finance. I was absolutely with-

out any standing in law; I had been deprived of my rights and rendered a dead man, rendered *civiliter mortuus*—civilly dead. An incompetent person or lunatic is civilly dead. He has no rights; he cannot transfer property, and he cannot vote and cannot have his liberty, as in my case. He must be locked up and robbed daily for life. I knew that state of affairs and I had tolerated it for nearly four years—three years, eight months and some days—and at the risk of my life, and at the possible permanent injury of my health, *for I still have an affected spine, as the record shows.* This was no more a parole in the honest sense of the word, in the real sense of the word, than a cheque which is given at the point of a pistol is a cheque in the honest sense of the word; it is not the intentional passing of money from one party to another. The law recognizes that anything which is given "under duress" is illegal and has no binding force whatever. A cheque given under duress, under the pistol point, is illegal. A man can stop it. That is what I mean by illegal. It is an illegal way of getting a cheque. *A parole given under duress is illegal. It is an illegal way to get a parole, to put a man in such a hole that he will give a parole, to get a little fresh air without a keeper's shadow in front of him every step he takes.* I, as a lawyer, knew that this parole that I gave was absolutely worthless; it had no binding effect; that the law did not expect me to keep it; that the Law said more; the Law said: "You are committing a fraud if you keep this parole one day longer than you are sure that you are able to get out of 'Bloomingdale' and show up this iniquity, or at least one

day longer than you begin to fear that you will jeopardize this aforesaid sureness of getting out, and turning on the lights, and showing the iniquity that has taken place in your case, and *will* take place unless checked by you—on the evidence, because nobody in New York has ever brought an action against 'Bloomingdale' for damages that has ever been in it." As far as I know, nobody ever has made a move. Although I knew that this parole was worthless, yet I was held by that parole for seventeen months on the record in spite of the whispers of freedom and home and happiness and the Sunny South. *That shows whether I did what I could to oblige Dr. Lyon, and not disappoint him.* But there was something more important to me than even my own honor. There is one thing and that is that *injustice shall not rule:* and if it were necessary for me—I frankly say—to lose my reputation, to be bracketed with any of the biggest criminals that ever lived—if it were necessary for me to pay that price—*without committing the crime be it well understood*—but if I were to be maligned and misunderstood and written about in history as one of the biggest criminals, I would be willing to pay that price *if that were the only price which could put injustice in law out of business,* I would be willing to sacrifice my reputation, which is the dearest thing to me, really dearer than anything, dearer than life, *but one thing, and that one thing is Ideality—is the greatest good for the greatest number, is the absolute antagonism and death in the last ditch opposed* to wrong-doing and injustice—and for that I will sacrifice everything, even my reputation, if it is

necessary. I won't sacrifice that like a fool, but I would sacrifice it if I could get a sure return in the wiping out of those Lunacy Laws, *if being understood all the time that I do not have to commit any crime*—I am simply *accused* of being a criminal. I have to say that, because otherwise I would be accused of "having broken my parole," I would just as soon be accused of having stolen a man's watch, or pocketbook, as being accused rightfully and honestly of breaking a bona fide military parole. Amongst soldiers a parole is given by one honorable foe to another, but that is among honorable foes, not among honorable men opposed by footpads, brigands and thieves, as I have been by the "Forty Thieves of Bloomingdale,"* aforesaid, *and robbed of twenty thousand dollars* by that gilded and well-groomed gang of prominent New Yorkers and pillars of the Episcopal and Roman Catholic Church; Cornelius N. Bliss was the most prominent Roman Catholic and devout son of the Church; Elbridge T. Gerry, as I remember, is an inveterate plate-passer, and Joseph H. Choate is an Episcopalian of quite Bishop-like proportions and rotundity. I do not wish to be understood as meaning any disrespect to Bishops when I say this. In a word, this parole was a farce. I got it out of Dr. Lyon on a bluff, so to speak, I bluffed him. I knew from the dastardly way Ex-Senator David B. Hill had left me to rot in "Bloomingdale," that I could not get a New York lawyer to touch my case unless I got

*Plaintiff-in-error's ironical phrase for the Board of Governors of "Bloomingdale," in his satirical history of New York, entitled "Four Years Behind the Bars of 'Bloomingdale,' Or, The Bankruptcy of Law in New York," published in 1906.

his ear outside the walls of my cell. A hint is as good as a kick to me. Turned down once is turned down forever, as far as I am concerned on any good proposition. So I gave up all idea of having anything to do with lawyers by letter or third parties until I got outside of my cell and could talk to them at Valhalla,† as I did later. But I made a bluff to Dr. Lyon, and when he asked me, as he did just before the 1899 proceedings, asked me if I would go down to see the jury in New York City, and I told him I was physically incapacitated from doing it—*physically—I knew that my presence before that jury would "blow the gaff," would give away the game, and I could walk out of the court a free man.* They, the Chanler family, knew that as well as I did. That is why they set the proceedings twenty miles away. I *"banked" on this fear of Dr. Lyon's, and others*, that I would by hook or crook get before that jury. So that, *although* I *told* him I was *not able to get there, yet I knew that fear* was so chill and deadly that *it* might carry a *bluff*,* and I was going to risk it. So I said, in effect, "Dr. Lyon, I am heartily sick of seeing the shadow of my keeper blotting the earth's surface in front of me when I parade these grounds, and I do not propose to have any more of it, and if

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†Three miles from White Plains—where "Bloomingdale" is situated.

*The fear that I *was*—after all—*able* to get there—the bluff consisting in assuming that plaintiff-in-error *could* get to court, and *not* that he could *not*. That he *could*—by hook or crook—get a lawyer who would bring *habeas corpus* proceedings—*not* that he was marooned and utterly cut off from all communication with the outer world. It was no bluff that plaintiff-in-error was confined to his bed, unable to walk and had been for three weeks, since Dr. Lyon so stated, *supra*, p. 105 of this Brief.

you don't give me permission to walk without a keeper, I will bring habeas corpus proceedings."

I knew thundering well I could not do any such thing; it was a bluff of the rankest kind, a regular poker bluff, a four-flush. I had no way of bringing habeas corpus proceedings, but I knew *they* were *afraid* I *might* do it by some hook or crook. Thereupon Dr. Lyon pondered for some seconds and said, "Very well, you may if you promise to come back." I promptly said, "I will," and I mean now to "come back" and look over "Bloomingdale" so soon as they cleanse the filthy Lunacy page of the Statutes, of the Statute Books of the Empire State, and it is safe for a white man and honest citizen of North Carolina to present himself in New York without danger of being arrested for life and robbed to the tune of twenty thousand dollars a year,† and then I will "come back."

I hope I have said enough to show that I was willing to risk my life, to practically sacrifice my patents—my property in the Self-Threading Sewing Machine and Patent Paving which I invented —and to be daily bled to the tune of one hundred dollars a week, to suffer all that for the sake of honor, and for the sake of the people, for the sake of being able to save laymen and laywomen being hurled into "Bloomingdale" on these bogus Lunacy Laws. That is why I broke my "parole" falsely so-called, for I never gave a parole in the true sense of that word, and this is all borne out

†SYNDOCHDOCHE. *For five thousand dollars a year for four years:* as appears from the remark in the next paragraph—"Daily bled to the tune of one hundred dollars a week"—for four years would equal twenty thousand dollars.

†Stenographer's error for "Synecdoche."

by Dr. Lyon's words: "He is a very honorable man"; and that was said after two years knowledge of me in "Bloomingdale"; *he had not met me that afternoon for the first time.*

Mr. Duke: So much of the foregoing answer as is argumentative is excepted to as illegal, and all of the answer which is practically a repetition of what has been heretofore stated in the deposition is excepted to as uselessly encumbering the record and consumption of valuable time.

Mr. Chaloner: My only excuse is that my client's interest is in jeopardy here unless thoroughly safeguarded. This is the first time that the question of parole has ever come up. I am not criticizing the remarks of the learned counsel of the other side; I am simply defending my client in this respect and without any wish to encumber the record.

Adjourned to Thursday, December 28th, 1911, at 3:00 o'clock P. M.

Chaloner says above: He gave up all idea of having anything to do with lawyers by letter or third parties "until I got outside of my cell and could talk to them at Valhalla, as I did later." How much later? SOME EIGHT OR NINE MONTHS LATER. He did not recover sufficient strength to walk the eight miles from White Plains to Valhalla and back—four miles there and four miles back—until after January first, 1900, as a glance at the excluded Deposition will prove. Chaloner then goes on to show how he managed to get this very rare privilege of "parole" out of Dr. Lyon. He,

in fact, says he "bluffed" it out of Dr. Lyon, relying on the dread that Dr. Lyon felt lest he, Chaloner, should get before a jury in New York, and thereby "walk out of court a free man." He says he "knew *that* fear was so chill and deadly that it might carry a bluff and I was going to risk it." So he said to Dr. Lyon that if he did *not* give him parole he "would bring *habeas corpus* Proceedings," though he knew there was no possibility of his doing so. He had already replied to Dr. Lyon's question as to his going to the 1899 Proceedings "twenty miles away" in New York City that he "was physically incapacitated from doing it." Therefore, it was a "bluff" to threaten to bring *habeas corpus* Proceedings under any conceivable conditions *seeing that he could neither walk nor communicate freely with counsel.*

How could said Choate truthfully make said statement that from the above passage "it abundantly appears that he absented himself from the 1899 Hearing by his own choice, being free to attend and to consult counsel?" But it throws, we respectfully submit, light upon how the learned Judge Mayer came to say: "And it further appears from Chaloner's deposition—that he absented himself from the 1899 Proceedings by his own choice." The learned Judge not having time to read some twenty pages from said excluded Deposition, very naturally believed what said Choate had printed about it in his brief.

(R) Mayer, J., continues: "But the propriety and sufficiency of the notice as matter of law are no longer open to question," p. 188, fol. 368.

Fraud opens everything *for revision.* As has been shown, Chaloner has not yet had his day in court. Therefore the question of fraud has never yet been passed upon. *U. S.* v. *Throckmorton, supra.* Also *Chanler* v. *Sherman,* 162 Fed. Rep. *The Parallels, supra.*

First reversal of the United States Circuit Court of Appeals by the United States District Court. *Third reversal of this United States Circuit Court of Appeals by itself.*

(S) Mayer, J., continuing: "Finally in regard to the failure to give Chaloner notice of the resignation of Butler and the appointment of Sherman as Committee, it appears that there is no Statutory requirement of notice in such a proceeding and it would seem that notice to the Committee of a proposed removal is the only notice required," p. 188, fol. 368.

A similar case concerning notice of the appointment of a Committee is found in the leading Insanity case of *Evans, Committee*, v. *Johnson*, 23 L. R. A., 737; *West Virginia Supreme Court of Appeals*, 1894 (Indexed in The Nineteen Points of Law, *infra*). Brannan, P., said: "There is abundant authority for this position. *Even though the statute be silent as to notice, yet the common law steps in and requires it*" (citing numerous leading cases).

(T) Mayer, J., continues: "But, if notice were required, the failure to give it is an irregularity which must be dealt with by the State Court of original jurisdiction," p. 188, fol. 368.

From not giving Chaloner notice in the 1897 Proceedings and not giving him opportunity to appear and be heard in the 1899 Proceedings the State Court of "original jurisdiction" *never acquired jurisdiction over Chaloner. Windsor* v. *McVeigh*, 93 U. S.; *Simon* v. *Craft*, 182 U. S.; *U. S.* v. *Throckmorton*, 98 U. S., *supra;* and *Chanler* v. *Sherman*, 162 Fed. Rep. *The Parallels, supra.* Thirteenth reversal of the United States Circuit Court of Appeals by the United States District Court. *Fourth reversal of this United States Circuit Court of Appeals by itself.*

(U) Mayer, J., continues: "Our conclusion is that the judgment of the New York Court was not a void judgment and it must remain valid until reversed or set aside by the Courts of New York," p. 189, fol. 368.

Chanler v. *Sherman*, 162 Fed. Rep. *The Parallels, supra.* Thirteenth reversal of the United States Circuit Court of Appeals by the United States District Court. *Fifth reversal of this United States Circuit Court of Appeals by itself.*

(V) Mayer, J., continues: "So, too, even if some of the requirements of the statutes had been omitted or neglected, or insufficient evidence of insanity was adduced, relief must be obtained in the Court which appointed the Committee," p. 189, fol. 368. *Windsor* v. *McVeigh, Simon* v. *Craft, U. S.* v. *Throckmorton, Chanler* v. *Sherman, supra. The Parallels, supra.* Thirteenth reversal of the United States Circuit Court of Appeals by the United States District Court. *Sixth reversal of this United States Circuit Court of Appeals by itself.*

(W) Mayer, J., continues: "But, however this may be, we think that this Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court rendered in a Proceeding in which it obviously has jurisdiction," p. 189, fol. 369. *Windsor* v. *McVeigh, supra; U. S.* v. *Throckmorton, supra; Simon* v. *Craft, supra; Chanler* v. *Sherman, supra. The Parallels, supra.* Thirteenth reversal of the United States Circuit Court of Appeals by the United States District Court. *Seventh reversal of this United States Circuit Court of Appeals by itself.*

THE NINETEEN POINTS OF LAW

Supported by Argument and Authority.*

THE LAW IN THE CASE.

The law in the case covering the aforesaid nineteen points (pp. 14-25) is as follows, to wit:

POINT 1.—The commitment proceedings were void for the following reasons, to wit: There was fraud and trickery in luring the plaintiff, John Armstrong Chaloner, a citizen of Virginia, into a foreign jurisdiction for the purpose of depriving him of liberty and property on a false charge of insanity.

It will be remembered that plaintiff was lured by Mr. Stanford White and a physician, who visited plaintiff in plaintiff's home in Virginia in February, 1897, was lured by Mr. Stanford White into the State of New York on the plea of taking "a plunge in the Metropolitan whirl" on the ground that plaintiff needed a change. That so soon as plaintiff reached New York City steps were taken clandestinely and under false pretenses by plaintiff's said brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler, two of the said petitioners, that steps were taken clandestinely by said parties working through the said physician who accompanied Mr. Stanford White, aforesaid, to the plaintiff's said home in Virginia; and also working through Dr. Moses Allen Starr, aforesaid; and finally also working

*From the Trial Brief *Chaloner against Sherman*. Printed and copyrighted 1905.

through said Mr. Stanford White himself, who proposed, through a third party, that plaintiff should appoint said Mr. White plaintiff's power of attorney; that steps as aforesaid were taken by plaintiff's said brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler, to have plaintiff declared, and locked up as, a lunatic. The following two cases given *in extenso* along with the following five cases abstracted substantially sustain our said contention.

Carpenter v. *Spooner*, 2 Sandf. (N. Y. Supr. Ct. Rep.), 717.

This Court will not sanction any attempt, by fraud or misrepresentation, to bring a party within its jurisdiction. Where a party having been induced by a false statement to come within the jurisdiction of the Court for the purpose of effecting service upon him, was then served with a summons and complaint in an action in this Court, the service was, on motion, set aside.

May 25th, 1850.

Appeal from an order made at chambers, setting aside the service of a summons, with costs. The facts appear in the decision.

A. Crist, for the plaintiff.

Spooner, for the defendant.

"The Court.—This was an action for libel. Both parties reside in Brooklyn, and out of the jurisdiction of this Court. The plaintiff, however, was desirous of having the case tried in this Court. In order to bring the cause within its jurisdiction, it was necessary that the summons should be served within this City. A clerk of the plaintiff's attorney, therefore, procured a person to write to the defendant, requesting him to call on the

writer next day, in this City. The defendant came, in order to comply with the request in the letter, and when he was leaving the ferry boat was met by the person who had written the letter, and was served with the summons in this action. The whole proceeding was a trick, for the purpose of giving this Court jurisdiction.

"The excuse alleged by the plaintiff is, that he had been so libeled by the defendant and others in Brooklyn as to raise the public feeling there against him, and he could not hope for a fair trial in the County of Kings. If so, there is a sufficient remedy by moving the Supreme Court; and we have no doubt, it will, on application, be properly applied. An application was made to set aside the service of this summons, and we think it was well founded. This Court will not sanction any attempt to bring a party within its jurisdiction by fraud and misrepresentation. And where by false statement or fraudulent pretense, a party is brought within the jurisdiction, and there served with process, the service will be set aside. We recollect a case where a party was entrapped into this State out of another State, and then served with process, and there the service was set aside.

"If a party who is not within the jurisdiction voluntarily come within it, he thereby becomes amenable to the process of the Court, but not unless he comes voluntarily. This Court will not countenance any proceeding of the nature adopted in this case.

"Appeal dismissed with costs."

The Olean Street Railway Company, Respondent, v. The Fairmount Construction Company, Appellant, 55 App. Div., Supreme Court, 4th Department, 1900. p. 292.

ADAMS, P. J.: Opinion in full:

"The defendant, The Fairmount Construction Company, is a foreign corporation organized and existing under the laws of the State of New Jersey.

"At the times hereinafter mentioned Clarence P. King was the defendant's President and resided in the City of Philadelphia.

"The plaintiff is a domestic corporation with its place of business in the City of Olean, Cattaraugus County, where its President, Wilson R. Page, resides.

"The summons herein was issued and the complaint verified by Page on the 25th day of May, 1900, and on the twenty-ninth day of June, following, they were personally served within the State upon John Forbes, the appellant's co-defendant.

"At this time Clarence P. King was claiming that the plaintiff herein was indebted to him in the sum of $674.44 for money loaned to the plaintiff on the 2nd day of December, 1897, and was corresponding with Page, as President of the plaintiff, with a view to having his claim adjusted and paid.

"In answer to a letter demanding payment, Page wrote King that if he would meet him in New York, the latter part of the week of July 15th, 1900, he thought they could 'come to some conclusion.' To this request King assented, and suggested the seventeenth day of July as the day for the meeting, whereupon Page again wrote King that he would meet him at the Astor House at twelve o'clock, noon, on Saturday, July twenty-first.

"The parties met at the time and place last mentioned and King presented his claim, which Page said he could not settle until he had seen a former Treasurer of the plaintiff, and while conversing in regard to the matter a process server walked in and served the summons and

complaint in this action upon King, and thereupon the interview between the parties terminated.

"A motion was thereafter made to vacate such service upon the ground that King was induced by some scheme or device to come within the jurisdiction of the Courts of this State in order that service of process might be obtained upon him; and it must, of course, be conceded that if the truth of the appellant's contention were clearly established, service secured by such means should not be permitted to stand. For the Court will not sanction any attempt by fraud or misrepresentation to bring a party within its jurisdiction (*Snelling* v. *Watrous*, 2 Paige, 314; *Carpenter* v. *Spooner*, 2 Sandf., 717; *Metcalf* v. *Clark*, 41 Barb., 45; *Beacom* v. *Rogers*, 79 Hun., 220).

"The plaintiff's President, however, denies that he invited Mr. King to come to the City of New York for the purpose of obtaining service upon him. On the contrary, he declares, that when he wrote King, suggesting that city as the place of meeting, he did not even know that he was the defendant's President, and there are some circumstances in the case which, to some extent, give color to the statement; but, upon the other hand, it is a somewhat remarkable coincidence that the process server should have appeared upon the scene just as the two Presidents had opened negotiations for a settlement of the demand which King was endeavoring to have adjusted, and that as soon as the process was about to be served Page announced that he could do nothing in the direction of settlement until he had seen a former Treasurer of the plaintiff.

"Assuming, however, that the coincidence to which we have referred was purely accidental and not the result of any trick or device, as perhaps we ought, in view of the decision of the Special Term, the fact remains that the

defendant's President was induced to come within the jurisdiction of the Court at the suggestion of the plaintiff's President, and for the express purpose of adjusting a claim against the plaintiff which he had been assured by Page would probably then be adjusted. In these circumstances we think that good faith and a due regard for the proprieties of the case required of the plaintiff that when the negotiations for a settlement of the matter which brought the parties together, terminated, a reasonable opportunity should have been afforded the defendant's President to leave the city and state before any attempt was made to serve a summons upon him; and inasmuch as this was not done, the plaintiff ought not to be permitted to take advantage of a course of conduct which, if not amounting to actual fraud and deceit, was certainly equivalent thereto and would involve a breach of the confidence which King had reposed in the *bona fides* of the invitation of the plaintiff's President to place himself within the jurisdiction of the Court (*Allen* v. *Wharton*, 13 N. Y. Supp., 38; *Higgins* v. *Dewey*, 34 N. Y. St. Rep., 692).

"The order appealed from should, therefore, be reversed, and the motion to vacate the service of the summons and complaint granted."

All concurred, Williams and Laughlin, JJ., in result only.

A clerk in the office of plaintiff's attorney, after many fruitless efforts to serve the defendant, who resided in the State, but without the jurisdiction of the Court, wrote him, as though desiring a business interview at a place within the jurisdiction. Defendant attended and was served with a summons, which he moved to set aside. *Held*, per Ehrlich, J., the clerk was guilty of

trickery, from which his principal, though ignorant, cannot be allowed to gain any benefit.

"The decisions are uniform that such deceit vitiates the service of legal process, but if there were no precedent exactly in point the Court would not hesitate to make one of the case at bar."

Wyckoff v. *Packard,* 20 Abb. N. C., 420 (N. Y. City Court Special Term, 1887).
Snelling v. *Watrous,* 2 Paige (Ch.), 314 (1830).

A person, against whom an attachment had issued for his contempt in not answering in an equity suit, applied for discharge from his debts under the Insolvent Act. Plaintiff in the civil suit opposed the discharge, procured an order for his examination, and, on the close of it, served him with the attachment papers, which it had previously been impossible to serve.

Held, defendant's application to be discharged from arrest should be granted:

"Where a party has not in fact been guilty of any crime this Court will not permit the complainant to resort to any unfair and inequitable method to enforce the process of attachment. It is very evident that the proceeding before the recorder to procure the personal attendance of the insolvent was a mere device to enable the complainant to arrest him on this attachment. I cannot allow a party thus to abuse the process or the remedial power of any Court." Per Wolworth, Ch.

N. Y. Super. Ct. 1837 Gen'l Term.
Baker v. *Wales*, 14 Abb. Pr.. Rep. (N. S.) 331.

On appeal from order vacating and setting aside ser-

vice of summons based on evidence that the defendant was induced to come within the State to settle the claim, that after an unsuccessful negotiation he was served at the attorney's office with a summons previously prepared and then and there filled out, and that plaintiff's attorney kept summonses in his office for that purpose, *held*, per Freedman, J., the evidence sustained the finding "that deceit had been used for the purpose of bringing defendant within the jurisdiction of this court—the service of the summons was therefore properly vacated and set aside (*Carpenter* v. *Spooner*, 2 Sandf. 716)." Order affirmed. All concur.

Lagraves Case, *Ib.* p. 333, note (Supreme Ct. 1st District, Spec. Term 1873) *held*, "a party brought within the jurisdiction by requisition on a criminal charge, made with design to get him here so as to hold him to bail in a civil action, is not liable to arrest in a civil suit brought *by those at whose instance the criminal proceeding was started.*"

Metcalf v. *Clark*, 41 Barb. 45 (1864.)

Where it appears that the defendant "was, through the instrumentality of plaintiff or of those acting in his behalf, inveigled into this State for the purpose of effecting service upon him of the summons in this action," *held*, proper to vacate service of the summons and all subsequent proceedings based thereon. Per Bockes, J.: "He was enticed within the jurisdiction of the court for a purpose to which the court will not give its sanction—The proceeding was a trick."

Point 2.—The said proceedings were void for the following reason, to-wit: There was fraud and trickery upon the part of the Medical Examiners in Lunacy in

the pay of the petitioners, who, in order to keep plaintiff in ignorance of the acts of the said petitioners, and that he should have no knowledge of the impending action, upon the part of the said petitioners, to deprive him of liberty and property on the said false charge of insanity, pretended to have an interest in trance-states and requested plaintiff to enter a trance in order, as they alleged, that they might for purely scientific reasons, note the action of a trance. Plaintiff, to oblige said Examiners in Lunacy, who never announced themselves as such, but kept said fact strictly in the background, and appeared in the guise, one of a surgeon, the other of an oculist—entered said trance. While in said trance, plaintiff made some remarks. Said remarks form the main charge against the sanity of the plaintiff. Said remarks were made wholly without the slightest ratiocination or volition upon plaintiff's part, except that, to oblige the said surgeon and the said "oculist," he permitted himself to enter said trance and while in said trance, for purely scientific reasons, temporarily surrendered his reasoning and speaking faculties to the influence of said trance. The said medical men expressed themselves as interested in said trance-phenomena, and thereupon took their departure. They visited plaintiff on one other occasion when the trance was resumed. Thereupon after a discussion of trances in general and plaintiff's in particular, said parties departed. A short time thereafter the "oculist" appeared and brusquely informed plaintiff, who was at his rooms at a hotel in New York City, at which he was temporarily sojourning, and in which rooms the said conversations had taken place, that he was insane and that he must accompany said "oculist," who now, for the first time, disclosed his identity, and said that he was a Medical Examiner in lunacy employed by the said petitioners. Plaintiff laughed at

the allegations of insanity, and requested said examiner in lunacy to state the grounds upon which said allegation was based. Said medical man thereupon said, "The things you said in the trance." Plaintiff laughed at this, whereupon said medical man said: "Don't you believe the things you said in the trance?" Upon which plaintiff replied with an emphatic negative. Plaintiff declined to accompany said medical man, whereupon, some twenty hours later, March 13th, 1897, plaintiff was arrested by two policemen in plain clothes in his said rooms, and taken by them to the Society of the New York Hospital at White Plains, Westchester County, New York, falsely known as "Bloomingdale," and there incarcerated for three years and eight months in a barred cell, on a false charge of lunacy; until Thanksgiving eve, 1900, when plaintiff escaped and fled to Philadelphia. Plaintiff was, of course, no more legally accountable for what he said in said trance, under the said circumstances, than he would have been legally accountable for remarks made in his sleep.

Point 3.—The said proceedings were void for the following reason, to-wit: There was fraud upon the Court, as well as upon the party, upon the part of the said Medical Examiners in Lunacy. Said medical men doctored plaintiff's trance utterances; that is to say, said medical men divided said trance utterances into two divisions. The first division said medical men took out of the said trance utterances, and placed by themselves. The second division said medical men mixed; leaving part to be guessed at by the Court, and taking the other part out of said trance utterances. The parts in both instances which were taken out of the trance utterances were stated by said medical men as having been said by plaintiff, leaving it to be inferred that

said parts were not parts of said trance utterances, but were plaintiff's own views which, upon the evidence, it being admitted by said medical men that plaintiff "frequently went into a trance-like state," upon said evidence they emphatically were not. Furthermore: Said medical men also swore that plaintiff was "violent" and "dangerous," two allegations profoundly false, and totally disproved by plaintiff's conduct at the time, and during the three years and eight months he was incarcerated at White Plains. In the proceedings in 1899 not one word was said about plaintiff's being dangerous or harmful to himself or anybody else, not one word even by the paid witnesses of the other side, and plaintiff had then been for over two years under observation.

POINT 4.—The said proceedings were void for the following reasons, to-wit: There was perjury upon the part of the said petitioners who, although at the time the said falsely alleged acts on the part of plaintiff were falsely sworn, of their own knowledge, by said petitioners, to have occurred at plaintiff's home in Virginia, said petitioners were widely separated from plaintiff; one of the said petitioners being in New York, one of the said petitioners being in New England, and the third of the said petitioners being in England.

POINT 5.—The said proceedings were void for the following reason, to-wit: There was fraud upon the Court as well as upon the party, upon the part of the said petitioners. For the foundation of the commitment proceedings had in New York City, March 10, 1897, was the sworn testimony of the said petitioners who—with the exception of the said medical men—were the only witnesses sworn at said proceedings; and the Court relied upon the truth of the oaths of said petitioners that

their said allegations against the plaintiff's sanity were *of their own knowledge*, whereas they were emphatically the reverse.

POINT 6.—The said proceedings were void *in toto*, for the reason that owing to the fact that plaintiff was kept away from Court by perjury and trickery, as aforesaid, there was no real contest.

POINT 7.—The said proceedings in 1899 were void *in toto*, for the reason that owing to the fact that plaintiff, by contrivance, was kept away from Court, there was no real contest. The said contrivance being that instead of setting the hearing in the County Court House of Westchester County, at White Plains, where plaintiff was confined, said hearing was set in Manhattan, over twenty miles away. This was done to keep plaintiff out of Court, for said petitioners were in a position to know of plaintiff's physical disability, aforesaid, at the time. Whereas had said hearing been set at White Plains Court—less than a mile from plaintiff's cell—plaintiff could have been carried there in a carriage without danger of injury to him; or, if that was not done, committees of the said Commission and jury could, in an hour, have visited him and examined him.

POINT 8.—The said proceedings in 1899 were void for the following reasons, to-wit:

(a) The only evidence of plaintiff's alleged incompetency came from the said two medical men in the pay of the other side, and from the said Medical Superintendent of the Society of the New York Hospital. Said evidence was, on the evidence strictly of two varieties, to-wit, frivolous, or perjured. The basis of the allegations of the two said medical men against plain-

tiff's competency and sanity was the aforesaid trance. At the *special request* of said medical men plaintiff, for scientific reasons, entered a trance in order that he might hear the comments thereon of two medical men who alleged that they were interested in trances. The only time that plaintiff entered a trance during his stay of three years and eight months at White Plains was in the presence of said medical men. Plaintiff did not hesitate to do this, although the doing of it had already got him in trouble, for the reason that plaintiff being a lawyer knew his rights, and knew that he had a legal right to enter a trance. Said medical men had deliberately lied to plaintiff. Said medical men had deliberately deceived plaintiff. Plaintiff upon the appearance of said medical men, had at once asked them "Do you represent anybody?" To which they both promptly replied that they represented no one. That the reason for their visit was that a friend of plaintiff's, whom they voluntarily and without questioning upon plaintiff's part, named, had requested them to call and see plaintiff as said friend was anxious that plaintiff should get out of "Bloomingdale." Plaintiff later communicated with said friend and found that there was not a word of truth in said medical men's assertion touching said friend's share in said medical men's visit. It developed later that said medical men were sent by the other side to obtain testimony for the other side at said proceedings in 1899. The portion of said medical men's said testimony concerning plaintiff's said trance is, of course, frivolous, from a legal standpoint; a party having—under the said circumstances—a legal right to enter a trance.

(b) A specimen of said medical men's evidence had to do with matter touched on in a letter attached to plaintiff's present affidavit, which letter plaintiff had written

to a legal friend on March 26, 1900, requesting him to procure counsel for plaintiff in order to institute *habeas corpus* proceedings to procure plaintiff's release. Plaintiff in said conversation with said medical men, touched on in said letter, strongly censured the parties directly or indirectly interested in holding plaintiff a prisoner on a false charge, and under void proceedings. Said medical men to whom plaintiff had spoken as freely upon said topics as in said letter, palpably—as will appear upon reading said medical men's sworn evidence at the said proceedings in 1899, and as will appear upon reading in connection therewith plaintiff's said attached letter—said medical men palpably and in a most barefaced and preposterous fashion garbled the substance of said conversation and of said letter. The balance of material allegations are on a par with above for barefaced perjury. Lastly, said medical men palpably perjured themselves on the witness stand at said proceedings in 1899, by swearing in effect that plaintiff was not only hopelessly insane and incompetent, but that plaintiff was increasingly so, and that plaintiff's falsely alleged insanity and falsely alleged incompetency would increase with the lapse of time; all of which palpably perjurious allegations have been abundantly disproved by plaintiff's acts since said trial, and by plaintiff's trial November 6, 1901, in the County Court of Albemarle County, Virginia, the same being a court of record, in which county plaintiff's home is; at which trial plaintiff was declared both sane and competent; said trial having been instituted by a neighbor, upon plaintiff's reappearance at plaintiff's said home after plaintiff's said escape, with a view to ascertaining plaintiff's sanity and competency; plaintiff at this time standing under the said void New York proceedings, in the light of an escaped lunatic, whom it was dangerous to allow at large. Plain-

tiff has since lived continuously at his said home in Albemarle County, Virginia, undisturbed.

And all of which plaintiff-in-error offered to prove on the trial in the lower Court, but was barred from doing so by the erroneous rulings of the learned Trial Judge (Folios 57-108-110, 111-112.)

RES ADJUDICATA AND COLLATERAL ATTACK.

Right to Attack Judgment Collaterally.

I.

In equity, a judgment may be attacked and impeached, by proceedings to prevent enforcement, upon the ground that it is clearly "against conscience." (pp. 194-198, Trial Brief.)

Marshall v. *Holmes*, 141 U. S., 589, 596. Opinion by the learned Mr. Justice Harlan.

Arrowsmith v. *Gleason*, 129 U. S., 86, 89. Opinion by Mr. Justice Harlan.

Proof that the party nominally bound by the judgment was, in fact, kept "away from Court" by trickery or fraud, will suffice as a ground for injunctive relief; proof of such a fact shows that the controversy was not substantial.

U. S. v. *Throckmorton*, 98 U. S., 616.

Reynolds v. *Etna*, 160 N. Y., 635, 652, 653.

The former adjudication and the litigation leading up to it "must be such not merely in name, but in fact and substance."

(*Ib.* citing 87 N. Y., 303; 137 N. Y., 259.)

II.

In Courts of law where equity powers are disclaimed the general rule is that a judgment may be impeached only by direct attack (*Drake* v. *N. Y. Sub. Co.*, 36 App.

Div., 275, 279; *Phenix Mills* v. *Miller*, 34 St. Rep., 999); BUT this rule is subject *to the following exceptions:*

(1) *Want of jurisdiction in fact may always be shown.*

Scott v. *MacNeill*, 154 U. S., 34.
Smith v. *Reed*, 134 N. Y., 568.
Matter of Killan, 172 N. Y., 547.

(2) *Fraudulent or collusive disregard of the rights of the party nominally bound by the judgment may be shown; the theory evidently being that his apparent assent or acquiescence was not a real and free act on his part.*

Manderville v. *Reynolds*, 68 N. Y.

(3) *When the judgment attacked collaterally is not the judgment of the forum in which it is attacked, even the former litigation of jurisdictional issues is not necessarily conclusive, as it would be if such issues of fact were actually litigated and determined* as a basis of a judgment in the same forum.

Matter of Kimball, 155 N. Y., 62, 68.

But even in cases where Courts of general jurisdiction are vested with powers of confiscation or with power to adjudicate *in rem*, and the law provides that such jurisdiction be exercised only in cases where the person whose property is affected is civilly dead or politically outlawed, or legally non-resident, *the judgment in rem is not conclusive as a determination of the jurisdictional facts unless the person affected has, by due process of law, been summoned to appear and had a fair opportunity to be heard as to his status.*

Chapman v. *Phenix N. Bank*, 85 N. Y., 437.
Scott v. *MacNeill*, 154 U. S., 34.

At one time it was supposed to be the law that the Surrogate might practically confiscate a man's property, by adjudicating him to be dead and issuing letters of administration upon his estate (*Roderigas* v. *East River Savings Institution*), but this doctrine has been practically abandoned (172 N. Y., 557); since the U. S. Supreme Court held that it tended to deprive persons of property without due process of law.

Scott v. *MacNeill*, 154 U. S., 34.

It is the fact, not the adjudication thereof, which vests jurisdiction.

People ex rel. Gould v. *Barker*, 150 N. Y., 52, 57.
Overly v. *Gordon*, 171 U. S., 21, 22.

And the party to be concluded by a determination of facts jurisdictional, must appear to have had a substantial, and not merely a nominal opportunity to be heard; the issue must have been both "litigated and decided" in the former action (160 N. Y., 653).

(This closes the aforesaid excerpt from APPEAL BRIEF in *Chaloner against Sherman* to the United States Circuit Court of Appeals for the Second Circuit.)

We append hereto pertinent extracts from recent decisions, bearing upon the general propositions above outlined.

Matter of Law, 56 App. Div. 454, 457.

As the decree is limited in its binding effect to the thing which it operates upon, it remains open to be controverted as to all the grounds and incidental facts upon which it professes to be founded. (*Durant* v. *Abendroth*, 97 N. Y., 132.)

The want of jurisdiction, either of subject-matter or person, renders the judgment a nullity, and it may be attacked in any form, either directly or collaterally. (*Kerr* v. *Kerr*, 41 N. Y., 272; *Pennoyer* v. *Neff*, 95 U. S., 714.)

"Judgments of superior courts exercising general jurisdiction are attended by a presumption that they have been regularly and legally rendered, and when the record does not disclose that the court acquired jurisdiction it will be presumed until the contrary appears. (*Chenung Canal Bank* v. *Judson*, 8 N. Y., 254; *Pacific Pneumatic Gas Co.* v. *Wheelock*, 80 Id., 278; *Potter* v. *Merchants' Bank*, 28 Id., 641; *Galpin* v. *Page*, 18 Wall., 350.) But where such courts exercise a special statutory power not according to the course of common law, no such presumption obtains, and they may be attacked collaterally. (Steph. Dig. Ev. [Chase's ed.], pp. 97, 98, note, and cases cited.)

O'Donoghue v. *Boies*, 159 N. Y., 87, at 98.

Per O'Brien, J.:

"When a party interposes the judgment of a court as the foundation of his title or claim, the want of jurisdiction in the court to render the judgment may always be set up against it when sought to be enforced, or when any benefit is claimed under it by the party in whose favor it was rendered, or by any one claiming under him.

It is always open to the party against whom the judgment is offered to prove the want of jurisdiction in the court, even though such proof contradicts recitals in the record. In the case of judgments recovered in the courts of other States which are to be given full faith and credit here under the Federal Constitution, the record may be impeached for want of jurisdiction, even by extrinsic evidence, and the same is true with respect to domestic judgments. Whenever, therefore, a judgment is interposed as a claim or the foundation of a title, the party against whom it is offered may show that it is void, and, therefore, that the supposed record is not in truth a record at all. No court or judicial officer can acquire jurisdiction by the mere assertion of it, or by erroneously alleging the existence of facts upon which jurisdiction depends. If the court had no jurisdiction, it had no power to make a record, and the supposed record is not in truth entitled to the character of a judgment. These propositions have been settled in this court once for all in the case of *Ferguson* v. *Crawford* (70 N. Y., 253). In the opinion of Judge Rapallo, which covers the whole field of discussion, the positions stated are sustained by a weight of argument and a wealth of illustration which leaves nothing further to be said on the subject. The statement of Judge Andrews in the case of *Risley* v. *Phenix Bank* (83 N. Y., 337) may also be referred to, where it is said: 'But a court authorized by statute to entertain jurisdiction in a particular case only, if it undertakes to exercise the power and jurisdiction conferred in a case to which the statute has no application, acquires no jurisdiction, and its judgment is a nullity, and will so be treated when it comes in question, either directly or collaterally.' These cases have been repeatedly approved and followed in this court as a correct expression of the law on the question of

jurisdiction. (*Craig* v. *Town of Andes*, 93 N. Y., 405; *People ex rel. Frey* v. *Warden, &c.*, 100 Id., 24; *C. C. Bank* v. *Parent*, 134 Id., 530; *Smith* v. *Reid*, Id., 571; *Beardslee* v. *Dolge*, 143 Id., 165; *Vials* v. *P. & M. R. R. Co.*, 123 Id., 455; *Bogart* v. *D. L. & W. R. R. Co.*, 145 Id., 287; *People* v. *Gardner*, 144 Id., 126; *Losey* v. *Stanley*, 147 Id., 560; *Warren* v. *Union Bank*, 157 Id., 259.)

"The want of jurisdiction to render the particular judgment may always be asserted and raised directly or collaterally, either from an inspection of the record itself when offered in behalf of the party claiming under it, or upon extraneous proof, which is always admissible for that purpose. There is but one solitary exception to this rule, and that is in a case where jurisdiction depends on a fact that is litigated in a suit and is adjudged in favor of the party who avers jurisdiction, then the question of jurisdiction is judicially decided, and the judgment record is conclusive on that question until set aside or reversed by a direct proceeding. (*Ferguson* v. *Crawford*, *supra*.)

* * * * * *

"While a court may acquire jurisdiction sufficient to exempt its judgment from collateral attack by deciding a disputed question of fact erroneously, it has never been held that it can acquire jurisdiction for any purpose by an error of law."

Ferguson v. *Crawford*, 70 N. Y., 253.

Chief Justice Rapallo said:

> "*He is sought to be held bound by a judgment when he was never personally summoned or had*

notice of the proceeding, which result has been frequently declared to be contrary to the first principles of justice, and this is sought to be accomplished by means of a judgment entered upon forged papers. No principle of public policy requires or sanctions sustaining such a judgment.

"*It is an elementary principle recognized in all cases, that, to give binding effect to a judgment of any Court, whether of general or limited jurisdiction, it is essential that the Court should have jurisdiction of the person as well as the subject-matter*, and that the want of jurisdiction over either may always be set up against a judgment when sought to be enforced, *or any benefit is claimed under it.*"

When we come to consider the effect of these authorities, it is difficult to find any solid ground upon which to rest a distinction between domestic judgments and judgments of sister States in regard to this question, for under the provisions of the Constitution of the United States, which require that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, it is now well settled that when a judgment of a court of a sister State is duly proved in a court of this State, it is entitled here to all the effect to which it is entitled in the courts of the State where rendered. If conclusive there it is equally conclusive in all the States of the Union; and whatever pleas would be good to a suit therein in the State where rendered, and none others can be pleaded in any court in the United States. (*Hampton* v. *McConnell*, 3 Wheaton, 234; Story Com. on Cons., Sec. 183; *Mills* v. *Duryee*, 7 Cranch, 481.)

But aside from this observation as to the effect of the authorities, an examination of them shows that our courts did in fact proceed upon a ground common to both classes of judgments. The reasons are fully stated in the case of *Starbuck* v. *Murray* (5 Wend. 148). In that case, which was an action upon a Massachusetts judgment, the defendant pleaded that no process was served on him in the suit in which the judgment sued on was rendered, and that he never appeared therein in person or by attorney, and this plea was held good, notwithstanding that the record of the judgment stated that the defendant appeared to the suit. Marcy, J., in delivering the opinion of the court, and referring to the argument that the defendant was estopped from asserting anything against the allegation of his appearance contained in the record, says: "It appears to me that this proposition assumes the very fact to be established, which is the only question in issue. For what purpose does the defendant question the jurisdiction of the court? Solely to show that its proceedings and judgments are void, and therefore the supposed record is not in truth a record. If the defendant had not proper notice of, and did not appear to, the original action, all the State Courts, with one exception, agree in opinion that the paper introduced, as to him is no record. But if he cannot show even against the pretended record that fact, on the alleged ground of the uncontrollable verity of the record, he is deprived of his defense by a process of reasoning that is to my mind little less than sophistry. The plaintiff in effect declares to the defendant—the paper declared on, is a record, because it says you appeared; and you appeared, because the paper is a record. This reasoning is in a circle. The appearance makes the record uncontrollable verity, and the record makes the appearance an unimpeachable fact." And again at p.

160 he says: "To say that the defendant may show the supposed record to be a nullity, by showing a want of jurisdiction in the court which made it, and at the same time to estop him from doing so because the court has inserted in the record an allegation which he offers to prove untrue, does not seem to me to be very consistent."

This is but an amplification of what is sometimes more briefly expressed in the books, that where the defense goes to defeat the record, there is no estoppel. That the reasoning of Marcy, J., is applicable to domestic judgments, is also the opinion of the learned annotators to Phillip's Evidence. (Cowen and Hill's notes 1st Ed., p. 801, note 551.) Referring to the opinion of Marcy, J., before cited, they say: "The same may be said respecting any judgment, sentence or decree. A want of jurisdiction in the court pronouncing it may always be set up when it is sought to be enforced, or when any benefit is claimed under it; and the principle which ordinarily forbids the impeachment or contradiction of a record has no sort of application to the case." The *dicta* of our judges are all to the same effect although the precise case does not seem to have arisen. In *Bigelow* v. *Stearns* (19 Johns., 41) Spencer Ch. J., laid down the broad rule that if a court, whether of limited jurisdiction or not, undertakes to hold cognizance of a cause without having gained jurisdiction of the person by having them before them in the manner required by law, the proceedings are void. In *Latham* v. *Edgerton* (9 Cow., 227), Sutherland, J., in regard to a judgment of a court of common pleas, says: "The principle that a record cannot be impeached by pleading, is not applicable to a case like this. The want of jurisdiction is a matter that may always be set up against a judgment when sought to be enforced or where any benefit is claimed under it." Citing *Mills* v. *Martin* (19 Johns., 33.) He

also says (page 229): "The plaintiff below might have applied to the court to set aside their proceedings, but he was not bound to do so. He had a right to lie by until the judgment was set up against him, and then to show that the proceedings were void for want of jurisdiction. In *Davis* v. *Packard* (6 Wend. 327, 332), in the Court of Errors, the Chancellor, speaking of domestic judgments, says: "If the jurisdiction of the Court is general or unlimited both as to parties and subject-matter, it will be presumed to have had jurisdiction of the cause unless it appears affirmatively from the record, *or by showing of the party denying the jurisdiction of the court*, that some special circumstances existed to oust the court of its jurisdiction in that particular case." In *Bloom* v. *Burdick* (1 Hill, 130), Bronson, J., says: "The distinction between superior and inferior courts is not of much importance in this particular case, for whenever it appears that there was a want of jurisdiction, the judgment will be void in whatever court it was rendered," and in *People* v. *Cassels* (5 Hill 164, 168), the same learned judge makes the remark, that no court or officer can acquire jurisdiction by the mere assertion of it, or by falsely alleging the existence of facts upon which jurisdiction depends. In *Harrington* v. *The People* (6 Barb., 607, 610), Paige, J., expresses the opinion that the jurisdiction of a court, whether of general or limited jurisdiction, may be inquired into, although the record of the judgment states facts giving its jurisdiction. He repeats the same view in *Noyes* v. *Butler* (6 Barb., 613, 617), and in *Hurd* v. *Shipman* (6 Barb., 621, 623, 624), where he says of superior as well as inferior courts, that the record is never conclusive as to the recital of a jurisdictional fact, and the defendant is always at liberty to show a want of jurisdiction, although the record avers the contrary. If the court had no jurisdiction, it

had no power to make a record, and the supposed record is not in truth a record. (Citing *Starbuck* v. *Murray*, 5 Wend., 158.) The language of Gridley, J., in *Wright* v. *Douglass* (10 Barb., 97, 111). is still more in point. He observes: "It is denied by counsel for the plaintiff, that want of jurisdiction can be shown collaterally to defeat a judgment of a court of general jurisdiction. The true rule, however, is that laid down in the opinion just cited (op. of Bronson, J., in *Bloom* v. *Burdick*, 1 Hill, 138 to 143), that in a court of general jurisdiction it is to be presumed that the court has jurisdiction till the contrary appears, but the want of jurisdiction may always be shown *by evidence*, except in one solitary case, viz: "When jurisdiction depends on a fact that is litigated in a suit, and is adjudged in favor of the party who avers jurisdiction, then the question of jurisdiction is judicially decided, and the judgment record is conclusive evidence of jurisdiction until set aside or reversed by a direct proceeding." * * *

In the *Chenung Canal Bank* v. *Judson* (8 N. Y., 254), the general principle is recognized, that the jurisdiction of any court exercising authority over a subject may be inquired into, and in *Adams* v. *The Saratoga and Washington R. R. Co.* (10 N. Y., 328, 333), Gridley, J., maintains as to the judgments of all courts, that jurisdiction may be inquired into, and disproved by evidence, notwithstanding recitals in the record and says that such is the doctrine of the courts of this State, although it may be different in some of the other States, and perhaps also in England, and he says "the idea is not to be tolerated that, the attorney could make up a record or decree, reciting that due notice was given to the defendant of a proceeding, when he never heard of it, and the decree held conclusive against an offer to show this vital allegation false. * * *

And in *Bolton* v. *Jacks* (6 Rob. 198), Jones, J., says that it is now conceded, at least in this State, that want of jurisdiction will render void the judgment of any court, whether it be of superior or inferior, of general, limited or local jurisdiction, or of record or not, and the bare recital of jurisdictional facts in the record of a judgment of any court, whether superior or inferior, of general or limited jurisdiction, is not conclusive, but only *prima facie* evidence of the truth of the fact recited, and a party against whom a judgment is offered, is not by the bare fact of such recitals estopped from showing, by affirmative proof, that they were untrue and thus rendering the judgment void for want of jurisdiction. He cites in support of this opinion, several of the cases which I have referred to and *Dobson* v. *Pearce* (12 N. Y., 167), and *Hatcher* v. *Rocheleau* (18 N. Y., 92).

It thus appears that the current of judicial opinion in this State is very strong and uniform in favor of the proposition stated by Jones, J., in 6 Rob. 198, and if adopted here, is decisive of the present case. It has not as yet, however, been directly adjudicated, and if sustained, it must rest upon the local law of this State, as it finds no support in adjudications elsewhere. There are reasons, however, founded upon our system of practice, which would warrant us in so holding. The powers of a court of equity being vested in our courts of law, and equitable defenses being allowable, there is no reason why, to an action upon a judgment, the defendant should not be permitted to set up, by way of defense, any matter which would be ground of relief in equity against the judgment; and it is conceded in those States where the record is held conclusive, that when the judgment has been obtained by fraud, or without bringing the defendant into court, and the want of jurisdiction does

not appear upon the face of the record, relief may be obtained in equity.

Hinchman v. *Richie* (1849) "The finding of an inquisition of lunacy may be impeached on the ground of fraud, and in such case it will furnish no justification for the arrest and confinement of the party."

Susan Conkey by Whipple Cook, her Guardian VERSUS *Henry Kingman* (1827) "Morton, J., pronounced the judgment of the court: The letter of guardianship and the bond for the faithful performance of the trust, approved by the judge of probate, were undoubtedly *prima facie* evidence of the appointment of the guardian. But they were not conclusive. The defendant might show, that though in form they were correct, yet in substance they were defective and void. * * *

It further appears, that no notice was given to the plaintiff, of the inquisition of the selectmen or of the proceedings before the judge of probate, and that there was no adjudication that she was *non compos mentis* or that a guardian be appointed. She was thus deprived of the management of her property, and, to some extent, of her liberty, without an opportunity to object or be heard, and without any formal judgment. Those are undoubtedly fatal defects, and render the whole proceeding unauthorized and void. It was so adjudged in *Chase* v. *Hathaway et al.*, 14 Mass. R. 222; *Wait* v. *Maxwell*, 5 Pick. 217; and *Hathaway* v. *Clark*, in id. 490. And in the last case, it was holden, that the healing influence of time, after a lapse of thirty years, could not cure the infirmity.

The appointment of the guardian being a nullity, it cannot authorize him to do any act which would bind his ward. Even an executive officer, to whom the guar-

dian was likened in the argument, cannot justify under a void precept. And although the letter of guardianship produced by the plaintiff was sufficient *prima facie*, yet we can discover no principle by which the defendant should be precluded from showing its invalidity. * * * "

Judgment of Court of Common Pleas affirmed.

United States, Appt., v. *Samuel R. Throckmorton et al.*, 98 U. S., 61 (October Term, 1878). (See S. C., 8 Otto., 61-71, Trial Brief, pp. 190-191.)

Mr. Justice Miller said:

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments. * * *

"In cases where, by reason of some thing done by the successful party to a suit, there was, in fact, no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from Court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; * * * these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree and open the case for a new and a fair hearing.

"In all these cases and many others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly

upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the Court.

"On the other hand, the doctrine is equally well settled that the Court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed.

"Mr. Wells, in his very useful work on *res adjudicata*, says, Section 499: 'Fraud vitiates everything, and a judgment equally with a contract; that is, a judgment obtained directly by fraud.' * * *

"The principle and the distinction here taken was laid down as long ago as the year 1702, by the Lord Keeper in the High Court of Chancery, in the case of *Torey* v. *Young*, Prec. in Ch., 193.

"This was a bill in chancery brought by an unsuccessful party to a suit at law, for a new trial, which was at that time a very common mode of obtaining a new trial. One of the grounds of the bill was, that complainant had discovered since the trial was had that the principal witness against him was a partner in interest with the other side. The Lord Keeper said: 'New matter may in some cases be ground for relief; but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial, unless it appears by deed, or writing, or that a witness, on whose testimony the verdict was given, were convict of perjury or the jury attainted.' "

Dick E. Arrowsmith, Appt. v. *Edward H. Gleason*

et al. October Term, 1888. 129 U. S. 86 (see S. C. Reporter's ed. 86-101.)

Mr. Justice Harlan said: "But whether that be so or not, it is difficult to perceive why the circuit court is not bound to give relief according to the recognized rules of equity, as administered in the Courts of the United States, the plaintiff being a citizen of Nevada, the defendants citizens of Ohio, and the value of the matter in dispute, exclusive of interest and costs, being in excess of the amount required for the original jurisdiction of such courts. * * * But this court, observing that the constitutional right of the citizen of one State to sue a citizen of another State in the courts of the United States, instead of resorting to a State tribunal, would be worth nothing, if the court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress, * * * We have repeatedly held that the jurisdiction of the Courts of the United States, over controversies between citizens of different States, can not be impaired by the laws of the States which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. If legal remedies are sometimes modified to suit the changes in the laws of the States and the practice of their courts, it is not so with equitable. The equity jurisdiction conferred on the federal courts is the same as that the High Court of Chancery in England possesses, is subject to neither limitation nor restraint by State legislation, and is uniform throughout the different States of the Union. * * *

As said in *Barrow* v. *Hunton*, 99 U. S. 80, 85 (25: 407, 408), the character of the case is always open to examination, 'for the purpose of determining whether, *ratione materiae* the courts of the United States are in-

competent to take jurisdiction thereof. State rules on the subject can not deprive them of it.' * * *

The most solemn transactions and judgments may at the instance of the parties, be set aside or rendered inoperative for fraud. * * * It is generally parties that are the victims of fraud. The court of chancery is always open to hear complaints against it, whether committed *in pais* or in or by means of judicial proceedings. In such cases the court does not act as a court of review, nor does it inquire into any irregularities or errors or proceeding in another court; but it will scrutinize the conduct of the parties and if it finds that they have been guilty of fraud in obtaining a judgment or decree, it will deprive them of the benefit of it and of any inequitable advantage which they have derived under it" * * * citing Story, Eq. Jur. § § 1570, 1573; Kerr, Fraud & M. 352, 353; *Gaines* v. *Fuentes,* 92 U. S. 10 (23: 524); and *Barrow* v. *Hunton*, 99 U. S. 80 (25: 407). So, in *Reigal* v. *Wood*, 1 Johns. Ch. 402 406.

"Relief is to be obtained not only against writings, deeds and the most solemn assurances, but against judgments and decrees, if obtained by fraud and imposition." To the same effect is *Boyce* v. *Evans*, 2 H. L. Cas. 257, 281: "If a case of fraud be established equity will set aside all transactions founded upon it, by whatever machinery they may have been effected, and notwithstanding any contrivances by which it may have been attempted to protect them. It is immaterial, therefore, whether such machinery and contrivances consisted of a decree of equity, and a purchase under it, or a judgment at law or of other transactions between the acts in the fraud." See also *Colclough* v. *Bolger*, 4 Dow, P. C. 54, 64; *Barnesly* v. *Powell*, 1 Ves. Sr. 120, 284, 289;

Richmond v. *Tayleur*, 1 P. Wms. 736; *Niles* v. *Anderson*, 5 How. (Miss.) 365, 386.

These principles control the present case which, although involving rights arising under judicial proceedings in another jurisdiction, is an original, independent suit for equitable relief between the parties; such relief being grounded on a new state of facts, disclosing not only imposition upon a court of justice in procuring from it authority to sell an infant's lands when there was no necessity therefor, but actual fraud in the exercise, from time to time, of the authority so obtained. As this case is within the equity jurisdiction of the circuit court, as defined by the Constitution and laws of the United States, that court may, by its decree, lay hold of the parties, and compel them to do what according to the principles of equity they ought to do, thereby securing and establishing the rights of which the plaintiff is alleged to have been deprived by fraud and collusion."

Sarah E. Marshall, Plff. in Err. v. *Henry B. Holmes, Sheriff, et al.*, 141 U. S. 589 (See S. C. Reporter's ed. 589-601.)

Mr. Justice Harlan said: "While, as a general rule, a defense can not be set up in equity which has been fully and fairly tried at law, and although in view of the large powers now exercised by courts of law over their judgments, a court of the United States, sitting in equity, will not assume to control such judgments for the purpose simply of giving a new trial, it is the settled doctrine that 'any fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a court of law, or of which he might have availed him-

self at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will justify an application to a court of chancery.' *Marine Ins. Co. of Alexandria* v. *Hodgson,* 11 U. S. 7 Cranch, 332, 336 (3: 362, 363); *Hendrickson* v. *Hinckley,* 58 U. S. 17 How. 443, 445 (15: 123, 124); *Crim* v. *Handley,* 94 U. S. 652, 653 (24: 216); *Metcalf* v. *Williams,* 104 U. S. 93, 96 (26: 665, 666); *Embrey* v. *Palmer,* 107 U. S. 3, 11 (27: 346, 349); *Knox County* v. *Harshman,* 133 U. S. 152, 154 (33: 586, 587); 2 Story, Eq. Jur. § § 887, 1574; *Floyd* v. *Jayne,* 6 Johns Ch. 479, 482, 2 L. ed. 190, 192. See also *United States* v. *Throckmorton,* 98 U. S. 61, 65 (25: 93, 95.)" * * *

Is it true that a circuit court of the United States, in the exercise of its equity powers, and where diverse citizenship gives jurisdiction over the parties, may not, in any case, deprive a party of the benefit of a judgment fraudulently obtained by him in a State court, the circumstances being such as would authorize relief by the federal court, if the judgment had been rendered by it and not by a State court?

A leading case upon this subject is *Barrow* v. *Hunton,* 99 U. S. 80, 82 (25: 407, 408). That was a suit in one of the courts of Louisiana to annul a judgment rendered in a court of that State upon the ground that it was founded upon a default taken, without lawful service of the petition and a citation, and because, prior to the judgment, the party seeking to have it set aside had been adjudged a bankrupt. The case was removed to the Circuit Court of the United States, and was subsequently remanded to the State court. The court held that the jurisdiction of the circuit court depended upon the question whether the action to annul the judgment was or was not in its nature a separate suit, or only a supplementary proceeding so connected with the origi-

nal suit as to form an incident to it, and to be substantially a continuation of it. It said: "If the proceeding is merely tantamount to the common law practice of moving to set aside a judgment for irregularity, or to a writ of error, or to a bill of review or an appeal, it would belong to the latter category, and the United States Courts could not properly entertain jurisdiction of the case. Otherwise, the circuit courts of the United States would become invested with power to control the proceedings in the State courts, or would have appellate jurisdiction over them in all cases where the parties are citizens of different States. Such a result would be totally inadmissible. On the other hand, if the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and according to the doctrine laid down in *Gaines* v. *Fuentes*, 92 U. S. 10 (23: 524), the case might be within the cognizance of the federal courts. The distinction between the two classes of cases may be somewhat nice, but it may be affirmed to exist. In the one class, there would be a mere revision of errors and irregularities, or of the legality and correctness of the judgments and decrees of the State courts; and in the other class, the investigation of a new case, arising upon new facts, although having relation to the validity of an actual judgment or decree, or of the party's right to claim any benefit by reason thereof."

Referring to the provisions of the Louisiana Code of Practice authorizing an action to annul a judgment obtained through fraud, bribery, forgery of documents, etc., the court said that it was disposed to allow the fact that, by the local law, an action of nullity could only be brought in the court rendering the judgment, or in the court to which the judgment was taken by appeal,

to operate so far as to make it an invariable criterion of the want of jurisdiction in the courts of the United States. "If," the court said, "the legislatures could, by investing certain courts with exclusive jurisdiction over certain subjects, deprive the federal courts of all jurisdiction, they might seriously interfere with the right of the citizen to resort to those courts. The character of the cases themselves is always open to examination for the purpose of determining whether, *ratione materiae,* the courts of the United States are competent to take jurisdiction thereof. State rules on the subject can not deprive them of it." As that proceeding was equivalent in common law practice to a motion to set aside the judgment for irregularity, or to a writ of error *coram vobis*, and as the cause of nullity related to form only, the case was held not to be cognizable in the courts of the United States.

The rules laid down in *Barrow* v. *Hunton* were applied in *Johnson* v. *Waters,* 111 U. S. 640, 667 (28: 547, 556); and *Arrowsmith* v. *Gleason*, 129 U. S. 86, 101 (32: 630, 635). In *Johnson* v. *Waters,* this court upheld the jurisdiction of the Circuit Court of the United States, by a decree in an original suit, to deprive parties of the benefit of certain fraudulent sales made under the orders of a probate court of Louisiana, which court, by the law of that State, had exclusive jurisdiction of the subject-matter of the proceedings out of which the sales arose. After observing that the court of chancery is always open to hear complaints against fraud, whether committed *in pais* or in or by means of judicial proceedings, the court said: "In such cases, the court does not act as a court of review, nor does it inquire into any irregularities or errors of proceeding in another court; but it will scrutinize the conduct of the parties, and, if it finds they have been guilty of fraud, in obtaining a judgment

or decree, it will deprive them of the benefit of it, and of any inequitable advantage which they have derived under it." In *Arrowsmith* v. *Gleason* the grounds of the jurisdiction of the Circuit Court of the United States to entertain an original suit—the parties being citizens of different States—to set aside a sale of lands fraudulently made by the guardian of an infant, under authority derived from a probate court, are thus stated; "These principles control the present case, which, although involving rights arising under judicial proceedings in another jurisdiction, is an original, independent suit for equitable relief between the parties; such relief being grounded upon a new state of facts, disclosing not only imposition upon a court of justice in procuring from it authority to sell an infant's lands when there was no necessity therefor, but actual fraud in the exercise, from time to time, of the authority so obtained. As the case is within the equity jurisdiction of the circuit court, as defined by the Constitution and laws of the United States, that court may, by its decree, lay hold of the parties and compel them to do what, according to the principles of equity, they ought to do, thereby securing and establishing the rights of which the plaintiff is alleged to have been deprived by fraud and collusion."

Point 9. The said Commitment Proceedings were void *in toto* for they were without due process of law and therefore unconstitutional for the following reason.

There was lack of notice.

The said Commitment Papers (Transcript of Record, p. 113, Fols. 222-223) show that plaintiff, John Armstrong Chaloner, a citizen of Virginia, was committed to Bloomingdale Insane Asylum at White Plains, New York, by an order entered March 10th,

1897, by Judge H. A. Gildersleeve of the Supreme Court of that State, upon the petition of Winthrop A. Chanler, and Lewis S. Chanler, brothers of plaintiff, and Arthur A. Carey, a cousin of plaintiff, and upon the certificate of M. Allen Starr and another, Statutory Medical-Examiners-in-Lunacy; and that personal service of process upon plaintiff was dispensed with by said Judge on the alleged ground that plaintiff was dangerous. The said proceedings under which plaintiff was so committed were had without any notice to plaintiff whatsoever, such notice having been specifically dispensed with by order of said Judge. (See Transcript of Record, p. 113, said Commitment Papers, lines 185-192.) Said Commitment was not temporary, but indeterminate and permanent as to time and was stated to be after "a hearing duly had." (See p. 113, said Commitment Papers, line 345.) Said order was that plaintiff be "adjudged insane and that he be committed to 'Bloomingdale' Insane Asylum at White Plains, New York, an institution for the custody and treatment of the insane." (See Transcript of Record, p. 113, Commitment Papers, lines 349-351.)

Plaintiff had no notice of said application either personal, or by substituted service on some person in plaintiff's behalf; and there was no hearing at which plaintiff was either present, could be present, or was represented by any other person. Plaintiff was finally adjudged insane and committed to perpetual imprisonment, without notice or hearing, and therefore without due process of law.

SAID COMMITMENT BEING, ON ITS FACE, A PERMANENT ORDER AND WITHOUT NOTICE, IS, FOR WANT OF DUE PROCESS OF LAW, VOID.

It is a true principle of law and justice that a per-

son can not be deprived of his liberty, or his property, without notice to him and opportunity to be heard in his own behalf. This proposition has been repeatedly expressed in the highest courts in many of the States. In many of them it has been specifically applied to cases of insanity upon *de lunatico inquirendo* proceedings. The above proposition is sustained by the following excerpts from cases ranging from 1817 to 1902, in date, fifteen of which from their being leading cases, are given *in extenso*.

In *Hathaway* v. *Clark*, 5 Pick. (Mass.), 490 (decided in 1827), the question of the necessity of notice arose indirectly, but was directly decided. A writ of error was brought to reverse a judgment, on the ground that the original defendant, at the time of the service of the writ upon him and of rendition of the judgment, was under guardianship as a person *non compos mentis*, and that no notice of the suit was ever given the guardian (corresponding to the Committee, in New York State). Issue was raised as to the existence of the guardianship; and to prove it, the records of the Probate Courts were produced, showing the appointment of a guardian, but containing no adjudication that defendant was *non compos* and no affirmative evidence that he ever had notice of the inquisition, or of the proceedings upon the return. *Held*, per Morton, J., the party alleging the existence of the guardianship had failed to prove it, because: (1) By statute, notice to the person to be affected by the inquisition, and of the adjudication, is essential to the validity of the proceedings in the Probate Courts.

(2) In the absence of such notice, the decree is absolutely void (citing *Chase* v. *Hathaway*, 14 Mass. 222).

(3) Notice was not shown by the record, and would not be presumed.

Hutchins v. *Johnson*, 12 Conn. 376 (1837) was an action brought by the conservator (the term then used to designate the committee) of a lunatic. One of the facts to be proved by plaintiff was his appointment as conservator. On appeal from a judgment in his favor, it was *held* (per Williams, Ch. J.), that because the record of his appointment failed to show that notice of the application was ever given to the alleged lunatic, the judgment should be reversed, notice being essential to the validity of so important a proceeding both by "the fundamental principles of justice" (citing *Chase* v. *Hathaway*, 14 Mass. 224) and by the statute of Connecticut. "A requirement so salutary should be enforced; and, until such notice is given, the court has no more right to make the appointment, no more jurisdiction in the case, than any other tribunal. * * *

"The case presented to us is that of a court, to whom an authority is delegated upon certain terms and conditions, having proceeded to act under that authority without having seen that those prerequisite conditions were complied with: in which cases we have held such proceeding void."

(Action was in simple *Assumpsit*.)

In *Board of Supervisors* v. *Budlong*, 51 Barb. 493 (1868) defendant was sued for the expense of maintaining his wife at the county insane asylum. The question was presented (both by objection and exception to the introduction in evidence of a certificate of the County Judge, and by offer to prove and exception to the exclusion of evidence, that the facts stated in said certificate as to the insanity of the wife were untrue), whether the defendant, who was not a party to the proceeding to adjudge his wife a lunatic, was concluded thereby and by the certificate of the result thereof.

Held, per E. D. Smith, J., the husband was not so bound; and the admission in evidence of the certificate, and the exclusion of evidence of the sanity of the wife, were error, requiring reversal. "The Statute, which authorized the certificate, does not declare what shall be the force or effect of such certificate as evidence, or whom it shall bind; and it must, therefore, stand upon the same basis with all other judgments or adjudications. It must bind those who were parties and privies to the proceeding, and had an opportunity to litigate the questions involved in such investigation and adjudication. No one else can be bound by this certificate. It is a fundamental rule of law and of common justice that no one shall be concluded by a legal judgment, decision or adjudication had or made in any suit or proceeding to or in which he was not a party or privy, and of which he had no notice, or in respect to which he had no opportunity to defend himself, or to litigate the question involved, or upon which his liability depended. The jurisdiction of all courts and officers exercising judicial functions is open to investigation, question and inquiry, whenever their proceedings are set up or sought to be enforced; and when there is no jurisdiction, such proceedings are absolutely void. If this certificate, then, was *prima facie* evidence of the facts it recites and affirms, or finds, it could not be conclusive on the defendant and he was clearly entitled to disprove the facts alleged or stated therein, upon which the jurisdiction of the judge depended."

Eslava v. *Lepetre*, 21 Ala. 504 (1852) was a suit to foreclose mortgages, one of which was executed by the mortgagor and his wife's guardian in lunacy. She was not made a party, though her guardians were. It appeared that they had been appointed on petition of

the husband, alleging his wife's insanity, etc., but there was no issuance of a writ *de lunatico inquirendo* and no finding of a jury therein. *Held*, per Ligon, J., appointment void, and objection that wife was not a party to the foreclosure suit well taken. "Without the issuance of this writ, and the finding of a jury, the County Court Judge had no power to declare her a lunatic or to appoint a guardian for her. These proceedings are indispensable to give the County Court jurisdiction to make the appointment; and as they were not had and as that Court is one of limited jurisdiction, the proceedings upon the appointment of guardians are *coram non judice and void*. Such being the case they may be impeached in any Court in a collateral proceeding in which a party seeks a benefit under them. * * * Neither does the record show that she had any notice whatever of the proceedings. They were *ex parte*, and are consequently null and void."

Molton v. *Henderson*, 62 Ala. 426 (1878) was an action brought by the guardian of a lunatic, the son of one Thos. Molton, to declare lands in defendant's possession subject to the trusts created by the will of the lunatic's father. The guardian had been appointed without notice to the lunatic and had brought proceedings to have the land in question sold, as beneficial to the lunatic. The sale took place, and defendant later purchased from grantees of the purchaser. Plaintiff now claims the sale to be void, alleging the jurisdictional defect in the appointment of the guardian, invalidating the proceedings for the sale.

Held, the want of notice rendered the inquisition of lunacy void. But the defendant having had possession adversely for the statutory time, *held*, entitled to retain it.

Mulligan v. *Smith*, 59 Cal. 206. Holds in reference to notice in street opening proceedings. In absence of notice, not precluded from attaching sufficiency of petition.

Hey Sing Teck v. *Anderson*, 57 Cal. 251. *Held, in re* seizure of fishing nets: Confiscations without a judicial hearing and judgment, after due notice, are void, as not due process of law.

McGee v. *Hayes*, 127 Cal. 336. I under Code Civ. Proc. 1763, providing that, on the filing of a petition for the appointment of a guardian for an incompetent person, notice must be given to such person of time and place of hearing of at least 5 days and "such person if able to attend must be produced," the personal appearance of such person on the hearing and his request that the petition be granted, do not cure fatal defects in the notice of the hearing served on him.

Board of Education v. *Bakerwell*, 122 Ill., 348, *Re* taking of property for normal school. "As said in *Westervelt* v. *Gregg*, 2 Kern 209: 'Due process of law undoubtedly means in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights. Such an act as the legislature may, in an uncontrolled exercise of its power, think fit to pass is in no sense the process of law designated by the Constitution.' "

Susan Conkey, by Whipple Cook, her Guardian VERSUS *Henry Kingman*, 24 Pick. 115.

Assumpsit on a promissory note as follows:

"Pelham, October 27th, 1827. For value received

of Whipple Cook, guardian of Susan Conkey, a distracted person, of Pelham, I promise to pay him the sum of $7.67 annually, that is to say, at the expiration of each year from the above date, for and during the natural life of said Susan Conkey. Witness my hand. Henry Kingman."

The plaintiff sued by Cook as her guardian, and the defendant pleaded in abatement, that at the time of suing out the writ the plaintiff was not under the guardianship of Cook; and issue was joined upon this plea.

At the trial in the Common Pleas, before Williams, J., the plaintiff produced the following evidence (to the competency of all of which the defendant objected) viz: a letter of guardianship, dated September 4th, 1827, from the judge of probate, appointing Cook the guardian of the plaintiff as a person *non compos mentis*, and a bond duly executed and approved for the faithful performance by Cook of his duties as guardian. The plaintiff further proved, that afterwards Cook, claiming a right to act in behalf of the plaintiff by virtue of the letter of guardianship, demanded of one Fitts, in behalf of the plaintiff, that he should set off her dower in a parcel of land of which she was dowable, and which her husband had conveyed to the defendant, and the defendant had conveyed with warranty to Fitts; that upon this a negotiation was had, which resulted in an agreement by the defendant to pay Cook so much money annually as was equivalent to the value of the dower, to be determined by arbitrators; and that in consideration thereof Cook agreed not to procure the dower to be set off, that arbitrators, mutually chosen, then awarded that the defendant should pay the sum of $7.67 annually; that Cook, as guardian, executed a writing purporting to be a lease of the dower during the life of the plaintiff, and the defendant thereupon gave the note above recited.

and that on the third of November, 1828, the defendant paid one instalment of the note.

To meet this evidence, the defendant proved (the plaintiff objecting to the introduction of the evidence), that the application by the selectmen of Pelham for a commission contained the name of Sarah Conkey, and not Susan Conkey; that the order of inquisition contained the same name; and that the name of Susan Conkey first occurs in the return of the commission. The defendant also proved that previous to the appointment of Cook as guardian no notice was issued by the judge of probate to the plaintiff to appear and show cause why a guardian should not be appointed, nor any adjudication made that she was *non compos mentis*, or that a guardian be appointed.

The judge ruled that Cook was not guardian of the plaintiff for the purpose of prosecuting this action, and by consent of parties ordered a nonsuit. To this ruling and also to the admission of the evidence offered by defendant the plaintiff excepted. * * *

Morton, J., pronounced the judgment of the court:

The letter of guardianship and the bond for the faithful performance of the trust, approved by the judge of probate, were undoubtedly *prima facie* evidence of the appointment of the guardian. But they were not conclusive. The defendant might show, that though in form they were correct, yet in substance they were defective and void. * * *

It further appears that no notice was given to the plaintiff of the inquisition of the selectmen or of the proceedings before the judge of probate, and that there was no adjudication that she was *non compos mentis* or that a guardian be appointed. She was thus deprived of the management of her property and, to some

extent, of her liberty, without an opportunity to object or be heard, and without any formal judgment. These are undoubtedly fatal defects, and render the whole proceeding unauthorized and void. It was so adjudged in *Chase* v. *Hathaway, et al.*, 14 Mass., R. 222; *Wait* v. *Maxwell*, 5 Pick. 217; and *Hathaway* v. *Clark*, in id. 490. And in the last case it was holden, that the healing influence of time, after a lapse of thirty years, could not cure the infirmity.

The appointment of the guardian being a nullity, it cannot authorize him to do any act which would bind his ward. Even an executive officer, to whom the guardian was likened in the argument, cannot justify under a void precept. And although the letter of guardianship produced by the plaintiff was sufficient *prima facie*, yet we can discover no principle by which the defendant should be precluded from showing its invalidity. * * *

Judgment of Court of Common Pleas affirmed.

Doyle Petitioner.

(16 Rhode Island, 537.)

June, 1899.

Per Curiam: * * *

It is not enough to answer that the persons are insane, since whether they are insane is the very question which ought to be determined before they are so completely confined as not any longer to have power to institute proceedings for their own relief, or to be heard and adduce evidence in their own behalf.

Great West Mining Company v. *Woodmas of Alston Mining Company*, 13 Am. St. Rep. 204 (December, 1888), (12 Colorado 46.)

Gerry, J., said: *Void judgment, Effect of.*—Absence of legal service or authorized appearance is jurisdictional and without jurisdiction no judgment can be entered under which any rights can be lost or acquired.

Jurisdiction cannot be acquired by the mere levy of an attachment, sufficient to authorize the court to determine the question of indebtedness, and to condemn the attached property to pay the same. Though an attachment is levied, jurisdiction is not required until service of summons.

Due Process of Law * * * No person can be prejudiced, or his rights of person or property affected, without notice, actual or constructive. Any proceeding which violates this principle is not due process of law, and is not according to the law of the land. * * *

Judicial Sale. * * * *Relief will be granted from a sale based upon a judgment* entered without service of process upon or appearance on behalf of the defendant, without inquiring as to the merits of the original claim. Although a just cause of action exists against the defendant, he must be allowed an opportunity to pay the debt, or redeem the property from sale, before his title thereto can be divested by judicial proceedings.

McCurry v. *Hooper*, 12 Alabama, 823, January Term, 1848.

This was an action of detinue, brought by the plaintiff, to recover of defendant, certain slaves. On the trial, the plaintiff read in evidence a bill of sale, executed to him for the slaves, by George L. Patrick, bearing the date of January, 1845. At the date of the instrument, the slaves were in possession of Patrick, and belonged to him. The consideration, expressed in the bill of sale, is $1,200.

The defense was, that at the day of the execution of the instrument Patrick was *non compos mentis;* and to show this, the defendant offered in evidence the transcript of a record from the orphans' court of St. Clair, from which it appears that on the first day of January,

application was made to the judge of the orphans' court by the friends of George L. Patrick for an inquisition of lunacy to ascertain if said Patrick was not a lunatic, and incapable of managing his affairs; but it does not appear who those friends were. The judge of the orphans' court ordered a writ *de lunatico inquirendo* to be issued to the sheriff of the county, commanding him to summon twelve citizens of the county, to make inquisition, if said Patrick be a lunatic, and incapable of managing his affairs. The sheriff summoned the jury, and on the 4th day of January, 1845, after being sworn, they found that Patrick was incapable of transacting his business, and was liable to be imposed on by any designing person, and certified this verdict, under their hands and seals. The sheriff returned the writ, with this verdict of the jury, to the orphans' court.

Dargan, J.: * * * The first question we propose to examine, is, was the record of the orphans' court of St. Clair purporting to be an inquisition of lunacy, to ascertain if George L. Patrick was sane, or *non compos mentis*, evidence for any purpose?

These proceedings purport to be had on the application of the friends of Patrick. The writ was issued, and the jury certified that he was unable to transact business; that he was liable to be imposed upon by designing persons; and that he was *non compos mentis*. This verdict was returned with the writ, and thereupon, a guardian was appointed, the defendant in error, to take charge of his property and person. It does not appear that George L. Patrick had any notice whatever of the time, and place, of making this inquisition; or that the jury saw him, or made any application, or effort to see him. It does not appear that he had any notice of the application to the court for the writ, or that he had any notice of the action of the court, on the return

of the writ; but the proceedings were *ex parte* merely; and by the judgment of the orphans' court, the defendant in error is invested with the control of the property and person of Patrick.

I think it is a fundamental principle of justice, essential to the rights of every man, that he shall have notice of any judicial proceedings that is about to be had for the purpose of divesting him of his property, or the control of it, that he may appear and show to them, who sit in judgment on his rights, that he has not lost them by the commission of a crime; nor should those rights be taken from him by reason of any misfortune. That he has the right to appear before the jury, and the court, and to show that he is not insane, that he and his property should not be put in charge of another is a self-evident truth, and is denied by no legal authority. (See 12 Ves. 444; *Ex parte* Cranmer, Stock on Lunacy, 100.) This being his right, to appear, and defend himself, the question is, what effect is the law to give to a proceeding that had denied this right?

In the case of *Wait* v. *Maxwell,* 5 Pickering, 219, this precise question came up, and the court held, that the proceeding of the court of probate, and the grant of letters of guardianship were null and void, because the *non compos* had no notice of them. And in 14 Mass. R. 222, it was determined, that it was the right of an individual against whom proceedings in the court of probate were taken to appear and controvert the fact of insanity, and that an inquisition taken without notice was void.

These authorities seem to be in unison with the first principles of justice, and are not opposed by any authorities that have fallen under our observation. We therefore come to the conclusion that the proceedings of the county court, in the nature of an inquisition, and deter-

mining said Patrick to be *non compos mentis*, are void; that they are not evidence for any purpose in the trial of the issues in the case, and should have been rejected, and not allowed to go to the jury. * * *

Let the judgment be reversed and the cause remanded.

DUE PROCESS OF LAW.

George Burdick v. *The People of the State of Illinois*, 149 Ill. 600.

(Filed at Mt. Vernon April 2, 1894.)

Magruder, J., said: * * * The phrase "due process of law" is the equivalent of the words "law of the land" as used in Magna Charta, and means "in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights." (*Board of Education* v. *Bakewell*, 122 Ill. 339; *Rhinehart* v. *Schuyler*, 2 Gilm. 473; *Davidson* v. *New Orleans*, 96 U. S., 97; Cooley on Cons. Lim. 5 ed. marg. page 356, top page 435.) An act of the legislature is not necessarily the "law of the land." A State cannot make anything "due process of law," which by its own legislation, it declares to be such.

Murray's Lessee v. *Hoboken Land and Improvement Co.*, 18 How. (U. S., 1855) 272.

The Court, per Curtis, J., "The article (in United States Constitution *re* "due process of law") is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave congress free to make any process "due process of law," by its mere will.

Bardwell v. *Collins*, 20 Am. St. Rep. 554, Minn. (July, 1890).

Mr. Justice Field, in delivering the opinion of the court in the recent case of *Dent* v. *West Virginia*, 129 U. S. 114, 123, discussing this question, said: "As we have said on more than one occasion, it may be difficult, if not impossible, to give to the terms 'due process of law,' a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as are forbidden. They come to us from the law of England, from which country our jurisprudence is to a great extent derived, and their requirement was there designed to secure the subject against the arbitrary action of the crown, and place him under the protection of the law. They are deemed to be equivalent to 'the law of the land.' In this country, the requirement is intended to have a similar effect against legislative power; that is, to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, his liberty, or his property.

"*Due process of law" not confined to judicial proceedings.* * * * Due process of law does not always mean judicial process. It is not confined to judicial proceedings, but extends to every case which may deprive the citizen of life, liberty or property, whether the proceeding be judicial, administrative or executive in its nature: *Eames* v. *Savage*, 77 Me. 212; 52 Am. Rep. 751; *Weimer* v. *Bunbury*, 30 Mich., 201; *Stuart* v. *Palmer*, 74 N. Y., 183.

Mr. Justice Miller, in delivering the opinion of the court in *Davidson* v. *New Orleans*, 96 U. S. 104, said: "Whenever, by the laws of a State or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State, or of some more limited portion of the community, and those laws provide for a mode confirming or contesting the charge thus imposed, in the

ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections. * * * It is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case." * * *

But the enforcement by a State of a tax levied under a void law is the deprivation of the owner of his property without due process of law; *Dundee Mortgage, etc., Co.* v. *School District No.* 1, 19 Fed. Rep., 259. And a law that imposes an assessment for local improvements, without notice to, and a hearing on, or an opportunity to be heard, on the part of the owner of the property to be assessed, deprives him of his property without due process of law; *Stuart* v. *Palmer*, 74 N. Y., 183. A proceeding for the assessment of property for taxes —that is, the ascertainment of its value upon evidence taken—is judicial in its nature. And to make a law authorizing such a proceeding valid, it must provide some kind of notice and an opportunity to be heard respecting it, before the proceeding becomes final, otherwise it will lack the essential ingredient of due process of law; *County of Santa Clara* v. *Southern Pacific R. R. Co.*, 18 Fed. Rep., 385. * * *

A statute which provides that the rates of charges for passengers and freights recommended and published by a State railroad commission shall be final and conclusive evidence as to what are equal and reasonable, and that there can be no judicial inquiry as to the reasonableness of such rates, deprives a railway company

of its property without due process of law: *Chicago, etc., Ry. Co.* v. *Minnesota*, 134 U. S. 418. Mr. Justice Blatchford, in delivering the opinion of the majority of the court in this case, referring to the statute, said: "It deprives the company of its right to a judicial investigation by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation, judicially, of the truth of a matter in controversy." * * *

A law which authorizes the summary seizure and sale of property in use by a person from whom a license is due, without any notice to the owner, without any trial, and without any opportunity to be heard, is void, because it attempts to authorize the taking of property without due process of law: *Chaurin* v. *Valiton*, 8 Mont. 451.

An act which undertakes to charge the owner of a dog with the amount of damage done by his dog, as fixed by the selectmen of the town, without an opportunity to the owner to be heard, is unconstitutional, because it attempts to take his property without due process of law: *East Kingston* v. *Towle*, 48 N. H. 57; 2 Am. Rep. 174. * * *

A statute providing that no convict shall be discharged from a State prison until he has remained the full term for which he was sentenced, excluding the time he may have been in solitary confinement for any violation of the rules and regulations of the prison, deprives him of his liberty without due process of law, and is therefore void: *Gross* v. *Rice*, 71 Me. 241. * * *

A person imprisoned for refusing to appear or testify before a county attorney under the Kansas act prohibiting the manufacture and sale of intoxicating liquors is distrained of his liberty without due process of law: *In re* Ziebold, 23 Fed. Rep. 791. * * *

A perusal of the foregoing cases will assist in deter-

mining the question, "What is due process of law?"

Bardwell v. *Collins* (*supra*).

In re Kemmler, 136 U. S. 436, Mr. Chief Justice Fuller, who delivered the opinion of the court in that case, discussing the question whether the act was in conflict with the Fourteenth Amendment to the Constitution of the United States, said: "As due process of law in the Fifth Amendment referred to that law of the land which derives its authority from the legislative powers conferred on Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law, so in the Fourteenth Amendment, the same words refer to that law of the land in each State which derives its authority from the inherent and reserve powers of the State, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions."

Moody v. *Bibb, et al.*, 50 Alabama, 245.

Peters, C. J., said: "This great light in this important jurisdiction may sometimes enable us to do right, which is the law of laws, and what the sovereign authority always must intend. * * *

"I. The appointment of Moody as guardian of Rufus R. Sims, by the Orphans' Court of Tuscaloosa County, in June, 1849, whether for special or general purposes, was clearly void. The court acted without jurisdiction. Sims was not brought before the court in any manner and had no notice whatever of the proceedings to declare him a lunatic. This was necessary before he could be put under the restraint of a guardianship and deprived of the control of his own person and of his prop-

erty. This appointment was made before the adoption and promulgation of the Code of Alabama. The proceeding was, therefore, under the law as existed before the Code was proclaimed. A like case to this came under the judicial notice of this court in 1852, at the June term of that year. This was the case of *Eslava* v. *Lepetre*, 21 Ala., 505. In this latter case, the report shows that a guardian had been appointed for Mrs. Eslava as a person of unsound mind, on the petition of her husband, by the Orphans' Court of Mobile County, without proceedings to have her declared a lunatic. The appointment of the guardian was made before the 7th day of January, 1849, as on that day her guardian was served with subpoena to bring her into court. 21 Ala., 511. In her case, the court said: 'This appointment was made upon no other assurance of the fact of Mrs. Eslava's lunacy than a petition of her husband without notice to her, and without the issue of a writ *de lunatico inquirendo*, and the verdict of a jury thereon. Without the issue of this writ, and the finding of the jury, the county court judge had no power to declare her a lunatic, or to appoint a guardian for her.' * * *

"But the right to life, liberty, and property is sacred, and it cannot be invaded by the legislative power. Decl. of Independence; Cooley's Const. Limit, p. 351 *et seq.*; Sedgwick on Stat. & Const. Law, p. 177 *et seq.*"

The State *ex rel. Larkin* v. *Ryan,* Court Commissioner, 70 Wisc., 676.

January 17—February 28, 1888.

Cassoday, J., said: "So sacred are certain rights of the citizen that they are especially guarded by our national constitution; which, among other things, declared that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' Sec. 1, Art. XIV., Amend. Const. U. S. In *Mugler* v. *Kansas*, 123 U. S., 663, it it is said by the court: 'Undoubtedly the State when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument or interfere with the execution of the powers confided to the general government.' "

Joseph Chaurin, Respondent, v. *Henry G. Valiton, Appellant*, Constitutional Law, 5th Division, Revised Statutes.

The Court held: Nothing can be the law of the land in the sense of the Constitution, however general it may be, and however it may affect the rights of all persons alike, which deprives the citizen of his life, his liberty, or his property, without due process of law; and that, as we have already seen, contemplates that a hearing must be allowed to him at some stage of the proceedings against him, and a hearing would be but a hollow mockery if he could not be allowed to defend and be protected in his rights by the judgment of the court, or the administrative or executive officer with whom he has to do.

Sidney H. Stewart, Jr., Appellant, v. *George W. Palmer, as Collector, etc., et al., Respondents*, 74 New York, 183 (May, 1878).

Earl, J., held:

"I am of the opinion that the Constitution sanctions no law imposing such an assessment, without a notice to and a hearing or an opportunity of a hearing by the owners of the property to be assessed. It is not enough that the owners may by chance have notice or that they may, as a matter of favor, have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard. * * *

"*The constitutional validity of law is to be tested, not by what has been done under it, but by what may, by its authority, be done.* The Legislature may prescribe the kind of notice and the mode in which it shall be given, but it cannot dispense with all notice. * * *

"The Legislature can no more arbitrarily impose an assessment for which property may be taken and sold, than it can render a judgment against a person without a hearing. *It is a rule founded on the first principles of natural justice older than written constitutions, that a citizen shall not be deprived of his life, liberty or property without an opportunity to be heard in the defense of his rights*, and the constitutional provision that no person shall be deprived of these 'without due process of law' has its foundation in this rule. *This provision is the most important guaranty of personal rights to be found in the Federal or State Constitution. It is a limitation upon arbitrary power, and is a guaranty against arbitrary legislation.* No citizen shall arbitrarily be deprived of his life, liberty or property. This the Legislature cannot do nor authorize to be done. 'Due process of law' is not confined to judicial

proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the proceeding be judicial, administrative or executive (Weimer v. Bruenbury, 30 Mich., 201).

"This great guaranty is always and everywhere present to protect the citizen against arbitrary interference with these sacred rights. * * * It may, however, be argued generally that due process of law required an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights. A hearing or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this."

In *Philadelphia* v. *Miller* (49 Penn. 440) Agner, J., speaking of taxation, says: "Notice or at least the means of knowledge is an essential element of every just proceeding which affects the rights of persons or property." * * *

It is a plain principle of justice applicable to all judicial proceedings, that no person should be condemned, or shall suffer judgment against him without an opportunity to be heard; and he says that an act "assessing persons without notice transcends the power of the Legislature, and is itself void."

Portland v. *Bangor* (65 Me. 120).

Walton, J., said: "If white men and women may be thus summarily disposed of at the North, of course, black ones may be disposed of in the same way at the South; and thus the very evil which it was particularly the ob-

ject of the Fourteenth Amendment to eradicate will still exist.

The objection to such a proceeding does not lie in the fact that the persons named may be restrained of their liberty, but in allowing it to be done without first having a judicial investigation to ascertain whether the charges made against them are true. Not in committing them to the workhouse, but in doing it without first giving them an opportunity to be heard. * * *

Philo Parsons and another v. *George B. Russell and another*, 11 Michigan, 113.

It was said: "Story defines 'due process,' etc., as 'being brought in to answer,' etc. This also means much the same as 'agreeable to the principles and usages of law' found in many statutes, *e. g.* U. S. Jud. Act § 14; and these principles and usages form the substratum of all State and Federal laws; Marshall Ch., J., Burr's Trial. * * *

Martin, Chief Justice, said:

Whatever may be the difficulty of defining this phrase of the Constitution when sought to be applied to other proceedings, when used in relation to those of a judicial character, it is evidently, and has been so universally held, intended to secure to the citizen the right to a trial according to the forms of law of the questions of his liability and responsibility, before his person or his property shall be condemned. Judicial action is in such case imperatively required, and "implies and includes *actor, reus, judex*—regular allegations, opportunity to answer, and trial according to some settled course of judicial proceedings." While we adopt the common law, or, to speak more accurately, so long as we recognize and submit to it, we recognize and adopt the fundamental principle that no man shall be party and judge in his own

case; that if tried, it shall be by his peers, and if deprived of liberty or property, it shall be by impartial judicial authority, after a trial and judgment under general laws. * * *

In the Common Pleas of Philadelphia.

Commonwealth *ex relatione Isaac Edmundson Stewart* v. *Thomas S. Kirkbride*, M. D. 2 Brewster, 419.

Brewster, J., said: I hold to the doctrine that no man can be deprived of his liberty without the judgment of his peers; and that it matters not to the law whether the alleged cause of detention is insanity or crime. * * *

The record shows no order made by the court for service of a notice of the proceedings, either upon the alleged lunatic or any other person; nor does it show that notice of any kind was given to any person. Lord Chancellor Erskine (*ex parte* Cranmer, 12 Ves. Jr., 455), said: "The party must certainly be present at the execution of the commission; it is his privilege." The same rule has been adopted in the United States. (See Russell's Case, 1 Barb. Ch. Rep., 38; and Hinchman's Case, Brightly's Rep., 181.) * * *

It is abhorrent alike to our sense of justice and to all judicial precedent that his character, liberty, and estate should be swept away from him without a hearing or opportunity of defense. To hold otherwise would be contrary to every principle of reason and justice.

They call for notice, and tested by their requirement this decree crumbles to ashes.

In *Dowell* against *Jacks*, 53 North Carolina Reports, page 387, the following is the *verbatim* finding of the court:

Manly, Judge: We regard as of no importance, connected with the merits of the petitioner's case, that attorneys were employed by a friend to attend, in her be-

half, to the inquisition of lunacy at July Term, 1859. She had no notice—was not legally represented, and what is of still greater importance, was not present, to be seen and examined by the jury.

Benjamin Chase, Appellant, &c., VERSUS *Brazillai Hathaway,* 14 Mass., 221 (1817), July Term.

Parker, J., said: "But we are of opinion that, notwithstanding the silence of the statute, no decree of the Probate Court so materially affecting the rights of property and the person, can be valid unless the party to be affected has had an opportunity to be heard in defense of his rights.

It is a fundamental principle of justice, essential to every free government, that every citizen shall be maintained in the enjoyment of his liberty and property, unless he has forfeited them by the standing laws of the community, and has had opportunity to answer such charges as, according to those laws, will justify a forfeiture or suspension of them. And whenever a Legislature has provided that, on account of crime or misfortune, the public safety or convenience demands a suspension of these essential rights of the individual, and has provided a judicial process by which the fact shall be ascertained, it is to be understood as required that the tribunal, to which is committed the duty of inquiring and determining, shall give opportunity to the subject to be heard in support of his innocence or his capacity.

It has been intimated that notice to an insane person would be of no avail, because he would be incapable of deriving advantage from it. But the question upon which the whole process turns is, whether *he is* insane; for the presumption of law is that every man is of sound mind until the contrary is proved; and it being possible that interested relatives might falsely suggest insanity

with a view to deprive the party of the power of disposing of his estate, it is essential that every possibility should be guarded against by personal notice to him when practicable, that he may expose himself to the view of the judge and prove, by his own conduct and actions, the falsity of the charge. * * *

Indeed, it would seem strange that the whole estate of a citizen might be taken from him and committed to others, and his personal liberty be restrained, upon an *ex parte* proceeding, without any notice of the pendency of a complaint, upon a suggestion of lunacy or other defect of understanding; while the depriving of the minutest portion of that property or the slightest detention of his person would be illegal upon a charge of crime, or a breach of a civil contract, unless all the formalities of a trial were secured to him by the forms of process, and the regular execution of it."

Re W. H. Lambert (Cal.), L. R. A., 55 (1902), p. 856.

Harrison, J., said:

"An examination of the foregoing provisions of the statute shows that there is no provision for giving to the alleged insane person any notice of the proceedings against him, and that under its provisions the first intimation that he may have thereof may be when the Sheriff takes him into his custody under the order of commitment. The person making the application for the commitment is not required to give him any notice thereof, nor is there any requirement that he shall be informed of the object for which the physicians are examining him." * * *

"This certificate may be made by any two physicians who have received and filed the certificate of a superior judge showing that they possess the requisite qualification. There is no limit to the number of physicians who may become such medical examiners, nor does the act authorize a superior judge to refuse his certificate to any physician who may show himself qualified therefor. No certificate is to be made unless two examiners shall find the person to be insane, but the person seeking the order of commitment is not concluded by the determination of the first examiners to whom he may apply, but is at liberty to continue his application for a certificate until he shall find two examiners who will certify to the insanity of the person. The examination is not made by them under any direction of the Judge, nor do they receive any letter of authority or power to compel testimony. The statute does not require that their certificate shall be given under oath, nor does it require that the witnesses before the examiners shall give their testimony under oath, or provide for any oath to be administered to such witnesses. They are only required to make "such examination" of the person as will enable them to form an opinion "as to his sanity or insanity," and their examination may in fact be so conducted that he will have no knowledge that they are examining him for that purpose, or even making any examination of him. * * * The statute does not require the Judge, when he passes upon their sufficiency, to give any notice thereof to the alleged insane person, or even to require him to be brought into his presence. * * *

"The provision in section 4 for a trial upon the question of his insanity is effective only after the order of commitment has been made, under which the person may have been immediately placed in the hospital, and cannot be made a substitute for his right to have an oppor-

tunity to be heard, and to defend himself against the charge before being deprived of his liberty. For the purpose of showing the inefficiency of this provision in protecting a person against an invasion of his constitutional right to a notice and a hearing before he can be deprived of his liberty, it is only necessary to read, in connection therewith, the provision that, before such trial can be had, he must provide for the payment of the costs thereof, and also the provision of section 8 in article I, of the act, that, after he has been committed to the hospital, he may be restrained of all correspondence with the outer world, except with the superior judge and the district attorney of the county from which he was committed. The statute thus clearly provides that the proceedings before the judge in a case like the present may be entirely *ex parte*, and that he may be satisfied that the alleged insane person is insane by merely examining the certificate and petition. He may issue the order of commitment upon the opinion of the two examiners, without any examination by himself of the person sought to be committed, or of the examiners who have made the certificate, and without knowledge of the facts or testimony upon which they have made their certificates. In thus acting upon these documents, he takes as the sole basis of his action the opinion of the examiners, ascertained as before shown, that the individual is insane. The opinion of practitioners of medicine, however, upon the question of insanity, are not always uniform or infallible, especially if such opinion formed *ex parte*, or without an opportunity for a full investigation of the charge. The mere certificate of an opinion thus obtained ought not to be a sufficient warrant for an order for the confinement of a person in an insane asylum. There should at least be the semblance of a judicial investiga-

tion, of which a public record can be preserved, before a person can be deprived of his liberty. * * *

It does not appear, either from the order of commitment or by the accompanying documents, that any notice was given to the petitioner of an intention to make an application for the order, or that he was ever notified or had any knowledge that the medical examiners would make any examination or investigation in reference to his sanity, or that the judge of the superior court ever directed any notice to be given him of the application, or of an intention to determine the question of his sanity; nor does it appear that he was present at the time the matter was under consideration by the judge, or was at any time seen or examined by the judge. The act in question was evidently suggested by the insanity law of New York passed in 1896 (1 N. Y. Laws 1896, chap. 545), and the provisions of that act have been closely copied. * * *

In *People, ex rel. Sullivan* v. *Wendell*, 33 Misc. 496, 68 N. Y. Supp. 948, the relator had been committed to an insane asylum under the provisions of this section, but had had no notice of the application, either personally or by substituted service on any one in her behalf, and there was no hearing at which she was either personally present or represented by any person. The court held that to the extent that the insanity law authorized such proceeding, it was in violation of the Constitution, in that it deprived her of her liberty without due process of law, and ordered her release. An order for the commitment of a person to an insane hospital is essentially a judgment by which he is deprived of his liberty, and it is a cardinal principle in English jurisprudence that, before any judgment can be pronounced against a person, there must have been a trial of the issue upon which the judgment is given. Under the laws of this State

a guardian of the person or the estate of an insane person cannot be appointed without giving him notice of the application therefor (Code Civ. Proc. § 1763); nor can a judgment for so small a sum as $5 be rendered against him unless he has been served with a summons in the action. (Code Civ. Proc. § 411.) Much more is there reason for giving him notice of an application to deprive him of his personal liberty. The provision in the statute for a notice to a relative or friend of the alleged insane person cannot be made the equivalent of a notice to the person himself. * * *

What constitutes due process of law may not be readily formulated in a definition of universal application, but it includes in all cases the right of the person to such notice of the claim as is appropriate to the proceedings and adapted to the nature of the case, and the right to be heard before an order of judgment in the proceedings can be made by which he will be deprived of his life, liberty or property. The constitutional guarantee that he shall not be deprived of his liberty without due process of law, is violated whenever such judgment is had without giving him an opportunity to be heard in defense of the charge, and upon such hearing to offer evidence in support of his defense. If his right to a hearing depends upon the will or caprice of others, or upon the discretion or will of the judge who is to make a decision upon the issue, he is not protected in his constitutional rights. *Underwood* v. *People*, 32 Mich. 1, 20 Am. Rep. 633. To say that, if he is in fact insane, therefore any notice to him would be vain, is to beg the very question whose determination underlies the right of the State to deprive him of his liberty. The fact of his insanity is to be determined before his right to his liberty can be violated. If that question is determined against him without any notice or opportunity to be heard or to in-

troduce evidence in his behalf, and under such determination he is confined in the hospital, his constitutional guaranty is violated.

The case before us does not involve the right of the State to provide for the summary arrest of a person against whom a charge of insanity is made, and his temporary detention until the truth of the charge can be investigated. Such arrest would itself be a notice to him of the charge, under which he would be afforded an opportunity for a hearing thereon. Nor is there involved the right of the State to permanently restrain an insane person of his liberty, whether such person be harmless or dangerous, but the question is whether he is entitled to a judicial investigation of the charge that he is insane, and the right to be heard thereon before its determination. The question to be determined is not whether the action of the judge in investigating the insanity of the petitioner was conducted under the forms of law, and with proper regard for his rights, but whether the Judge had the right to enter upon the investigation, or take any action whatever in reference to his sanity. * * *

"It is not enough that (he) * * * may by chance, have notice, or that he may, as a matter of favor, have a hearing. The law must require notice to him * * * and give (him) * * * the right to a hearing, and an opportunity to be heard. * * * The constitutional validity of law is to be tested not by what has been done under it, but by what may by its authority be done." *Stuart* v. *Palmer*, 74 N. Y., 188, 30 Am. Rep., 291. "It is not what has been done, or ordinarily would be done under a statute, but what might be done under it, that determines whether it infringes upon the constitutional right of the citizen. The Constitution guards against the chances of infringement." *Bennett* v. *Davis*,

90 Me., 105; 37 Atl., 865. The following authorities may be referred to in support of the foregoing views: *Underwood* v. *People*, 32 Mich., 1; 20 Am. Rep., 633. *Re* Doyle, 16 R. I., 537; 5 L. R. A., 359, 18 Atl., 159. *State* v. *Billings*, 55 Minn., 467; 57 N. W., 206, 794. *Portland* v. *Bangor*, 65 Me., 120; 20 Am. Rep., 681. *Bennett* v. *Davis*, 90 Me., 102; 37 Atl., 864. *People ex rel. Ordway* v. *St. Xavier's Sanitarium*, 34 App. Div., 363; 56 N. Y. Supp., 431. In the case last cited the question was quite fully considered by the General Term of the Supreme Court of New York. The relator had been committed to an asylum for inebriates for a term of one year under provision of a statute of that State authorizing such commitment to be made by any judge of a court of record upon a certificate in writing, signed by two physicians, containing statements bringing the person within the description mentioned in the statute. It was held that as the order had been made without any notice to the relator, and without her presence, she was deprived of her liberty without due process of law, and that the commitment was void; the Court very tersely and aptly phrasing the principle underlying its decision as follows: "No matter what may be the ostensible or real purpose in restraining a person of his liberty,—whether it is to punish for an offense against the law or to protect the person from himself, or the community from apprehended acts,—such restraint cannot be made permanent or of long continuance unless by due process of law."

Under the foregoing considerations, it must be held that the insanity law of 1897 to the extent that it authorizes the confinement of a person in an insane asylum without giving him notice and an opportunity to be heard upon the charge against him, is unconstitutional,

and that the proceedings by virtue of which the petitioner is held by the respondent are invalid.

It is ordered that the petitioner be released from the asylum.

We concur: Beatty, Ch. J., Temple, J., Henshaw, J., Garoutte, J., dissenting.

Matter of Georgiana G. R. Wendel.

The People ex rel. Maurice J. Sullivan, Relator, v. *John G. Wendel and Mary E. A. Wendel, Respondents,* 33 Misc., 496 (Supreme Court, Kings, Special Term, December, 1900).

Marean, J., said:

> "She had no notice of the application, either personal or by substituted service on some person in her behalf, and there was no hearing at which she was either present or represented by any other person. She had been finally adjudged insane and committed to perpetual restraint, without notice or hearing. She is deprived of her liberty, therefore, without due process of law (*People ex rel. Ordway* v. *St. Saviour's Sanitarium,* 34 App. Div., 363). The Insanity Law, so far as it permits this, is in violation of the Constitution."

"When one has been duly adjudged insane, when his *status* as an insane person has been duly established, personal notice, or notice of proceedings affecting his interest, may be dispensed with, if it appears that such service would be prejudicial to his mental condition. But, for the protection of those who are sane, it ought

not to be tolerated that any person should be adjudged insane, and finally committed, without either notice or actual hearing.

"It is doubtful, also, if the commitment of the alleged incompetent to the custody of her sister, even if it were valid, warranted her transfer to the hospital by the commission. The statute only permits transfers from one hospital to another.

"She is discharged."

WEST VIRGINIA SUPREME COURT OF APPEALS.

Heil J. Evans, Committee of Evan Morgan *v.* Omer B. Johnson *et al.;*
Thornton Pickenpaugh, Impleaded, etc., Appt. (W. Va.), April, 1894; 23 L. R. A., 737.

Brannon, P., said:

"The brief of appellant's counsel, in its opening, presents what in its nature is the first question for us to decide, by insisting that the plaintiff has no right to recover in this suit or any suit. The first reason given by counsel for this contention is that the appointment of Heil J. Evans to be committee of Evan Morgan as an insane person is void for want of notice to said Evan Morgan. In Lance *v.* McCoy, 34 W. Va., 416, the opinion is expressed that such an appointment by a County Court without notice, as required by Code, Chap. 58, No. 34, is void. A reexamination of this question in this case has confirmed me in the view then expressed. The question is of importance, both because of its frequent occurrence and of its effect upon persons alleged

to be insane. So far as my observation has gone, the practice has been in Clerk's Offices of the County Courts and in County Courts, to make such appointments without such notice. It lies at the foundation of justice in all legal proceedings, that the person to be affected have notice of such proceedings. *As such an appointment takes from the person the possession and control of his property and even his freedom of person, and commits his property, his person, his liberty, to another, stamps him with the stigma of insanity and degrades him in public estimation no more important order touching a man can be made short of conviction of infamous crime. Will it be said in answer to that that he is insane and that notice to an insane man will do him no good? The response is that his insanity is the very question to be tried, and he the only party interested in the issue. Often, if given notice, he will be prompt to attend and in his person be the unanswerable witness of his sanity; often, if not given notice, those interested in using or robbing him of his property will effectuate a corrupt plan. Almost as well might we convict a man of crime without notice. There is abundant authority for this position. Even though the statute be silent as to notice, as ours to appointment of committees by County Courts is, though that as to Circuit Court appointments requires notice, yet the common law steps in and requires it.*"

See Chase *v.* Hathaway, 14 Mass., 222, 224; Hathaway *v.* Clark, 5 Pick., 490; Hutchins *v.* Johnson, 12 Conn., 376, 30 Am. Dec., 622; McCurry *v.* Hooper, 12 Ala., 823, 46 Am. Dec., 280; Monroe County Suprs. *v.* Budlong, 51

Barb., 493; Eslava v. Lepetre, 21 Ala., 504, 56 Am. Dec., 266; Dutcher *v.* Hill, 29 Mo., 271, 77 Am. Dec., 572; Buswell, Insanity, No. 55; Stafford *v.* Stafford, I Mart. (N. S.), 551.

In Molton *v.* Henderson, 62 Ala., 426, held that "inquisition of lunacy without personal notice to the alleged *non compos* is void, so is the appointment by the probate court of a guardian for said lunatic, and the proceedings by such guardian for a sale of lands belonging to said lunatic." A statute authorizing an inebriate to be committed to a hospital on *ex parte* proceeding was held void by the New York Supreme Court. *Re* Janes, 30 How. Pr., 446. In Georgia the statute required notice to three relatives of the person before appointment of a guardian over him as an insane person. Judge Bleckley, delivering the opinion, thought there ought also to be notice to the person. He said: "It is, to say the least, doubtful whether the property of an adult citizen can be taken out of his custody and committed to guardianship without previous warning served either upon him, or some person duly constituted by law or some legal tribunal to be notified in his stead. If it was unreasonable in the opinion of a Roman Governor,* to send a prisoner and not signify withal the

*ACTS, CHAPTER XXV.

"(13) And after certain days King Agrippa and Bernice came unto Caesarea to salute Festus.

(14) And when they had been there many days, Festus declared Paul's cause unto the king, saying, There is a certain man left in bonds by Felix:

(15) About whom, when I was at Jerusalem, the chief priests and the elders of the Jews informed me, desiring to have judgment against him.

(16) To whom I answered, It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have license to answer for himself

crime alleged against him, the law judges it to be equally so to pass upon the dearest civil rights of the citizen, without first giving him notice of his adversary's complaint. The truth is that at the door of every temple of the laws in this broad land stands justice, with her preliminary requirement upon all administrations:—*You shall condemn no man unheard. The requirement is as old, at least, as Magna Charta. It is the most precious of all gifts of freedom*, that no man be disseised of his property or deprived of his liberty, or in any way injured, *nisi per legale judicum parium suorum, vel per*

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concerning the crime laid against him.

* * * * * * *

(25) But when I found that he had committed nothing worthy of death, and that he himself hath appealed to Augustus, I have determined to send him.

(26) Of whom I have no certain thing to write unto my lord. Wherefore I have brought him forth before you, and specially before thee, O king Agrippa, that after examination had, I might have somewhat to write.

(27) For it seemeth to me unreasonable to send a prisoner, and not withal to signify the crimes laid against him."

ST. JOHN, CHAPTER VII.

"(49) But this people who knoweth not the law are cursed.

(50) Nicodemus saith unto them, (he that came to Jesus by night, being one of them,)

(51) Doth our law judge any man, before it hear him, and know what he doeth."

Judge Bleckley might further have said in his aforesaid censure of the present lunacy laws of the aforesaid "black belt of lunacy," that both the ancient Roman law and the ancient Jewish law permitted those two veritable pillars of Hercules of the absolute rights of individuals—namely the right of notice and opportunity to appear and be heard: *vide* said Acts, Chapter XXV (16) "he which is accused have the accusers face to face, and have license to answer for himself;" and again, said St. John, Chapter VII (51) "Doth our law judge any man, before it hear him, and know what he doeth."

Thus the Jews and pagan Romans set a shining example of law, justice, and equity to the foul falsely alleged laws anent lunacy procedure in said "black belt of lunacy" in which black belt the State of New York and the State of Pennsylvania take the lead for infamy.

Thus the Jews and pagan Romans set a shining example of law, justice and equity to the alleged Christian communities represented by the States making up said "black belt of lunacy"—albeit Christianity at present rather under a cloud.

We advisedly say "albeit Christianity at present rather under a

legem terrae. It is a principle of natural justice which courts are never at liberty to dispense with, unless under the mandate of positive law, that no person shall be condemned unheard." He said that in that case there was "action, trial and judgment in two days, and no previous notice." *In our practice it often occurs in ten minutes. This practice I say, as was said by the Louisiana Court in Stafford v. Stafford, supra, might put "the wisest man in the community under the control of a curator, and hold him up to the world as an adjudged insane."*

Both constitution and statute confer this power on the county courts as a jurisdiction. Before appointing the

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cloud" since Caiaphas the High Priest, with the whole packed and hostile Jewish Sanhedrim at his back, gave Jesus Christ a squarer deal than does the Supreme Court of New York in the case of a person accused of lunacy. Jesus Christ—according to the record was the recipient of notice—summary notice by arrest, it is true, but notice nevertheless, since said arrest was merely temporary and definite in duration, to wit, until the Court presided over by Pontius Pilate could assemble. Whereas plaintiff's summary arrest in March, 1897, was neither temporary nor definite, but led to incarceration—immediate incarceration—without further intervention of a court or opportunity to appear and be heard—immediate incarceration in a cell, which was only allegedly—but really *illegally*—inquired into at the hands of the law—as practiced at this day and generation in the State of New York—at the arbitrary caprice of the aforesaid conspirators—the other side—*over two years later*, and only then, on the evidence, because said conspirators knew, through said conspirators' agent said Medical Superintendent of The Society of the New York Hospital said Dr. Samuel B. Lyon—that plaintiff was physically incapacitated—by spinal trouble brought on by the atrocity of having been illegally confined without trial on a false charge for over two years in a madhouse cell—was thus physically incapacitated from being present at said proceedings before said Sheriff's Jury in June, 1899, since same were held over twenty miles away from White Plains where plaintiff was —on the record-evidence—*confined to bed and had been thus confined for more than three weeks at said time.* Jesus Christ was also—according to the record—the recipient of opportunity to appear and be heard, since Jesus Christ was brought into Court.

Therefore the Supreme Court of New York afforded plaintiff—both in said proceedings in March, 1897, and in June, 1899—less opportunity to appear and be heard than did the Jews and pagan Romans afford Jesus Christ. And the trial of Jesus Christ is considered, at least by Christians, as the vilest instance of judicial tyranny of record in the annals of Christianity or Paganism.

Court must determine whether or not the fact which alone gives it power to act, exists; that is whether the party is in any of the phases or conditions of mind to be considered insane under the statute. It must inquire into the fact, and in deciding exercise judgment, and of this legal investigation, all important to him, he ought to have notice. He wants to deny the very basis of the proposed order—his insanity. It is an important transaction to him. Shall he have no notice of it? Am I told that the statute does not in terms require notice? I answer as shown in Lance *v.* McCoy, 34 W. Va., 416, as a Circuit Court cannot appoint without, so by proper construction of the Code, neither can a County Court. I answer further, that a statute will not be construed to authorize proceedings affecting a man's person or property without notice. It does not dispense with notice.

Bishop, Written Law, Nos. 25, 141.
Chase *v.* Hathaway, 14 Mass., 222, 224.
Arthur *v.* State, 22 Ala., 61.
Endlich, Interpretation of Statutes, No. 262.
Booneville *v.* Omrod, 26 Mo., 193.
Wickham *v.* Page, 49 Mo., 526.

Chief Justice Marshall held void a judgment of even a court martial imposing fines on militia men because without notice.

Meade *v.* Deputy Marshal of Virginia Dist., 1 Brock, 324 Fed. Cas., No. 9, 372.

This statute is one of summary proceeding.

If the case were one of mere error or irregularity, it

might be said that the order was good against collateral attack, and must be reversed by a direct proceeding; but the question is one of jurisdiction—a want of authority to make the order for want of jurisdiction over the person to be affected. How can his property be affected or title given the committee to enable him to sue for it, if the order is void as to the person? If he is not affected by it how is his property? If the committee would restrain the person of the *non compos,* could he not release himself by treating the order as void? I cannot see how the order of a clerk fixing the personal status of a person, without notice, can rob him of his property and vest title in another person. A tribunal may have jurisdiction of cases *ejusdem generis* with the matter involved in a proceeding before it, and it may have jurisdiction of the particular matter involved in that particular case; but if it have no jurisdiction of the person, by service of process or appearance, if the proceeding is not *in rem* it cannot go on. Though the Taylor County Court has jurisdiction to appoint committees for insane persons, and though it has lawful jurisdiction to act on the matter of the appointment of a committee in the particular instance of Evan Morgan yet it could not act without notice to him, unless we say notice was not required by law, which I have above sought to show is not the case. A sentence of the Court without hearing the party, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to any respect in any other tribunal. Jurisdiction is indispensable to the validity of all judicial proceedings. Jurisdiction of the person as well as the subject-matter are prerequisites and must exist before a court can render a valid judgment or decree, and, if either of these is wanting all the proceedings are void. So the Court said literally in

Haymond *v.* Camden, 22 W. Va., 180, syl. Nos. 5, 9. So it has often held, as shown by Judge Green in the opinion McCoy *v.* McCoy, 29 W. Va., 807. No Court has more steadily held the rule of necessity of process or appearance than this Court, whether as to proceedings of superior or inferior Courts. Must there be a process before a superior Court can render merely money judgment, and yet no notice before a Clerk can stamp a man with insanity, and take from him his property and freedom of person? * * *

When we say there must be jurisdiction, we mean both that the matter must be within the jurisdiction of the Court and the person to be affected, by service of notice upon him, Cooley, Const. Lim., 403. I maintain that such action as the appointment of a committee for one as insane without notice, being so grave in its effect upon his personal status, his right to vote, liberty and property, is not due process of law. It violates the defining by Mr. Webster in the Dartmouth College case, generally received as a proper one of due process of law, that 'it hears before it condemns.'

The decree is reversed and the bill is dismissed, without prejudice to any other suit by Evan Morgan or any lawful committee. No prejudice against the collection of the debts shall result from this decision."

Hinchman v. *Richie.* (April 9, 1849.)
1 Brightly's Reports, 144.
Note, p. 180.

No one, however, has a right to confine an insane person for an indefinite period, until he shall be restored to reason, but upon compliance with the formalities of the law. *Colby* v. *Jackson*, 12 N. H. 526. * * *

Krause, President, said: "The 6th section requires

the court to direct notice, either to the party to whom the commission shall issue or to some near relations or friends, who are not concerned in the application, and the object being to procure a defense when that may reasonably be made, it is obvious that such as counsel a finding against the defendant, or desire it, are excluded from that list of persons, as ineligible to stand in his stead. For some purpose or other this direction was not asked of the court; and notice was not given by the commissioner. * * *

Nor was he himself summoned beforehand or brought in at the time to be present at the examination of the witnesses, on whose testimony he was pronounced incapable of exercising the rights and duties of husband, father and citizen. He was in fact not present for any purpose of defense, but for exhibition merely—a conclusion that is forced on the mind by the whole course of conduct; for the witnesses had been heard when he was called into the room; his desire to have friends and counsel to aid him was disregarded, and the business affecting all his high interests was concluded after he had been removed. In *ex parte* Cranmer, 12 Ves. Jr. 455, Chancellor Erskine says: "the party must certainly be present at the execution of the commission; it is his privilege;" and such must be the construction of our statute, except where, from the necessity of the case, it is impracticable to give literal force and operation to the principal, as in the state of facts instanced in the third division of the second section, by which a commission may be executed against an inhabitant of the State, who is absent from it, in the county containing his real estate. But that is justified upon the ground of its being a purely beneficial measure, to save the property from impending mischief; and to prevent oppression, the court exacts ample proof that such is the object, and

directs extraordinary efforts to be made, by publication or otherwise, to reach the party with notice.

Mary Smith v. *Stephen Burlingame*, 4 Mason (R. I.) 121, November Term, 1825.

Story, J., said: "My opinion is that the objection is fatal. The Courts of Probate have no right to put a person under guardianship, as unfit to manage her affairs, without notice to the party, and on adjudication on the facts; and until such adjudication, no letters of guardianship can legally be issued. The case of *Chase* v. *Hathaway* (14 Mass. R. 222), is directly in point, and with that case I entirely concur."

Wait v. *Maxwell*, 16 American Decisions, 391. (5 Pickering, 217.)

Parker, C. J., said: "The decree of the court of probate, granting letters of guardianship, is void, because it does not appear that any notice was given to the subject of it before the inquisition taken; nor is there any judgment or decree ascertaining that she was *non compos mentis*."

In *McMurray* v. *Hooper*, (Ala.) 46 Am. Dec. 280, the Court said:

"I think it is a very fundamental principle of justice essential to the right of every man, that he should have notice of any judicial proceedings which is about to be had for the purpose of divesting him of his property or the control of it, that he may appear and show to them who sit in judgment on his rights that he has not lost them by the commission of a crime, and that they should not be taken away from him by reason of a supposed misfortune. That he has a *right* to appear before the jury and the court, to show that he is not insane and that

he and his property should not be put in charge of another, is self-evident and *is denied by no legal authority.*"

So, in *Hutchins* v. *Johnson*, (Conn.) 30 Am. Dec. 624, the Court said:

"Notice of such proceedings (*de lunatico inquirendo*) so important to the subject, is required by the *fundamental principles of justice.*"

And in the case of Mays, 10 Pa. County Ct. Reports 293, this language was used:

"But, in whatever way we regard it, the necessity for notice faces us, and, if it has not been given, the proceedings cannot for an instant be maintained."

The text writers also enunciate the same principle in insanity cases. Thus, in Buswell on Insanity, section 55, it is said:

"In the United States it is generally held that the party alleged to be insane has the *right* to have notice, *and to be present* at the proceedings instituted for determining the issue of sanity."

And in Cuming and Gilbert on the "Poor, Insanity, etc., Laws of New York," at page 173, it is said:

"Under a constitutional government no person can be deprived of life, liberty or property, without due process of law, and, therefore, no person can be lawfully declared insane and his personal liberty permanently restrained without formal proceedings and an opportunity afforded him to appear personally and with witnesses to refute the allegations of the person seeking to deprive him of his liberty."

But the very question was recently considered by the

Appellate Court of the State of New York, in a case so similar to the one presented by plaintiff that it must be considered as conclusive. It was the case of *The People, ex rel. Elizabeth Ordway* v. *St. Saviour Asylum*, reported in 34 App. Div.

Elizabeth Ordway was induced by her family and her friends to take some steps to be confined and treated for inebriety. It was arranged that she should permit herself to be committed to St. Saviour Asylum for one year for the purpose of treatment. Proceedings were had under the statute and she was committed by the court to St. Saviour for the period of one year, unless sooner discharged by the Trustees at that institution. *There was no notice of the proceedings served on Miss Ordway.* She, however, was fully cognizant of the proceedings and they were had with her consent and permission and in pursuance of the commitment order she gave herself up and entered the asylum.

After she had been there for some time, she decided that she desired her freedom again. The Trustees refused to discharge her and she sued out a writ of *habeas corpus*. The Trustees replied by a return showing the record of the proceeding under which she was placed in their custody. Counsel for Miss Ordway demurred to the return, arguing that the proceedings were void as being in contravention to the constitutional provision requiring due process of law: The court sustained the demurrer, held the proceedings void and restored Miss Ordway to freedom. The Court, at page 370, said:

"No matter what may be the ostensible or real purpose in restraining a person of his liberty, whether it is to punish for an offense against the law or to protect the person from himself or the community from apprehended acts, such restraint cannot be made permanent or of long continuance unless by due process of law.

* * * We refer to that process by or under which a person is detained for a definite period of time * * * and not to that summary process which issues to take in custody a supposed or alleged dangerous or incompetent person, and under which he may be detained *until an investigation in the ordinary course of law may be had*, * * * but where a person is confined by what is upon its face *final process* and by which he is consigned to incarceration or restraint of his person by adjudication for a long period, that is to say, by a judgment claimed to be binding upon him, there is not due process of law, unless he has had notice and a hearing, or at least such a hearing as implies notice."

Again on page 371, the Court said:

"A hearing or an opportunity to be heard is absolutely essential; we cannot conceive of due process of law without this."

And on page 372:

"The statute now under consideration goes far beyond the condition of danger. It subjects the person to restraint *not during periods of danger*, but for a year if the judge so orders, and for treatment and reformation. * * * What reason exists why a person alleged to be incompetent or dangerous should not have an opportunity before judgment finally against him confining him for a long period of time, which he cannot shorten to contest the charge, as much as a person accused of crime? The rights of one are as sacred and inviolable as of the other. * * * Shall *ex parte* proof that would only avail to *hold an alleged criminal for trial* be regarded as conclusive proof against a supposed unfortunate?"

Continuing on page 373, the Court says:

"Acts of the Legislature which go beyond the allowance of *temporary confinement* and restraint *until trial or hearing* may be had, and the accused person have

his day in court in some way customary or adequate to enable him to present his case, are invalid exercise of legislative power. * * * It surely cannot be said that the procedure authorized by the act under which this relator was committed and which created the wrong is due process of law simply because the Legislature chose to authorize that procedure."

And the Court concludes its able opinion as follows:

"We are of the opinion that the commitment under which this relator is held is not due process of law, and that proceedings under the act, so far as they result in restraint for a year *or less period* of time depending upon the discretion of those who retain the relator, are invalid, for the reason that *no notice was given by which she might in the proceedings itself by immediate interrention or subsequent opportunity to intervene, be heard in resistance of the accusation made against her.*"

Applying the language of this decision to the case under consideration, we find that it fits every circumstance that is essential.

1*st*. The proceedings were on their face final.

2*nd*. It was not temporary in character, ordering a commitment for safety until a hearing—it recites that the order was made *after a hearing*.

3*rd*. There was no notice to plaintiff of the proceeding—it was specifically dispensed with—and plaintiff had no opportunity "in the proceeding itself" to be heard in defense of his rights."

The conclusion is, therefore, inevitable that upon the authority of the decisions cited above, and particularly of the decision in the Ordway case, the proceedings in the Chaloner case were absolutely void for want of notice which is required by due process of law, provided for in the Constitution of the United States. And the mere fact that the Legislature, in the act under which the

proceedings were had, provided for such proceeding without notice does not alter the legal effect of such proceedings when had *without notice.*

POINT 10. The said Proceedings were void for the following reason, to-wit. They were summary. Lunacy proceedings in New York State are mandatory, in derogation of common law rights, and must be strictly observed in pursuance of the statute. While said commitment was in fact made to the Society of the New York Hospital, it was not so stated; the term Bloomingdale Asylum being used, an institution unknown to the law.

The said proceedings were void for the following reason:

A flagrant breach of Section 60 of Chapter 545 of the laws of 1896 was committed in said proceedings, to wit. The cover of said Commitment Papers (Transcript of Record, p. 104) contains the following, to-wit: "State of New York—State Commission In Lunacy Petition, Certificate of Lunacy and orders. This blank, consisting of five parts, is furnished by the State Commission in Lunacy, pursuant to Section 60 of Chapter 545 of the laws of 1896, which, among other things, provides as follows: "*The Commission shall prescribe and furnish blanks for such certificates and petitions which shall be made only upon such blanks.*" * * * "The blanks should be carefully read and properly filled out to insure the commitment of a patient." After such a mandatory and particularized and italicized warning regarding a regular and legal form of procedure in filling out said blanks, it is reasonable to assume that said blanks would in each and every case be so filled out. But in plaintiff's case a gross irregularity occurs three times. Once upon the back of the cover of said Commitment Papers (p. 114). Once upon line 155 therein,

and once again upon line 350 therein. Moreover the two latter gross said irregularities are made in defiance of italicized mandates. In said first of said two instances —said italicized mandate line 156 is as follows, to wit: (*It is essential that the official title of the institution should be correctly inserted*)," p. 109. In accordance with said mandate the following should have appeared upon said line 155: "The Society of the New York Hospital." In place of said official title appears, however, the fancy name of "*Bloomingdale Asylum, at White Plains.*" In said record of said two instances of gross irregularity and italicized mandate, line 349 is as follows, to wit: ("*Insert, correctly, official title of institution.*)" Whereupon we discover that said first of said two instances, of gross irregularity, presents a new phase of gross irregularity in addition to said first gross irregularity's original grossness, to wit. In place of finding upon said line 350 "The Society of the New York Hospital," which, if law's mandates mean anything, should have been there, and, astounding though it sounds, in place of finding what should have been there if consistency even in irregularity can aid in showing an honest error, to wit, "*Bloomingdale Asylum at White Plains,*" *what do we find?* We find that said gross irregularity, said "*Bloomingdale Asylum at White Plains,*" has, so to speak, undergone a metamorphosis taken on a new shape, and now stands forth as "Bloomingdale *Insane* Asylum at White Plains, *N. Y.,*" to which phantom institution, so to speak, to which illegally designated concern plaintiff was duly committed, for two lines further down, line 352 (p. 113), appears the following, "Signed, H. A. Gildersleeve"; and on line 353 "Justice Supreme Court, State of New York." Incredible as it sounds said metamorphosed said gross irregularity said "*Bloomingdale Insane Asylum at*

White Plains, N. Y." upon said back of said cover of said Commitment Papers experiences, so to speak, a second metamorphosis, and now dwindles into "*Bloomingdale, White Plains, N. Y.*" If it is true, as said mandate reads, said line 11, "The blanks should be carefully read and *properly filled out to insure the commitment of a patient,*" and if it is furthermore true, as said mandate reads, ("*It is essential that the official title of the institution should be correctly inserted.*") said line 156, then it is also true that a failure to properly fill out said blanks fails to insure the commitment of a patient; and, furthermore, it is also true that if it is *essential* that the official title of the institution should be correctly inserted it is essential. If the above is correct, it follows inevitably that said failure to insure the commitment of the patient did fail to secure said commitment through said failure's being in its nature *essential.*

The same gross irregularity is repeated frequently in the Proceedings in 1899. To take only three of said instances, which from the said instances importance in said proceedings stand out boldly. The said myth of "Bloomingdale" is passed along and given a helping hand by Lawyer Candler of the other side, in said proceedings. In said Candler's examination, *supra*, of said Carlos F. McDonald, said Candler says: "Have you visited him (plaintiff) in the Bloomingdale Asylum for the Insane?" (Transcript of Record, p. 120). Small wonder that the public is fooled, and regards "Bloomingdale" as a public institution more or less eleemosynary in its nature when said Society of the New York Hospital winks at infractions of the law regarding the correct name of the institution to be inserted in all Commitment Papers, and so sails like a pirate under false colors—with Commodore Elbridge T. Gerry at the

wheel and the Hon. Joseph Hodges Choate—so to speak —first mate.

The same irregularity occurs four times in the affidavit filed June 23rd, 1899, with the Decretal Order by Egerton L. Winthrop, Jr., of the said firm of Jay and Candler (pp. 136-137), to wit: "John Armstrong Chanler * * * from Bloomingdale Asylum." Again "the said John Armstrong Chanler had been committed to the Bloomingdale Asylum for the insane." Lastly "Dr. Samuel B. Lyon, the Superintendent of the Bloomingdale Asylum for the insane."

The same irregularity occurs twice in the said decretal order of said Judge Henry A. Gildersleeve (p. 136), filed and recorded June 23rd, 1899, a certified copy of which we exhibit to wit: "Dr. Samuel B. Lyon, the person in charge of Bloomingdale Asylum." Lastly, "He (said John Armstrong Chanler) was committed to the Bloomingdale Asylum, White Plains."

"It has been held that Statutes providing for the examination, commitment, and custody of insane persons are mandatory, and must be strictly pursued: Meurer's Appeal, 119 Pa. St., 115; *State* v. *Baird*, 47 Mo., 301; *Territory* v. *Sheriff of Gallatin County*, 6 Mont., 297, *Note* 43 Am. St. Rep., 531.

Point 11. The Proceedings in New York City, in 1899, before a Commission and a Sheriff's Jury to declare plaintiff an incompetent person *in absentia*, plaintiff never being before the jury or represented in Court in any way, were void *in toto*, for they were without due process of law and therefore unconstitutional for the following reasons. (*a*) There was lack of proper notice, for plaintiff being at the time in duress of imprisonment, illegally confined under a void proceedings, and without access to counsel, the so-called notice was no notice

at all.* The Supreme Court of New York had in effect civilly murdered Chanler. It had in effect illegally rendered him civilly dead—an insane person is *civiliter mortuus*—it had, so to speak, placed him in his coffin, and in the act of nailing down the lid and consigning him to the tomb—the proceedings to appoint a committee of his person and estate—served notice on his corpse to be present at the said ceremony. He having been rendered physically incapable of observing said summons by the said illegal act of said Supreme Court which said act had, by confining him for two years in a madhouse cell, rendered him for the time bed-ridden, as the experts in the pay of the other side virtually admit. Said proceedings in 1899 being in point of fact conducted in plaintiff's absence through plaintiff's said enforced physical inability to be present thereat were therefore also, in like manner, as said proceedings in 1897—truly and typically *ex parte* and therefore utterly void. (*b*) *There was lack of opportunity to appear and be heard.* For plaintiff, upon the sworn testimony of the medical men in the pay of the Petitioners, was incapacitated from coming to Court, plaintiff being in bed with an affection of the spine at the time of said trial, and having been so for more than three weeks previous thereto.

Said Subsequent Proceedings to Appoint a Committee.

Plaintiff was confined in the Asylum of "The Society of the New York Hospital" at White Plains, New York, from March 13th, 1897, until May, 1899, before any

*A sinister point in this case, and one whose influence saturates the entire proceedings with a taint of wrong intolerable to law, is the fundamental fact that a citizen of a foreign State was lured into the State of New York, with a view to subjecting said citizen to the jurisdiction of the New York courts.

steps were taken to have plaintiff declared incompetent and to have a committee of plaintiff's person and estate appointed. And it must be noted that this detention was an illegal one, *absolutely* void, that plaintiff was UNDER DURESS OF IMPRISONMENT.

In May, 1899 (Transcript of Record, p. 78), a petition was filed by two of plaintiff's brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler, aforesaid, to have plaintiff declared an insane and incompetent person by a Sheriff's jury, and a committee appointed for plaintiff's person and estate.

It appears by the record of said subsequent proceedings that an order was entered on the 9th day of May, 1899, requiring:

"Notice of the application prayed for in said petition be given in the following manner, a copy of this order and of the said petition, affidavits and notice of motion shall be served upon the said John Armstrong Chanler, the alleged incompetent person, personally * * * by delivering the same to him in person."

It was also provided that other members of his family, not petitioners, should be served with like notice.

Under this order the following notice was issued to plaintiff (p. 79):

"Please take notice that upon the annexed petition and annexed affidavits, a motion will be made at a Special Term, Part 1, of the Supreme Court, State of New York, held at the County Court House in the Borough of Manhattan, in the City and County of New York, on the 19th day of May, 1899, at ten and a half o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order that the prayer of the said petition be granted, and for such further and other order as shall be proper in the premises."

This notice was served by William White Whittaker,

a clerk in the office of Messrs. Jay and Candler, as appears from his affidavit, in said certified copy of proceedings 1899, by delivering to plaintiff a copy thereof, at said "Society of the New York Hospital," White Plains.

On the 19th day of May, 1899, the Court entered an order for the appointment of a commission *de lunatico inquirendo* (Transcript of Record, p. 92).

On the 23rd of May, 1899, the appointment of the three Commissioners was issued, and they were instructed "to make inquisition into the facts hereinbefore recited." The Commissioners were also directed to (pp. 92-93)

"cause previous notice of the time and place of execution of this notice to be given to the said John Armstrong Chanler and to Doctor Samuel B. Lyon, the person having charge and care of him * * * and that whenever you shall so demand, the said Doctor Samuel B. Lyon shall produce before you and a jury the said John Armstrong Chanler to be inspected and examined by you and the said jury, but that in your discretion you may dispense with the attendance of the said John Armstrong Chanler before you and the jury unless the jurors some or one of them shall require the attendance of the said John Armstrong Chanler before the jury."

In the pursuance of this order the three commissioners qualified and issued the following notice (p. 100):

"Please take notice that a commission heretofore issued out of under and by order of the Supreme Court dated the 23rd day of May, 1899, to inquire whether John Armstrong Chanler is an incompetent person and by reason of which infirmity he is incapable of managing his person and property and to us directed as com-

missioners, will be executed at the County Court House in the Borough of Manhattan and City of New York on the 12th day of June, 1899, at four o'clock in the afternoon of that day."

By the affidavit of William White Whittaker it will appear that this notice was likewise served on plaintiff at said "Society of the New York Hospital," White Plains, and upon said Dr. Lyon at the same place. (p. 100.)

The commissioners then proceeded on the 12th day of June, 1899, to inquire into plaintiff's mental condition. Plaintiff was not present at the proceedings and the attorneys for the petitioners stated that they would not produce him unless ordered so to do by the commissioners. (pp. 101-102.)

The commissioners did not at any stage of the investigation order plaintiff to be produced, nor was there any person present in plaintiff's behalf authorized in any way to represent plaintiff. Doctor Lyon, who testified, stated distinctly that plaintiff did not wish him (Lyon) to represent him in the proceedings (p. 115). He stated that said plaintiff was physically incapacitated from being present before the jury. And upon further examination said Dr. Lyon stated that plaintiff would be temporarily injured mentally and physically by his production before the jury.

Upon this statement and similar statements by the other physicians who testified the jury brought in its verdict that John Armstrong Chanler was incompetent to manage his person or his affairs (p. 136). Plaintiff was never before the commissioners or the jury. This is the statement of the facts of the second proceedings and the question arises as to the legal effect of the same.

We have seen in our examination of the first proceedings that *notice* to the alleged insane person of any proceedings permanently affecting his liberty or property,

an opportunity to be heard in defense of his rights, are essential features of that due process of law that is required by the Constitution of the United States.

Undoubtedly said second proceedings *did* effect, and *permanently,* the liberty and property of plaintiff. It was a final proceeding.

Undoubtedly the notice that was served upon plaintiff advised plaintiff of said second proceedings.

It now remains to examine the question, What is the effect of such notice when given to a person under duress and who is not actually produced at the hearing?

Opportunity to be Heard.

The whole purpose of notice, as required by the statutes, and by the decisions under the due process clause of the Constitution, is to give opportunity to the defendant or respondent to appear and defend his rights. The plain language of the text-writers and decisions of courts is that the defendant in any proceeding is entitled to NOTICE AND AN OPPORTUNITY TO BE HEARD.

The above proposition is sustained by the following excerpts from five leading cases, as well as by the following excerpt from a full note on "Due Process of Law as applied to Insane persons." 43 American State Reports, 531. Followed by numerous other excerpts from leading cases.

In *Brown* v. *Board of Levee Commissioners,* 50 Miss. 468, Simrall, J., said: "The term under consideration (due process of law) refers to certain fundamental rights which that system of jurisprudence of which ours is a derivative has always recognized. If *any of these* are disregarded in the proceedings by which a person is condemned to the loss of life, liberty or property, then the

deprivation has not been by 'due process of law'."

Am. and Eng. Ency. of Law, p. 296, n. 2.

"* * * the most satisfactory definition (due process of law) is that it secures to every one the right to have notice of any proceeding by which his rights of life, liberty or property may be affected, and to be afforded an opportunity to defend protect and enforce such rights in an orderly proceeding adapted to the nature of the case."

Am. and Eng. Ency. of Law, p. 296, and ca. ci.

John L. Bethea, Adm'r. of Susannah Robinson, dec'd, against *Alexander McLennon.* 23 North Carolina Reports 1840, page 523, 526-7. (Iredells Law Vol. 1.) (*supra*).

The Court held: "It is true, that the lunatic is entitled to be present before the jury; and if they deny his right, such denial would be sufficient cause for setting aside the inquisition."

Stafford v. *Stafford*, 6 Martin's Rep. 643. (*supra.*)

Porter, J., said: "But if, on the contrary, the petition of interdiction is solicited, from malice, or through error, against one of sound mind, it is not perceived by us why the proceedings should be carried on, without his knowledge. So far from it, that we think it indispensable he should have the opportunity afforded him to hear and confront those, who by their evidence are about to deprive him of all control over his actions, and take from him the enjoyment of his property. The defendant had a right to demand in the appellate court, legal proof of her insanity, and that legal proof was not furnished by testimony taken out of her presence. The principles

on which this case has been supported might place the wisest man in the community under the control of a curator, and hold him up to the world as an adjudged insane."

In Re William M. Bryant, 3 Mackey, 489. (*supra.*)

Counsel said: "Due process of law, as defined by the courts and by the law-writers, does not mean, the certificate of two physicians and the request of a sister. It means laws which hear before they condemn, and render judgment only after trial. It cannot be a police regulation, independent of the judiciary and entirely under the control of the Legislature. This would enable the Legislature to deprive the citizen of his liberty, without the intervention of the judiciary or any other department of the government." 4 Wheat, 519. * * *

The Court of Maryland (Chancellor Bland) said: "Generally and technically speaking, those only are considered lunatics who have been so found and returned; without an inquest and return thereon, no one can be judicially treated as a lunatic and be debarred of his liberty, or have the management of his property taken from him. The power to divest a citizen of his personal freedom and of his property, is one of the most extraordinary and delicate nature; and should, therefore, never be exercised without observing every precaution required by the law." Rebecca Owings' Case, 1 Bland Ch. Rep. 290. * * *

Mr. Justice James said: "* * * One of the terms for admission is that two physicians shall certify to the insanity of the party. But that does not do away with the necessity of a proper judicial ascertainment of the

fact of insanity. The provision for the physician's certificate only contemplates the fact that a person may have been found insane by a jury on inquiry, and yet may have become sane again, and, therefore, the certificate is to show that the insanity has not ceased. As a matter of interpretation, the statute is merely permissive. It gave no power to seclude a person *in invita* who has not been judicially found to be insane. * * *

"There must be a regular adjudication of the question by due process of law, without which even the Chancellor cannot act; and due process of law in establishing the insanity of a person has long been declared to be by inquiry through a jury. * * *

"The deprivation of the liberty of a citizen upon the ground of lunacy is a matter of very grave importance, because it may easily happen that for fraudulent purposes, perhaps with a view to deprive a person owning property of his control over it, a perfectly sane man might be sent to an asylum by his relatives, upon a certificate of two physicians, and be illegally confined there for years."

Due Process of Law as Applied to Insane Persons, 43 American State Reports, 531. (Note.)

It is a fundamental principle of both State and National Constitutional Law and that no man shall be deprived of "life, liberty or property" without "due process of law," and under the express provision of the Fourteenth Amendment to the Constitution of the United States, no State shall deny "to any person within its jurisdiction the equal protection of laws." The right of personal liberty is thus jealously guarded by constitutional law, *and we are unaware of any distinction between the civil rights of a sane person, and those of an*

insane subject of the government. Nor shall there be any. *Persons, though insane, are still human beings, and laws which provide for their commitment to hospitals for proper care and treatment, mark, it is said, the vast difference between civilized free people and a savage nation.* Such laws are common, but it must be observed in connection with them, that all power over the person is liable to abuse. The deprivation of the liberty of a citizen upon the charge of insanity, is a matter of very grave importance, *because it may easily happen that for fraudulent purposes, perhaps with a view to deprive a person owning property of his control over it a perfectly sane man may be sent to an asylum by his relatives, upon certificates of physicians merely, and be illegally confined there for years.* The civil rights of insane persons do not seem to have been often adjudicated by the Courts, and a close search for authorities reveals the facts that, since the ratification of the Fourteenth Amendment, in July, 1868, its doctrines as applied to such persons have seldom been defined. *Enough is gleaned from the authorities, however, to show that insane persons have rights that the mere existence of the fact of insanity does not take away or abridge the rights of a citizen, and that a person charged with insanity cannot be deprived of his civil rights without the formalities prescribed by law.* * * *

Commonwealth v. *Kirkbride*, 2 Brewst. 400, 419; and it has been held that statutes providing for the examination, commitment and custody of insane persons are mandatory and must be strictly pursued; Meurers Appeal, 119 Pa. St. 115: *State* v. *Baird*, 47 Mo. 301; *Territory* v. *Sheriff of Gallatin County*, 6 Mont. 297. If "due process of law" means the regular and orderly course of judicial proceedings in the administration of justice it would also seem clear that a determination of

insanity is not conclusive, without the person charged with being insane has had notice and opportunity to be heard either in person or by counsel, an opportunity to produce witnesses, and to confront those seeking his retirement to an asylum or hospital, and in general to make whatever defense may be justified by the circumstances of the case. * * *

In the class of cases under consideration "due process of law" undoubtedly means, "in the due course of legal proceedings, according to those rules and forms which have been established and for the protection and private rights"; *Burdick* v. *People*, 149 Ill. 600; 41 Am. St. Rep. 329. It means, at least some legal procedure, in which the person proceeded against, if he is to be concluded thereby, shall have an opportunity to defend himself: Doyle Petitioner, 16 R. I. 537; 27 Am. St. Rep. 759. For example, a state statute which authorizes the placing of insane persons in certain hospitals or asylums within the State by their parents, guardians, relatives or friends, or if paupers, by the overseers of the poor, upon certificates of their insanity, made by two practicing physicians of good standing, and which provides that when placed in hospitals or asylums they may be lawfully received and detained therein, until discharged in one of the modes provided in the statute, where such statute does not provide a procedure by which the person confined can, as of right, defend himself, is void, being in conflict with the due process clause of the national constitution: Doyle, Petitioner, 16 R. I. 537; 27 Am. St. Rep. 759.

The arrest of a person upon the charge of insanity for the purpose of confining or committing him in an insane asylum is, strictly speaking, not an arrest in either a criminal or civil proceeding, but is one sui generis, *and ought not, in this day of regard for personal liberty,*

to be allowed otherwise than upon information on oath, and an order made directing the alleged lunatic to be brought before the Court for examination. * * *

All reason in favor of confinement without legal investigation assumes the person to be insane. *The question of insanity is the very one to be adjudicated.* The question as to whether, in doubtful cases, an inquisition to determine the insanity of a person is a prerequisite to his confinement in an asylum came up in the case of Van Deusen *v.* Newcomer, 40 Mich., 90.

The Court was equally divided, two of the Justices holding that it was necessary, and two of them that it was not. In this case, Mrs. Newcomer, the defendant-in-error, being at the passenger house of the Michigan Central Railroad at Albion, was, on October 1st, 1894, forcibly taken and put aboard the cars of that railroad and removed to the Michigan Asylum for the Insane at Kalamazoo, where she was restrained of her liberty until August 4th following. The persons chiefly instrumental in procuring this confinement were her son-in-law and his mother, with whom she had difficulty, but her daughter gave consent. A person having no more legal authority than that which might be claimed for any citizen accompanied her on the cars and to the asylum. The reason assigned for removing Mrs. Newcomer to the asylum was her insanity. There had been no judicial finding of the fact, and it was not made to appear that there were any such manifestations of mental delusions as indicated danger to others. The plaintiff-in-error was, at that time, in charge of the asylum, and he received and detained Mrs. Newcomer in the full belief that she was insane. It was not shown that the medical and other assistants in the asylum believed her to be insane while she remained there. On being discharged from the asylum Mrs. Newcomer

brought suit for false imprisonment, and recovered six thousand dollars damages. Mrs. Newcomer claimed never to have been insane at all, and the contest in the Court below was mainly over the question of fact. The defendant's theory was that the restraint of insane persons in asylums is lawful, and being lawful, the placing of them, whether for their own benefit or for the protection of others, is in itself "due process of law," even in the absence of any judicial investigation into the question of sanity. *While this theory was approved by two of the Justices, it was disapproved by Justices Cooley and Campbell. The former, in his opinion, pointed out difficulties in proceeding without judicial inquiry, showing that the law should not tolerate the forcible taking and detention of one in an insane asylum upon the mere assertion that he is mentally unsound; that secret investigations into cases of this character should be frowned down, that safety lies in the publicity of the proceedings; and that while it is no doubt true, a public trial of the fact of insanity would be more or less exciting and disturbing to a mind already in a diseased or abnormal condition, it is by no means certain that the consequences would be more serious than those likely to follow from the sudden arrest or the removal for confinement in the asylum of a person who believes himself to be perfectly sane. "An insane person," said the astute Justice, "does not necessarily lose his sense of justice or his right to the protection of the law; and when he is seized without warning and without the hearing of those whom he might believe would testify in his behalf, and delivered helpless into the hands of strangers, to be dealt with as they may decide within the limits of a large discretion, it is impossible that he should not feel keenly the seeming injustice and lawlessness of the proceeding." "Nothing but actual in-*

sanity," said Campbell, C. J., "will authorize the seclusion of one who makes known his objections, and claims against reception. If no objection is made by a sane person to his own seclusion he cannot complain of it afterward. The authorities are uniform that there must be consent or actual insanity" (Van Deusen *v.* Newcomer, 40 Mich., 90, 142; Anderson *v.* Burrows, 4 Car. & P., 210; Rex *v.* Turlington, 2 Burr., 1115; Hall *v.* Semple, 3 Fost. & F., 337; Fletcher *v.* Fletcher, I El. & E., 420; Look *v.* Dean, 108 Mass., 116; 11 Am. Rep., 323; Colby *v.* Jackson, 12 N. H., 526).

Insanity has a multitude of forms, and while a dangerous maniac may be restrained temporarily, even by a private citizen, without warrant, until he can be safely released or arrested upon legal process, or committed to an asylum under legal authority, this is not the case in the milder forms of insanity, and even the desire to promote the welfare of the unfortunate individual does not justify an arrest, for nothing is more harmless than some of the milder forms of insanity. The right of personal liberty is deemed too sacred to be left to the determination of an irresponsible individual, however conscientious. The law gives insane persons the safeguards of legal proceedings, and the care of responsible guardians (Kelcher *v.* Putnam, 60 N. H., 30; 48 Am. Rep., 304).

It has been held that a commission to examine a person alleged to be an imbecile, etc., issued without the requisite notice, and neither preceded nor followed before judgment by the appointment of a guardian *ad litem*, is not aided by the presence of the imbecile and his representatives by counsel, even when the counsel gives his consent to the judgment appointing the guardian, it appearing that the commission issued one day was executed the next, and that the judgment appoint-

ing the guardian followed immediately. "The object of notice," it is said, "is that there may be due warning to make objection for legal cause to *the commission* or any of the Commissioners as well as to prepare for adducing evidence on the main question" (Morton *v.* Sims, 64 Ga., 298).

> "*We have always understood that no judgment of a Court is supported by due process of law if rendered without jurisdiction of the subject-matter and notice to the party, but some of the Courts have not been over strict in applying the doctrine of notice to cases of insanity. The very object of requiring notice to be given to a party charged with insanity or of requiring him to be produced in open Court where possible, would seem to be designed to prevent fraud in the procuring of verdicts of insanity without affording the defendant an opportunity of being heard.* * * *
>
> "*Attempts by interested persons to get control of the person and property of another by the aid of lunacy proceedings, or proceedings on the ground of habitual drunkenness are not infrequent, and no precaution should be omitted which may apprise the party of the proposed action, and enable him to appear and defend. The authorities and text-writers assume that the party proceeded against should have notice of the time and place of executing the commission.*"

Statutes requiring a party charged with insanity to be produced in open court, when possible, are designed to prevent fraud in the procuring of verdicts of insanity without affording the defendant an opportunity of being heard: *Fiscus* v. *Turner*, 125 Ind. 46, *ibid.*

Remedies * * * One illegally committed as an insane person may move to set aside the inquisition for insufficiency of the evidence or other material matters: *In re Perrine*, 41 N. J., 409; or he may be discharged on *habeas corpus: Territory* v. *Sheriff of Gallatin County*, 6 Mont., 297; *Doyle Petitioner*, 16 R. I. 537; 27 Am. St. Rep. 759. Or an action for damages will lie for a malicious prosecution on a charge of insanity which results in committing to an asylum one who is not insane. The order of commitment in such a case is not conclusive evidence against the plaintiff of his insanity at any time, or of probable cause for the prosecution: *Kellogg* v. *Cochran*, 87 Cal. 192. In an action by such a person, for false imprisonment the broadest latitude should be allowed in showing the jury what the patient said and did, and how he appeared when in the asylum, as facts bearing on the question of his sanity: *Van Deusen* v. *Newcomer*, 40 Mich., 90. The defendant in a lunacy proceeding may personally appeal from a judgment declaring him to be a person of unsound mind: *Cuneo* v. *Bessoni*, 63 Ind., 524.

Confinement upon Charge of Insanity After Acquittal of Crime on Ground of Insanity. * * * A statute providing for the confinement in the insane hospital of the State prison of persons acquitted of murder or other felony on the ground of insanity, until discharged by the governor on receiving the certificate of the trial judge and the medical superintendent of the State insane asylum, upon an examination made by them, after being duly summoned for that purpose by the prison directors, that the prisoner is no longer insane, has been condemned, not only upon the ground that it fails to furnish adequate means for the enforcement of the remedy provided, against the restraint being continued be-

yond the necessity which alone can justify it, but also upon the ground that it plainly violates the constitutional safeguard against restraints of personal liberty without "due process of law," the proceedings contemplated by it being not only inquisitorial and *ex parte*, but incapable of being set in motion except at the will of the prison directors, who would, therefore, practically control the liberty of the person: *Underwood* v. *People*, 32 Mich., 1; 20 Am. Rep., 633.

State v. Billings (55 Minnesota, 467, 43 Am. St. Rep., 525, January, 1894).

Collins, J., said:

> "*Mr. Webster's exposition of the words 'law of the land' and 'due process of law,' viz.: 'The general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial'*—was quoted; and then the Court went on to say that, in judicial proceedings, *'due process of law' requires notice, hearing and judgment. These words*, said the Court, *do not mean anything which the Legislature may see fit to declare to be 'due process of law,' for there are certain fundamental rights which our system of jurisprudence has always recognized, which not even the Legislature can disregard, in proceedings by which a person is deprived of life, liberty or property, and one of these is 'notice before judgment in all judicial proceedings.'* * * *
>
> "But it may be stated generally that due process of law requires that a party shall be properly brought into Court and that he shall have an opportunity when there, to prove any fact, which,

according to the Constitution, and the usages of the common law, would be a protection to him or to his property (People *v.* Board of Supervisors, 70 N. Y., 228). Due process of law requires an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing, or an opportunity to be heard, is absolutely essential. 'Due process of law' without these conditions cannot be conceived (Stuart *v.* Palmer, 74 N. Y., 183, 30 Am. Rep., 289).

"*It follows that any method of procedure which a Legislature may, in the uncontrolled exercise of its power, see fit to enact, having for its purpose the deprivation of a person of his life, liberty or property, is in no sense the process of law designated and imperatively required by the Constitution.* And while the State should take charge of such unfortunates as are dangerous to themselves and to others, not only for the safety of the public, but for their own amelioration, due regard must be had to the forms of law and to personal rights. *To the person charged with being insane to the degree requiring the interposition of the authorities and the restraint provided for, there must be given notice of the proceeding, and also an opportunity to be heard in the tribunal which is to pass judgment upon his right to his personal liberty in the future.* There must be a trial before judgment can be pronounced and there can be no proper trial unless there is guaranteed the right to produce witnesses and submit evidence. The question here is not whether the tribunal *may* proceed in due form of law, and

with some regard to the rights of the person before it, but, *rather is the right to have it so proceed absolutely secured?* Any statute having for its object the deprivation of the liberty of a person cannot be upheld unless this right is secured, for the object may be obtained in defiance of the Constitution and without due process of law. * * *

"*That it has opened the door to wrong and injustice to the making of very serious and unwarranted charges against others by wholly irresponsible and evil-minded persons*, is evident, although the method of instituting the proceedings does not affect the validity of the act. * * *

"The commission issues to the examiners, and they are authorized and directed to 'examine' the alleged lunatic. * * * *It (the examination) may be formal or informal, as they choose, and the person under examination may not have the slightest idea that he is the subject of inquiry or investigation.* The examination may be at any place where the subject can be found, or at a place convenient for the examiners. It may be public or private, and judging from the questions found in the form to be answered by the examiners, it *may consist simply in observing the alleged lunatic and in making inquiries of him or his acquaintances, or, for that matter accepting common street gossip.* To illustrate: In the certificate signed by the physicians who made this examination is the answer to a most important question, viz.: 'Has the patient shown any disposition to injure others?' The answer is 'Yes. *It is reported* that she threatens to shoot, carries firearms, and did shoot at one person passing, not knowing whom.'

"When this examination, *of which the subject need not be informed, and in which he takes no part,* is completed, the examiners are required to make a verified written report and recommendation, and on this the officer may commit without any other or further act, except that he must see the subject, either in or out of Court, informing him fully of the proceedings, and must also notify the County attorney of what is going on. *Not until after the examination, report and recommendation, upon which the officer may commit, if he so chooses, need there be any notice whatsoever to the person charged with being a proper subject for the insane asylum, nor need the County attorney be advised of the proceeding. If personal rights are of any consequence, and if they need protection at any time, such notice should precede examination, not follow it.* But aside from this serious defect in the law, it will be seen that there is *no provision which assures to the accused a trial at any time, either before or after notice, under the forms of law; no provision which guarantees to him a judicial investigation and a determination as to his sanity.* The officer before whom the inquiry is pending is nowhere required to conduct his examination with the least regard to the rights of the person charged with being insane—*his right to exercise his faculties without unwarranted restraint, and to follow any lawful avocation, for the support of life.*

"Nor is the officer obliged to hear a particle of testimony, although he is at liberty to do so. The accused or the County attorney might appear before him with an army of volunteer witnesses; but if their testimony were received or heard, or

if there was the slightest approach to a trial, it would be through the grace of the officer, not as a matter of right to the person whose personal liberty is jeopardized by the proceeding. We are not speaking of what every honorable and humane officer would do when a case was brought before him, but of what the statute would permit an officer to do.

"*Further examination of this enactment need not be made, for enough has been said to establish its invalidity and to indicate what outrages might be perpetrated under it.* The objection to such a proceeding as that authorized by this statute does not lie in the fact that the person named may be restrained of his liberty, *but in allowing it to be done without first having a judicial investigation* to ascertain whether the charges made against him are true, not in committing him to the hospital, *but in doing it without first giving him an opportunity to be heard.*

"We are compelled to the conclusion that the enactment of the sections referred to is unconstitutional, because they allow and sanction a denial of the protection of the law, and the deprivation of personal liberty without due process of law.

"As we have shown, the statute is so constructed that the opportunity to be heard in defense is not guaranteed to the person charged. It is not framed so as to compel a hearing before condemnation or a trial, under the general forms of law, before judgment is pronounced. Where it is plain that legislation upon any subject is in conflict with constitutional provisions, *the duty of the Court is obvious, and must be performed,*

> *whether the interest of a large number or of a certain class of people is involved, or the rights of a single citizen."*

As was said in the case quoted above, People *ex rel. Elizabeth Ordway* v. *St. Saviour Asylum,* 34 App. Div., at page 371:

> "*A hearing or an opportunity to be heard,* is absolutely essential, we cannot conceive of due process of law without this."

And quoting again from Cumming & Gilbert on The Poor, Insanity, etc., Laws of New York, page 173:

> "No person can lawfully be declared insane and his personal liberty permanently restricted without formal proceedings, *and an opportunity afforded him to appear personally.* * * *"

And again, from Buswell on Insanity, Section 55:

> "The party alleged to be insane has the right to have notice *and to be present* at the proceedings for determining the issue of sanity. * * *"

So in *Hinchman* v. *Ritchie,* Brightley (Pa.), 182, the Court said:

> "In all other cases * * * he is followed and the commission executed where he is found, that this *privilege of being present* may be secured to him, and secured not merely for exhibition of him to the commission and inquest * * * but also to give him full opportunity of defeat-

> ing proceedings improper, for want of foundation or legal conduct, in any of its stages."

And in the case of James, 30 How. Pr. (N. Y.), 453, it was said:

> "I think no person should be adjudged to be insane or be confined as a lunatic, except perhaps temporarily, *without an opportunity of being heard* on the question of his alleged insanity before a tribunal competent to decide it."

And in another New York case, *In re* Tracey, 1, page 580, it was said:

> "It is the privilege of a party against whom a commission of lunacy is issued to have notice and *to be present* at its execution."

Approved in *In re* Whitemack, 3 N. J. Eq., 252.

In *Holman* v. *Holman,* 80 Me., 139, the Court used this language:

> "It is a well-settled rule of the Common Law that when an adjudication is to be made which will seriously affect the right of a person, he should be notified *and have opportunity to be heard.*"

In the case of Vanauken, 10 N. J. Eq., 186, the following occurs:

> "The alleged lunatic has a right *to be present at the execution of the commission,* to make his

> defense by himself or counsel and to examine witnesses."

And in the very early case of *Ex parte* Cranmer, 12 Ves. Jr., at page 455, the Chancellor said:

> "The party certainly must *be present at the execution of the commission. It is his privilege.*"

And in the Supreme Court of the United States the same question has been discussed and passed upon. In Windsor *v.* McVeigh, 93 U. S., 278, the Court said:

> "The law is and always has been that wherever notice or citation is required the party cited has the right *to appear and be heard.*"

But it is useless to multiply authorities. The proposition is well settled that a party against whom any charge or claim is made, likely to affect his liberty or his property, must have an opportunity to be heard in his own behalf.

USUALLY BY NOTICE.

Usually this opportunity to be present and to be heard is given by notice of the nature of the proceedings and the time and place of the hearing. It would be hard to conceive a better method of giving opportunity *under ordinary conditions.* Ordinary conditions imply a defendant who is free to control his person and under no restraint. Ordinary conditions imply a defendant or respondent who is untrammelled and who is permitted to follow the inclination and determinations of his own mind. But, after all, the notice is only the *machinery* used to afford opportunity. It is not the opportunity

itself; and *opportunity to be heard* is the gist and substance of the constitutional requirement.

As was said in Windsor *v.* McVeigh, 93 U. S., 277-8: "But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered."

The question of immediate moment therefore in the case under consideration is, was an opportunity to appear and defend plaintiff's rights afforded to plaintiff; that is, was such opportunity afforded as is contemplated by due process of law?

PLAINTIFF WAS UNDER DURESS OF IMPRISONMENT.

It must not be forgotten that plaintiff was under duress of imprisonment. Plaintiff had been committed to said Society of the New York Hospital as insane, was imprisoned in said asylum and had been for two years. Plaintiff was held there against plaintiff's will and over plaintiff's protest at the time of said proceedings. And the fact that plaintiff was so imprisoned and so under duress *was known to the Court;* the record itself shows this (Transcript of Record, pp. 100-103).

First.—The notice of motion was directed to "John Armstrong Chanler, Bloomingdale Insane Asylum, White Plains, Westchester County, New York."

Second.—The affidavit of service of the notice of motion upon plaintiff discloses the fact that he was in "Bloomingdale Asylum, at White Plains."

Third.—The affidavit of said Dr. Lyon to said petition of plaintiff's said brothers shows that plaintiff was a "patient" in the Asylum aforesaid.

Fourth.—The appointment of the Commissioner directs them to inquire whether plaintiff "now in Bloomingdale Asylum in the State of New York, is an incompetent person."

Fifth.—The appointment also directs notice to be given to Dr. Lyon, "the person having the charge and care of him."

Sixth.—The affidavit of William White Whitaker that he served the notice of hearing shows that it was served on plaintiff "at Bloomingdale Asylum" and on said Dr. Lyon "in whose charge the said John Armstrong Chanler, an alleged incompetent person, is."

SERVICE ON A PERSON UNDER DURESS.

What effect, therefore, can any process have upon plaintiff under said circumstances—plaintiff being held in durance—to prevent plaintiff's following plaintiff's own inclinations and to restrain plaintiff from going where plaintiff might wish? The power of the State of New York had seized plaintiff and in effect had said to plaintiff:

> "You shall not leave this place of imprisonment to which I have confined you until the officials in charge of it and of you give you permission to do so."

What opportunity did plaintiff have to appear in

person and defend his liberty, and his entire estate?

This being so, and it being true that plaintiff, through physical inability as aforesaid, had no opportunity to appear and defend plaintiff's rights, what effect can be given to the notice that was served upon plaintiff? We find that a case somewhat similar to it has been passed upon by no less authority than the Supreme Court of the United States. In Windsor *v.* McVeigh, 93 U. S., the facts were these:

McVeigh was a Virginian and owned property in Alexandria County, in that State. During the Civil War he was a supporter of the Confederate Government and a soldier in its army. An act of Congress was passed providing for the confiscation of the property of such persons, and under that act proceedings were instituted in Alexandria County to enforce the confiscation of McVeigh's property.

Notice of the proceedings were given by publication, as was required by the statute, and in response to that notice McVeigh appeared by attorney and filed his answer in the suit.

The United States attorney moved the Court to dismiss the answer because McVeigh was a rebel. The Court did dismiss the answer and denied McVeigh the opportunity to defend his property rights and entered an order confiscating his property. The cause was taken to the Supreme Court of the United States and the proceedings were held void. The Court said, pages 277-8:

> "Until notice is given, the Court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject-matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the

> charges made. It is a summons to him to appear and to speak, if he has anything to say, why judgment sought should not be rendered. *A denial to the party of the benefit of a notice would be in effect to deny that he is entitled to notice at all*, and the sham and deceptive proceedings had better be omitted altogether."

And again, at page 278:

> "The law is and always has been that whenever notice or citation is required, the party cited has the *right to appear and be heard; and when the latter is denied (note the distinction between notice and opportunity), the former is ineffectual for any purpose.* The denial to a party in such a case of the right to appear is in legal effect the *recall of the citation to him.*"

The case of McVeigh *v.* United States, 11 Quall, 259, and the case of Underwood *v.* McVeigh, 23 Gratt. (Va.), 409, are to the same effect, and grew out of the same general state of facts.

In Underwood *v.* McVeigh, at page 418, the Court said: "No sentence of any Court is entitled to the least respect in any other Court or elsewhere, when it has been pronounced *ex parte and without opportunity of defense.* * * * A tribunal which decides without hearing the defendant or giving him an *opportunity to be heard* can not claim for its decrees the weight of judicial sentences."

Notice the similarity of the two cases in general characteristics. In both cases notice was given to the

defendant; in one by actual service in person, and in the other by publication. In both cases, the party was prevented from appearing by order of the Court. In the McVeigh case the order was entered after he attempted to appear. In the Chaloner case the order was entered before notice to Chaloner. In both cases it was the order of the Court which nullified the notice that was given. McVeigh could not appear because the Court *would* not let him. Chaloner could not appear because the Court *did* not let him. Chaloner could not appear because the Court had placed him in such a position—said physical disability brought on by the confinement ordered by Judge Gildersleeve, in said Judge's said order of March 10th, 1897—that it was impossible for Chaloner to appear except by order of a competent tribunal directing said commission and said jury—or a committee made up of members of said commission as well as of said jury—to visit Chaloner in his cell—in the event of Chaloner being physically incapacitated from making the journey to Court—*and said order was never entered.* The law does not countenance the doing of a vain thing. If it required notice to be given Chaloner in the said proceedings to appoint his said committee, it required it for the purpose of giving him an opportunity of being present to represent himself in said proceedings. And if said opportunity to appear which said notice was intended to give was not in fact given, but was prevented by Chaloner's said situation—said physical disability—which was itself due to said order of said Judge Gildersleeve in March, 1897 (and under a void proceeding be it remembered), then said notice is in effect withdrawn and said proceedings are wholly *ex parte* (Windsor *v.* McVeigh, *supra;* Underwood *v.* McVeigh, *supra*). The said Commissioners had the power to require the

production of Chaloner before them and said jury. Said power was especially conferred upon them by the order of their said appointment. And said power was for the purpose not only of examining Chaloner, but also for the purpose of giving him the chance to defend himself (Hinchman *v.* Ritchie, Brightley, 182): "In all other cases * * * he is followed and the commission executed where he is found, that this *privilege of being present* may be secured to him, and secured not merely for exhibition of him to the Commissioner and inquest * * * but also to give him *full opportunity* of defeating proceedings improper, for want of foundation or legal conduct in any of its stages." And the said commission should have so ordered Chaloner's presence, had it not been for the said sworn testimony of Doctors Lyon, MacDonald and Flint, aforesaid, in effect, that Chaloner would be physically injured by said production before said commission and said jury in New York, twenty miles away from Chaloner's cell, where Chaloner lay in bed with an affection of the spine which said affection had confined Chaloner to his bed for three weeks previous, at least. Upon ascertaining which said commission and said jury, should, as public spirited citizens mindful of their oaths, have at once appointed committees made up from their number, to at once visit Chaloner. And the Court should have ordered Chaloner's presence before said commission and said jury as was done in *ex parte* Cranmer, cited above—"it is his privilege"—provided only that Chaloner was physically able to attend a Court so far removed from his place of residence at said time. Failing which, said Court should have ordered that either said commission and said jury, or a committee made up from each should visit Chaloner and examine him and afford him the opportunity to *appear and be*

heard, which said void proceeding under Judge Gildersleeve in March, 1897, had—by rendering Chaloner ill —deprived him of.

If this had been done Chaloner would have been present before the tribunal that was trying him. As the said record proves Chaloner was far from averse to receiving visitors who pretended an interest in his case and in his liberation from imprisonment. As the said record proves Chaloner received politely visitors pretending said interest, and spoke with the utmost frankness before them. As said record proves Chaloner was both physically and mentally able to sustain the strain of an interview most searching and most drastic in its questionings. He might have demanded a removal to the Federal Court. He might have made what explanation and defence he desired. He might have demanded witnesses. He might have cross-examined witnesses. He might have refuted statements made by witnesses. He might have secured counsel to assist him in preventing his further imprisonment, and the turning over to a committee the control of his entire estate and of his person as well. He would have had his day in court. It would then have been due process of law and the said proceedings would have been regular. But the aforesaid salutary order was never given. The aforesaid Commission and aforesaid jury permitted plaintiff to remain in imprisonment, where they knew plaintiff to be; they permitted the person in control of plaintiff to appear before themselves and make *ex parte* allegations derogatory to plaintiff's sanity and competency; upon which said points to wit, plaintiff's sanity and competency, depended not only the control and enjoyment of plaintiff's entire estate but also plaintiff's personal liberty, and plaintiff's good name and fame in the community, in so far as such are affected

by the stigma of insanity and incompetency: while the aforesaid commission and aforesaid jury permitted plaintiff to remain helpless—owing to plaintiff's said physical disability to appear and be heard—to remain helpless under vital charges without opportunity owing to plaintiff's said physical disability to refute said vital, and as the result proved, utterly false charges. The aforesaid Commission and aforesaid jury permitted plaintiff no opportunity to refute said utterly false and utterly vital charges upon the part of plaintiff's *quasi* jailor or any other of the equally vital and equally false allegations made against plaintiff upon the part of Doctors Macdonald and Flint. The action of the aforesaid Commission as proved by Commissioner Fitch, and the action of the aforesaid jury, as proved by said jury's foreman prove said Commission and said jury indifferent not only to the rights of personal liberty and personal property upon the part of a citizen of the United States, but also indifferent to their oaths. Said action, to wit, Transcript of Record, p. 133, fol. 257: "Mr. Candler: 'That is our case.' Mr. Candler: 'There is a desire that the respondent be produced here before the jury; I think it is entirely proper and I shall take an adjournment to any day that will be agreeable to the Commissioners and the jury.' The jury states that they do not desire to have the respondent produced in court. Mr. Candler: 'I want to comply with the wishes of the Commissioners and jurors.' A juror: 'The jury does not care to have Mr. Chanler produced before them and for that reason there is no necessity for an adjournment, we can render our verdict now.' Mr. Candler: 'The order of the court reads that if the jury or any of the commissioners desire to have the respondent produced in court and have him put on the stand they may do so.' The foreman: 'It will be very hard to bring this

jury here again and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand.' Transcript of Record, p. 133, fol. 257. By Mr. Fitch (re-examining said Dr. Macdonald): Q. 'Do you think, under the circumsances it would be unnecessary (to produce plaintiff in court) unless the Commissioners and jury desire to have him produced?' A. 'Yes, sir.' Com. Fitch: 'I think you have covered the ground. We wanted to have some reason why he has not appeared at this inquest.'" *Not* "We wanted to get at the truth of this matter" or "We wanted to get at the reason why" but "We wanted to have some reason why he has not appeared at this inquest." Any reason apparently would suffice Mr. Commissioner Fitch, *any reason;* even a reason as grotesquely ludicrous as totally devoid of logic, reason, common sense or any other quality save humor as the preposterous one said Commissioner builds his hopes upon, to wit: "and if you say it would be an injury to him and unduly excite him to bring him unless the commission found it necessary that is sufficient." As was said in *Windsor* v. *McVeigh*, above cited: "The subsequent sentence of confiscation of the property (opportunity to be heard having been denied) was as inoperative as though no monition or notice had been issued." And in *Underwood* v. *McVeigh,* cited above, the Court said: "The sentence of condemnation and sale was a nullity—void *in toto.* It was rendered *absolutely void* by the act of the Court in refusing to permit McVeigh to appear and be heard." Upon reading said proceedings of 1899 and signing them, the court, upon seeing, as we shall presently prove appears upon the face of said proceedings that plaintiff owning: *first* to plaintiff said physical disability—*second* to said

court's said failure to order that, provided plaintiff should be unable for any reason to appear in court, said commission and said jury, or a committee made up from members of said Commission as well as from said jury, should visit plaintiff in plaintiff's place of imprisonment and examine plaintiff personally—*third* to the fact that all the three medical experts who testified for the other side did so, to the effect, that plaintiff was physically incapacitated from appearing in Court as the following proves (Transcript of Record, p. 134, fol. 259): (Doctor Samuel B. Lyon having been previously sworn is recalled by Commissioner Fitch). "By Com. Fitch: Q. 'Do you not think it would do him (plaintiff) harm to be produced in court) physically and mentally?' A. 'Yes, sir.' Q. 'And do him an injury?' A. 'Yes, sir.'—Upon reading said proceedings and upon seeing as we shall presently prove appears upon the face of said proceedings that plaintiff owing to the said *three causes* was physically unable to appear and therefore in the eye of the law did not have an opportunity to appear in court; said court in failing to order a new trial practically and in effect "*refused to permit plaintiff to appear and be heard*" *by "denying plaintiff benefit of said notice.*" It is a rule with all tribunals that no man can be asked to come into court at the cost of his health and mental or bodily welfare. Common humanity suggests such a ruling. Hence it has come to pass that the certificate of a physician—an affidavit by said physician—that a party could not be produced in court without physical or mental detriment exempts said party from appearing, and the trial of said party even upon so grave a charge as murder is postponed until said party is physically and mentally able to appear. *Ergo* a trial had when the defendant is not in a physical or mental condition to appear, and

therefore does not appear, is a trial where said defendant had no opportunity "to appear and be heard." Such is the exact case with plaintiff. Plaintiff is alleged upon the sworn testimony of said Doctor Samuel B. Lyon to have said at the time that plaintiff was physically unable to be present at said proceedings on account of a pain in plaintiff's spine (*ibid*, p. 115, fol. 226) plaintiff having, upon said Doctor Lyon's said testimony, kept plaintiff's bed for more than three weeks and being in bed at said time of said trial. Plaintiff swears in plaintiff's affidavit subjoined hereto that said Doctor Lyon's said statement *in re* plaintiff's said statement *in re* plaintiff's spine is correct. Plaintiff's said statement *in re* said pain in plaintiff's spine is worthy of credence for three reasons.

First. Plaintiff upon the sworn testimony of witnesses of the other side is an upright man. The said Medical Examiners in Lunacy state (lines 223-224 of said Commitment papers) "He (plaintiff) does not indulge in any bad habits." Said statement is borne out by said Doctor Lyon (proceedings 1899, p. 15) where said Doctor Lyon says: "He (plaintiff) is a very honorable man." Transcript of Record, p. 118, fol. 231.

Second. Said Doctor Lyon swears (same page *ibid*) "He (plaintiff) went out by himself an hour or so—then he ceased to go out because he was physically unable to." Said physical inability alluded to by said Doctor Lyon preceded, as appears upon said Doctor Lyon's said testimony, said pain in plaintiff's spine, which, growing worse confined plaintiff to plaintiff's bed, where plaintiff was at said time of said trial and had been for at least three weeks as aforesaid.

Third. Said Doctor Lyon swears (p. 118, fol. 231) that plaintiff told said Doctor Lyon "that he (plaintiff) could not come (to court) on account of his infirmity."

Q. "Did that infirmity really exist or was it a delusion?" A. "I think he has a pain in his spine * * * he did not feel as if he could stand up; he has kept his bed for over three weeks at least." Although all three said Doctors do their best to belittle plaintiff's said infirmity in order, on the evidence patent to a careful student of said testimony at said proceedings in order to prejudice said Commission and said jury against plaintiff, and cause said commission and said jury to conclude that plaintiff was not only a hypochondriac, but was indifferent to said Commission and said jury and said proceedings, and did not care to take the trouble to obey the summons and appear in court and defend plaintiff's good name and plaintiff's rights, although all three said Doctors do their best as aforesaid to belittle plaintiff's said infirmity, yet when there seems for a transitory moment—and in spite of the reiterated protests of said jury in strenuous opposition to said proposition—yet when there seems for one fleeting moment a possibility of the question of plaintiff's being brought to court all three said Doctors at once change their base with amazing swiftness, if not with a like ability. Said Doctor Lyon is so anxious to prevent plaintiff's appearance on the witness stand that said Doctor in said Doctor's zeal does not shrink from swearing in two opposite directions. (Transcript of Record, p. 133, fol. 257.) "Com. Ogden: 'The respondent can be produced in court without any injury or harm being done to himself—I understand the doctors have testified that he is physically able to attend court.' Mr. Chandler: 'I shall produce him here if it is the wish of the commissioners, and if we take an adjournment to some other day.' Com. Fitch: 'I will ask to have Dr. Lyon recalled' (p. 134, fol. 259). Doctor Samuel B. Lyon having been previously sworn is recalled by Doctor Fitch. By Mr. Candler: Q. 'Doctor, will you be kind enough to state

whether in your judgment, in view of the desire of John Armstrong Chanler not to come before this Commission and jury that it will do him an injury to bring him down here against his will?' A. 'I think it would be—I think he would be very much incensed and get excited; I think it would be an injury to him. When I said he was physically able to come down I mean if he wanted to come, but not forcibly—not to bring him down forcibly.' Q. 'You think it would exhaust him to bring him down here before these commissioners and jurors?' A. 'Yes, sir.' By Com. Fitch: 'You think it would be an injury to him to bring him down here? On your former testimony you said it would be no injury.' A. 'It would be no injury.' Q. 'Now you are willing to say it would do him harm and injury if he were brought down here before this commission and jury.' A. 'I don't want my testimony to be contradictory. I think his illness is hypochondriacal. He has the physical strength to come down, but I think he would be excited and disturbed by it and it would make him uncomfortable' (*sic*). Q. 'Do you not think it would do him harm physically and mentally?' A. 'Yes, sir.' Q. 'And do him an injury?' A. 'Yes, sir.' Q. 'Not permanently but temporarily?' A. 'Yes, sir. He is a man that don't bear opposition; he becomes excited—he does not brook opposition.' By a juror: 'Would you have to use force to bring him here?' A. 'It would just depend; it would depend upon how he took it; he said he did not want to come down.'" Upon examining the above peculiar sworn testimony one is struck by two things.

First. One is struck by the craft displayed by Lawyer Candler in playing upon the human nature of said jury, to wit. Said jury have iterated and reiterated their dislike to having plaintiff placed upon the stand. Said

foreman of said jury has gone so far as to announce that (Transcript of Record, p. 133, fol. 257). "It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand." Said exceedingly frank foreman of said jury was evidently set against bringing the jury there again. An adjournment would obviously do that, therefore an adjournment of all other things was the thing at that time that said frank foreman regarded with hostile eye. Said lawyer Candler was quick to seize upon said weak spot in said foreman and promptly thrust said obnoxious proposition of an adjournment re-enforced by the pleonastic "to some other day" (*ibid* fol. 257)—prominently under the nose of said foreman. Mr. Candler: "I shall produce him (plaintiff) here if it is the wish of the commissioners *and if we take an adjournment to some other day.*"

Second. Upon examining said above peculiar sworn testimony one is struck by the following. Said Lawyer Candler says: (*ibid* fol. 258). Q. "Doctor, will you be kind enough to state whether in your judgment, *in view of the desire* of John Armstrong Chanler *not to come before this commission and jury* that it will do him an injury to bring him down here against his will?" It will be noted that said lawyer Candler does not say "in view of John Armstrong Chanler's statement that he is physically unable to be present on account of a pain in his spine" but "in view of the desire of John Armstrong Chanler not to come before this commission and jury." Doctor Lyon is not the only one of said Doctors who changed base precipitately. Said Doctor Carlos F. Macdonald said (*ibid*, fol. 241): "I examined him (plain-

tiff) again in company with Dr. Flint at Bloomingdale on April 20th, 1899, this year. This examination lasted from about six-thirty to eight o'clock P. M. On this occasion he was in bed and he was in what seemed to be his usual physical condition. He did not at first complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine just above the sacrum. * * * He was wearing a porous plaster which he said gave him instant relief when he applied it. He said his nervous system was run down under his 'incarceration.' * * * He said nothing about spinal trouble except in answer to questions. We formed the opinion he had no disease of the spine and the difficulty complained of is a delusion probably temporary. He received us on this occasion very cordially again. * * * He talked most freely and seemed to conceal nothing from us." So much for Doctor Macdonald's debonnair diagnosis of plaintiff's said painful and prolonged suffering. But said Doctor Macdonald trims about as swiftly—but less clumsily—than said Doctor Lyon when there arrives the said fleeting possibility of the question of plaintiff's being brought into court. (*Ibid*, fol. 259.) "Doctor Carlos F. Macdonald, having been previously sworn, is recalled by Doctor Fitch. By Mr. Candler: Q. 'Will you be kind enough, Doctor, to state your views in regard to the effect upon Mr. John Armstrong Chanler to bring him down here in view of the statement which he made to Doctor Lyon in reference to his preference not to come?' A. 'I think it would excite him very much; in that way it would tend to aggravate his mental condition. He is physically able to come down here, but it would unduly excite him; it would undoubtedly excite him very much and exhaust him."

Doctor Austin Flint, Senior's, opinion affords very

small hold for dissection. Said opinion is, in effect, merely an affirmation of the said opinion of said Doctor Macdonald. (pp. 125-126, fols. 244-246, *ibid.*) "Doctor Austin Flint, being called as a witness for the Petitioners, was duly sworn, and testified as follows: By Mr. Candler * * *

A. 'I examined Mr. Chanler March 16th, with Doctor Macdonald, and I have listened carefully to his testimony and that is the testimony that I should give if I were to detail to the jury the examination we made and the result arrived at—perhaps adding my recollection to his.' * * * (P. 135, fol. 261, *ibid.*) "Doctor Austin Flint, having been previously sworn, is recalled. By Mr. Candler: Q. 'Doctor Flint, what have you to say on this subject, in regard to bringing Mr. Chanler here under the circumstances mentioned?' A. 'From my examination of Mr. Chanler, although I quite agree with Dr. Fitch, with the general principle that the alleged lunatic should always be produced if physically able to come, it seems to me that this case is so plain and distinct that it is practically unnecessary; and if it should be necessary to use force to bring him down here against his will I think it would be detrimental to him. Those are my views, although I quite agree with the practice that a lunatic ought to be produced in court if he can'." Said Doctor Flint after putting out a delicate feeler by way of hint to the said jury and the said Commission that said Doctor Flint's said testimony, together with said Doctors Macdonald and Lyon's said testimony had quite done for plaintiff and quite rendered inquiry into the veracity of said allegations against plaintiff upon the part of said Medical men a work of supererogation, yet and nevertheless twice remarks, as follows: "I quite agree with Doctor Fitch, with the general principle that the alleged lunatic should always be produced

if physically able to come" and again "I quite agree with the practice that a lunatic ought to be produced in court if he can." Obviously if after the above reiteration, said Doctor Flint was telling the truth plaintiff was not "physically able to come." The above is the formidable array of expert opinions—all and sundry of which said expert opinions, be it remembered, are from experts of the other side—the above is the formidable array of expert opinions in support of plaintiff's said assertion that plaintiff was physically unable to be present at said proceedings in 1899 on account of a pain in plaintiff's spine (p. 114, fol. 225). As we have shown, a trial had when the defendant is not in a physical or mental condition to appear, and therefore does not appear, is a trial had where the defendant had no opportunity "to appear and be heard." As the United States Supreme Court said in *Windsor* v. *McVeigh*, 93 U. S., page 278, *supra:* "The law is and always has been that whenever notice or citation is required, the party cited has the *right to appear and be heard;* and when the latter is denied (*note the distinction between notice and opportunity*) the former *is ineffectual for any purpose.* The denial to a party in such a case of the right to appear is in legal effect *the recall of the citation to him.*" Upon plaintiff's own assertion aforesaid, *supported as aforesaid by said Medical experts of the other side* plaintiff was physically unable to be present at said proceedings in 1899. *Ergo* plaintiff had—at said proceedings—no opportunity "to appear and be heard."

As the United States Supreme Court said in *Windsor* v. *McVeigh*, 93 U. S., page 277, *supra:* "Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made.

It is a summons to him to appear and to speak, if he has anything to say, why judgment sought should not be rendered. *A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all*, and the sham and deceptive proceedings had better be omitted altogether." As in the case of *Underwood* v. *McVeigh*, 23 Gratt (Va.) 418 (*supra*), growing out of the same general state of facts the court said: "No sentence of any court is entitled to the least respect in any other Court, or elsewhere, when it has been pronounced *ex parte* and without opportunity of defense * * * a tribunal which decides without hearing the defendant or giving him an opportunity to be heard cannot claim for its decrees the weight of judicial sentences.".

The said Commitment Papers (Transcript of Record, p. 113, fols. 222-223) show that plaintiff, John Armstrong Chanler, a citizen of Virginia, was committed to Bloomingdale Insane Asylum at White Plains, New York, by an order entered March 10th, 1897, by Judge H. A. Gildersleeve of the Supreme Court of that State, upon the Petition of Winthrop A. Chanler, and Lewis S. Chanler, brothers of plaintiff, and Arthur A. Carey, a cousin of plaintiff, and upon the certificate of M. Allen Starr and another, Statutory Medical-Examiners-in-Lunacy; and that personal service of process upon plaintiff was dispensed with by said Judge on the alleged ground that plaintiff was dangerous. The said proceedings under which plaintiff was so committed were had without any notice to plaintiff whatsoever, such notice having been specifically dispensed with by order of said Judge (See said Commitment Papers, fol. 223, lines 185-192). Said commitment was not temporary, but indeterminate and permanent as to time and was stated to be after "a hearing duly had" (See Commitment Papers, line 345). Said order was that plaintiff be "adjudged insane and that he be committed to Bloomingdale Insane

Asylum at White Plains, N. Y., an institution for the custody and treatment of the insane." (See Commitment Papers, line 349-351.)

Said Commitment Being, On Its Face, a Permanent Order And Without Notice, Is, For Want of Due Process of Law, Void.

In *Windsor* v. *McVeigh*, 93 U. S. *supra*, the Supreme Court of the United States said: "Until notice is given, the court has no jurisdiction *in any case* to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter."

(1) *As the above argument proves, lack of notice is lack of due process of law. As has been shown above there was lack of notice to plaintiff in said proceedings in* 1897, *by which* plaintiff was declared a homicidal maniac upon an order entered by said Judge H. A. Gildersleeve: upon the Petition of plaintiff's said brothers and cousin, Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey; and upon the certificate of lunacy signed by said Medical-Examiners-in-Lunacy said Doctor Moses A. Starr and another; upon the strength of all of which illegal performances plaintiff was summarily arrested and incarcerated for three years and eight months in the Society of the New York Hospital, White Plains, New York, until plaintiff was fortunate enough to make good plaintiff's escape therefrom Thanksgiving Eve, 1900. *Lack of due process of law renders any proceedings void ergo* said proceedings in 1897 were void.

(2) *As the above argument proves lack of opportunity to appear and be heard is lack of due process of law. As has been shown above there was lack of opportunity to appear and be heard—upon plaintiff's part*

through illness—in said proceedings in 1899 *before said Commission and said Sheriff's jury* instituted by plaintiff's said brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler with a view to having plaintiff declared an incompetent person, in which said proceedings said Medical-Examiners-in-Lunacy, said Doctors Carlos F. Macdonald and Austin Flint, Senior, testified in effect that plaintiff was a hopeless lunatic and a hopeless incompetent, and also joined said Dr. Samuel B. Lyon in testifying in effect that plaintiff was physically incapacitated by a pain in plaintiff's spine from appearing at said proceedings.

Furthermore. As has been shown above said court practically and in effect "*refused to permit plaintiff to appear and be heard*" by "*denying plaintiff the benefit of said notice*" for the *three* aforesaid reasons: *first*, plaintiff's said physical disability—*second*, said court's said failure to order that, provided plaintiff should be unable for any reason to appear in court, said commission and said jury or a Committee made up from members of said Commission, as well as from said jury, should visit plaintiff in plaintiff's place of imprisonment and examine plaintiff personally—*third*, all the three medical experts who testified for the other side did so, to the effect, that plaintiff was physically incapacitated from appearing in court as the following proves (Transcript of Record, p. 134, fol. 258). "(Doctor Samuel B. Lyon having been previously sworn is recalled by Dr. Fitch). By Com. Fitch: Q. 'Do you not think it would do him (plaintiff) harm (to be produced in court) physically and mentally?' A. 'Yes, sir.' Q. 'And do him an injury?' A. 'Yes, sir'." Upon reading said proceedings and upon seeing, as we have proved above, it appears upon the face of said proceedings that plaintiff, owing to the said *three causes* was physically unable to appear,

and therefore in the eye of the law did not have an opportunity to appear in court; said Court in failing to order a new trial practically, and in effect "*refused to permit plaintiff to appear and be heard*" by "*denying plaintiff* the benefit of said notice." As was said in *Underwood* v. *McVeigh*, cited above, the court said: "The sentence of condemnation and sale was a nullity—void *in toto*. It was rendered *absolutely void* by the act of the Court in refusing to permit McVeigh to appear and be heard." And in *Windsor* v. *McVeigh*, above cited, "The subsequent sentence of confiscation of the property (opportunity to be heard having been denied) was as inoperative as though no monition or notice had been issued." As the above argument proves said sentence declaring plaintiff an incompetent person was a nullity—void *in toto*. It was rendered *absolutely void* by the act of the Court in refusing to permit plaintiff to appear and be heard. The subsequent sentence practically confiscating plaintiff's property by turning said property over to said falsely alleged committee of plaintiff's person and estate (opportunity to be heard having been denied) was as inoperative as though no monition or notice had been issued. *Ergo said finding of said Commission and said Sheriff's jury in* 1899 *was a nullity—void* in toto; *and said subsequent sentence of said Court declaring plaintiff an incompetent person and turning plaintiff's person and property over to a falsely alleged committee of plaintiff's person and estate (opportunity to be heard having been denied) was as inoperative as though no monition or notice had been issued.*

As the above argument proves lack of opportunity to appear and be heard is lack of due process of law. As has been shown above there was lack of opportunity to appear and be heard—upon plaintiff's part through ill-

ness—in said proceedings in 1899, *before said Commission and said Sheriff's jury. Lack of due process of law renders any proceedings void, ergo said proceedings in* 1899 *were void.*

Said proceedings being void the possession of plaintiff's property by said falsely alleged Committee is without warrant or authority and plaintiff may pursue said falsely alleged Committee in the Courts as a trespasser upon plaintiff's property.

Plaintiff being a citizen of Virginia, and the falsely alleged Committee of plaintiff's person and estate, said T. T. Sherman, being a citizen of New York, and the amount in controversy being over three thousand dollars, the Federal Court has jurisdiction.

Point 12. The said Proceedings in 1899 were void for lack of due process of law for the following reason, to-wit. Said trial was had *in absentia.* The Court failed to direct the appearance, before said Commission and said Sheriff's jury, of plaintiff; and the Court also failed to direct that, failing this, said Commission and jury, or committees made up therefrom, should visit plaintiff in his cell in the Society of the New York Hospital, at White Plains.

Ex parte Cranmer (1806) (*supra*). Lord Chancellor Erskine said: "The party certainly must be present at the execution of the commission (*de lunatico inquirendo*). It is his privilege."

Bethea against McLennon, North Carolina Reports (1840) (*supra*). The court said: "It is true that the lunatic is entitled to be present before the jury; and if they deny him this right, such denial would be sufficient cause for setting aside the inquisition."

Stafford v. *Stafford* (*supra*). The Court said: "We think it indispensable he (the alleged lunatic) should have the opportunity afforded him to hear and confront those who, by their evidence, are about to deprive him of all control over his actions and take from him the enjoyment of his property. The defendant had a right to demand in the Appellate Court, legal proof of her insanity, and that legal proof was not furnished by testimony taken out of her presence."

Dowell against Jacks, North Carolina Reports (1859) (*supra*). The Court said: "She had no notice—was not legally represented, and what is of still greater importance, was not present, to be seen and examined by the jury."

Stewart v. *Kirkbride* (1867) (*supra*). The Court said: "Lord Chancellor Erskine (*ex parte* Cranmer, 12 Ves. Jr. 455) said: 'The party must certainly be present at the execution of the commission; it is his privilege'." The same rule has been adopted in the United States. (See Russell's case, 1 Barb. Ch. Rep. 38; and Hinchman's case, Brightley's Rep. 181.)

State v. *Billings* (1894) (*supra*). The Court said: "But it may be stated generally that due process of law requires that a party shall be properly brought into court, and that he shall have an opportunity, when there, to prove any fact which, according to the Constitution, and the usages of the common law, would be a protection to him or to his property: *People* v. *Board of Supervisors*, 70 N. Y. 228."

Point 13. The said proceedings in 1899 were void for lack of due process of law, for the following rea-

sons, to-wit: (1) Although notice of the said proceedings could have been given days earlier, the order was barely complied with in giving the required five days, and the hearing placed at the unheard of hour of four o'clock in the afternoon in New York City, more than twenty miles away from White Plains, where plaintiff was confined. This would naturally hurry the trial. (2) The constitutional guarantee of due process of law applies to the proceedings at the trial. It compels an orderly, fair, reasonable presentation of the facts, and a legal conclusion therefrom. At the said jury trial in this case there was a most colossal disregard of the rights of liberty and property. When the evidence was in—and there seemed some chance of the appearance of the plaintiff—the foreman of the said Sheriff's jury stated to the said Commission: "It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest. They think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand." And this from the foreman of a Sheriff's jury where the liberty and property of a citizen were at stake, and where said jury had not been employed for weeks or even days upon said case, but had met for the first time in their lives on said case, at four o'clock that afternoon.

1. In approaching said point one is struck by two things. *First.* One is struck by the statement that "Although notice of the said Proceedings could have been given days earlier, the order was barely complied with in giving the required five days, and the hearing placed at the unheard of hour of four o'clock in the afternoon in New York City, more than twenty miles away from White Plains, where plaintiff was confined. This would naturally hurry the trial."

Second. One is struck by the statement that "When the evidence was in—and there seemed some chance of the appearance of the plaintiff—the foreman of the said sheriff's jury stated to the said commission 'It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest.' They think the case can be submitted upon the testimony which has been given. *'They do not wish to have the respondent placed upon the stand'.*" Although said notice of said Proceedings could have been given days earlier the said order was barely complied with in giving the required five days. A moment's thought will arouse the suspicion that said undue haste was the result of some, at present, hidden motive. A moment's further thought will confirm said suspicion particularly when one connects said suspicion with said extraordinary hour for beginning a judicial proceedings of the weight and importance of said hearing upon which depended not only the entire control of plaintiff's large estate, but also plaintiff's liberty. Said suspicions will be still further confirmed by connecting therewith the monstrous remark of said foreman, to-wit, "They (the said sheriff's jury) do not wish to have the respondent placed upon the stand." "*A refusal to adjourn an inquisition for a reasonable time to enable the party charged to make necessary preparation for trial, when he has been prevented from making that preparation by the day named in the notice, is good ground for setting aside the inquisition.*" *In re Jewett*, 23 N. J. Eq. 288. Note in 43 Am. St. Rep. 531.

Point 14. The said proceedings in 1897 and the said proceedings in 1899 were void *in toto* from lack of proper evidence. Unless there is clear proof of insanity a judgment against the party founded thereon runs foul of the

constitutional provision. On the maxim that "only the best evidence procurable is admissible" no evidence, short of the alleged lunatic's personal appearance in Court or before a committee of the jury, can be the best evidence procurable of said alleged lunatic's mental and physical condition. Anything short of said personal appearance is purely *ex parte* and therefore void. The sum total of the evidence against plaintiff in the proceedings in 1897 was made up of either purely perjured testimony upon the part of the said petitioners, or purely bought and paid for testimony upon the part of the said medical examiners in lunacy hired by the said petitioners. The sum total of the evidence against plaintiff in the proceedings in 1899 was made up of the aforesaid evidence, perjured testimony, upon the part of the said medical examiners in lunacy who, as in the first instance were in the pay of the other side. The bulk of the evidence in both said proceedings had to do with the purely frivolous charge that plaintiff entered upon occasional trances, and trance-like states. Not one word was uttered at either of the said proceedings against plaintiff's business capacity, or business judgment, or business foresight, or business prudence. And this fatal omission was in the teeth of the fact that plaintiff was, at the time the said proceedings in 1897 were instituted, actively engaged in large business operations, in which plaintiff had been engaged for four years past, and was holding the position as a member of the Board of Directors in two large corporations at the time of plaintiff's said arrest and imprisonment upon a false charge of lunacy (Folios 69-70, 87-89). Not a single one of plaintiff's associates upon said Boards was called as a witness against plaintiff's sanity. In short, the whole evidence in plaintiff's case goes to prove plaintiff's permanent and unbroken sanity and competency through

life. (See Plaintiff's Exhibit 3, and Plaintiff's Exhibit 7 for identification.)

In closing said subject it might be well to draw attention to the ignorance, the professional ignorance, displayed by said Doctors Carlos F. Macdonald and Austin Flint, Senior. In the opinion concerning the psychological experiments of plaintiff-in-error, by Professor William James, M. D., Professor of Psychology at Harvard University, the following occurs, to-wit: "The Napoleon experiment falls strictly within the limits of praiseworthy research. Psychology would be more advanced were there more subjects of automatism ready to explore carefully their eccentric faculty. Although the medical profession is beginning to acquaint itself with these phenomena, it is still lamentably ignorant. Specialists in insanity in particular are ignorant, for in spiritualistic circles those automatisms are regarded as valuable gifts, to be encouraged rather than checked, and asylum Doctors hardly ever see them. When they do see them they may interpret them as delusional insanity, with which they *are* familiar, and a merely mediumistic subject may thus have grievous injustice done him. In delusional insanity there is also automatism, so 'Paranoia' so-called and mediumship have elements in common. But for 'Paranoia' to be diagnosed there must be no distinct alternation between the primary and the 'X' consciousness, and there must be marked abnormal peculiarities in the case as well as intellectual delusion. In Mr. Chanler's case there appears to have been complete alternation, and there is no sign whatever of delusion." In said opinion of the late Doctor Thomson Jay Hudson the following occurs, to wit: "The salient feature of the situation consists in the fact that he (plaintiff) has made an original and independent discovery of a most important Psychological fact. In fact it may be said to be *the* fun-

damental fact of Psychological science, since all other facts of Psychology sustain a necessary relationship to it; and many of them are inexplicable in the absence of a knowledge of the fundamental fact or principle, that Mr. Chanler discovered. It is that man is endowed with a mental faculty—or a congeries of mental faculties and powers—that lie below the threshold of normal consciousness. I do not say that Mr. Chanler was the first discoverer of this fact; for I do not know the date of his discovery. But I have every reason to believe that he was an original and independent discoverer. It is true that many eminent scientists have, within the last decade, arrived at the same conclusion, each by his own methods of investigation and experimentation. Most of them have made their experiments on others; but one of the remarkable features of Mr. Chanler's methods of research is that his conclusions were based wholly upon experiments made upon himself, together with an intelligent observation of the workings of his own inner consciousness. The advantages of that method are obvious to any Psychologist." In said opinion of Dr. John Madison Taylor, the following occurs, to wit: "At all times Mr. John Armstrong Chanler consistently holds to the view that this cerebration is the product of clear ratiocination, based upon well-authenticated and accepted facts, Physiologic, Psychologic, and Metaphysic. That the attitude of the mind, which he names the unknown or X-Faculty, is the product of mental evolution, and in varying degrees, is common to all sentient human beings, and in no manner or degree the product or reflection of any cause or influence outside the human organism. *His chief contention as to having made a discovery is that he makes practical use of this function of the subconsciousness, and through Graphic Automatism causes it to perform literary work.* * * * He sees

no reason why others should not develop the same faculty."

An examination of the statements and remarks, in said proceedings, upon the part of said Doctors Macdonald and Flint reinforce the truth of said Professor James's said remark, "Although the medical profession is beginning to acquaint itself with these phenomena, it is still lamentably ignorant. Specialists in insanity in particular are ignorant." Said Doctor Flint says in said Doctor's statement (p. 86, fol. 166): "He (plaintiff) went into a trance at the request of Doctor Macdonald and gave the most vivid illustrations of the death of Napoleon. He had told deponent and the said Macdonald that he was Napoleon only when in a trance." Said Doctor Macdonald says in said Doctor's statement "He (plaintiff) went into a trance at the request of deponent and gave the most vivid illustration of the death of Napoleon. He had told deponent that he was Napoleon only when in a trance." Granting said statements touching, "He had told deponent and the said Macdonald that he was Napoleon only when in a trance" (p. 86, fol. 166) and "He had told deponent that he was Napoleon only when in a trance," granting said statements to be true—which, as has been said aforesaid said statements are not—for in plaintiff's said affidavit plaintiff swears: "I wished to have a little fun with Mr. Macdonald and Mr. Flint, so I set a little trap for them, into which both fell head first. It was as follows. I said: 'I boldly say that I am the reincarnation of Napoleon Bonaparte.' It was as good as a play to one interested in watching the facial play of human emotions, it was as good as a play to watch the Doctors. Mr. Macdonald's feline features and cold blue eye lit up with expectant triumph. In Mr. Austin Flint, Senior, expectancy of triumph took on a heavier, but no less

pronounced, form. Mr. Flint's heavy features took on an unwonted animation and his somnolent eye lit up with the flame of anticipation. So soon as I had checked off the above facial expressions carefully, so as to be able to describe them truthfully in my brief, when occasion served, I instantly threw their hopes to the ground: I instantly added to my above remark, '*But I only say so when in a trance.*' The effect was instantaneous. Mr. Macdonald collapsed, and fairly wriggled with chagrin, as he blurted out the damaging 'You can't catch him.' The effect on Mr. Flint was shown by his sagging back into his seat with a grunt of disgust. They evidently, from their disappointment, showed that they fully realized the innocuousness of my apparently bold declaration qualified. They evidently knew that no man is mentally, morally, or legally responsible for what he says in his sleep. Therefore, they deliberately, craftily, transpose the position of the qualifying word 'only' and instead of putting it where it belonged in my sentence, move it to a point where it takes on an entirely different meaning"—granting said statements touching "He had tóld deponent and the said Macdonald that he was Napoleon only when in a trance" and "He had told deponent that he was Napoleon only when in a trance. Granting said statements to be true which, as indicated above said statements are not,—plaintiff never saying that plaintiff was Napoleon Bonaparte except when plaintiff entered a trance, whereupon not plaintiff but plaintiff's said "X" consciousness, operating plaintiff's vocal organs, pretended to be Napoleon Bonaparte, a preposterous proposition stoutly denied by plaintiff upon issuing from said trance—said statements fit exactly the case mentioned aforesaid by said Professor touching the alternation of consciousness. "For 'Paranoia'" to be diagnosed there must be no distinct alternation be-

tween the primary and the "X" consciousness." * * * "In Mr. Chanler's case there appears to have been complete alternation." By "primary consciousness" Professor James means our ordinary waking consciousness. By "X" consciousness Professor James means the consciousness in operation during trance states and trance-like states. Even said Doctors Macdonald and Flint admit that plaintiff claimed a complete alternation "alternation of consciousness" by asserting that plaintiff had said that plaintiff "was Napoleon only when in a trance:" that is to say that plaintiff's trance-consciousness—plaintiff's "X" consciousness—as Professor James terms it—completely alternated or completely changed from plaintiff's "primary consciousness," when plaintiff entered said trance. That is to say. That plaintiff's "primary consciousness" was in control of plaintiff's actions and utterances when not in a trance, and that when plaintiff entered a trance plaintiff's primary, or ordinary waking, consciousness gave place to—alternated with—plaintiff's "X" consciousness, which operated said trance, and as "X" consciousness invariably pretend to represent some person, other than the person represented by said primary consciousness plaintiff's said "X" consciousness followed said invariable Psychological rule, and pretended to represent some person other than plaintiff—arbitrarily choosing to claim to represent Napoleon Bonaparte. Now regarding the ignorance of the medical profession concerning trances and trance-like states mentioned aforesaid by said Professor James. Said Professor says: "Although the medical profession is beginning to acquaint itself with these phenomena it is still lamentably ignorant. Specialists in insanity, in particular, are ignorant." Said specialists in Insanity, Doctors Macdonald and Flint proved themselves no whit less ignorant than the general run

of specialists in Insanity in said regard for instance. Said Doctor Flint says as though he were pronouncing a final and incontrovertible doom (*ibid.*, p. 126, fol. 245), "And he (plaintiff) had the delusion of the change of personality which is observed in many cases of 'paranoia.'" Likewise said Doctor Macdonald (*ibid.*, p. 123, fol. 240): "The form of his (plaintiff's) insanity, from which he is suffering, is 'paranoia' or chronic delusional insanity, the English term of it. It is an incurable form of mental disease * * * it is also characterized in the mania known in the later stage by the change in the personality of the individual. * * * I should say that Mr. Chanler is the most typical classical case of 'paranoia' I have ever seen. I have seen thousands of them. It presents all the essential and diagnostic signs of that disease * * * and change of personality." And (*ibid.*, p. 124, fol. 242): Q. "In your opinion, Doctor, is he now of unsound mind?" A. "Yes, sir." Q. "Is he capable of attending to his person or estate—his affairs?" A. "Absolutely not." By Commissioner Ogden (*ibid.*, fol. 243): Q. "This opinion is formed on your observation?" A. "Yes, sir." Q. "And is it independent of what was told you?" A. "Yes, sir. It is confirmed, of course, there is no shadow of doubt in my mind, and I think in the experience—any experienced examiner in lunacy would reach that conclusion without any history of the case whatever. * * * It presents all the ear-marks of typical paranoia. In the physical and mental condition there is no symptom lacking to make it a perfectly typical case of paranoia. If one wanted a case for teaching or describing a case in a textbook you could not describe it more graphically than simply taking his case as it presents itself. *It is the most striking case of paranoia that I ever have seen in my life.*" From the above there was evidently little

doubt in said Doctor Carlos F. Macdonald's mind but that plaintiff was afflicted with a case of "paranoia." Now let us hear what said Doctor Austin Flint, Senior, has to say upon said interesting topic of "paranoia" (*ibid.*, fol. 245): Q. "And from what form of insanity is he now suffering? A. "He has a typical case of what is known as paranoia or chronic delusional insanity." Q. "In your opinion, Doctor, is that progressive and incurable?" A. "It is incurable and progressive and will finally terminate in dementia. If I may be allowed to say those cases frequently live for a very much longer time, quite different from paresis." Q. "In your judgment, is Mr. Chanler now capable of taking care of his estate and person? A. "No, sir, he is not." By Commissioner Ogden (*ibid.*, fol. 245): "That is the usual thing, Doctor, that a patient suffering from paranoia —it is first by degrees gets a slight form and then a mature delusion?" A. "That is the usual thing. * * * He has some fixed delusion like this delusion that he is Napoleon Bonaparte." Q. "Is his physical condition all outlined with that form?" A. "Nothing could be more typical of that form of disease; it is an absolutely typical case from every point of view." From the above there was evidently little doubt in said Doctor Austin Flint, Senior's, mind but that plaintiff was afflicted with a case of paranoia notwithstanding said Professor James's remarks aforesaid. "But for 'Paranoia' to be diagnosed there must be no distinct alternation between the primary and 'X' consciousness;" and notwithstanding, as has been shown above even said Doctors Macdonald and Flint admit said "alternation between the primary and 'X' consciousness" by asserting that plaintiff had said that plaintiff "was Napoleon only when in a trance." So much for the professional ignorance displayed by said Doctors Carlos

F. Macdonald and Austin Flint, Senior. But said admission by said Doctors that plaintiff had said that plaintiff "was Napoleon only when in a trance" does more than advertise said professional ignorance of said Doctors. Said admission places said Doctors in a rather unpleasant position as regards perjury. For said Doctors both define paranoia as "chronic delusional insanity." Said Doctor Macdonald (*ibid.*, fol. 240) "paranoia or chronic delusional insanity;" said Doctor Flint (*ibid.*, fol. 245) "paranoia or chronic delusional insanity." *How could plaintiff's falsely, grotesquely, ignorantly, alleged "delusion" regarding Napoleon Bonaparte be said to be "chronic," which means all the time, when said Doctors Macdonald and Flint both admit that plaintiff said that plaintiff "was Napoleon only when in a trance," and therefore not out of a trance; and, as plaintiff on the evidence, only entered a trance once during his whole imprisonment, once during three years and eight months, therefore not all the time and therefore not chronic. While the truth as shown above is that plaintiff stoutly denied that plaintiff was Napoleon Bonaparte either in or out of a trance.*

In this connection it is apposite to draw attention to two points in connection with said trances and trance-like states in which plaintiff from time to time entered purely for scientific research. As has been shown by said statement of said Doctor Horatio Curtis Wood (*supra*) and by the said opinion of said Professor James plaintiff is far from being a believer in spiritualism. As has been shown by plaintiff's said letter to said Woods, under date July 3rd, 1897, plaintiff is far from being either a Buddhist or a Hindu. Said documents prove plaintiff to be a scientific student who places what spiritualists claim to be the work of spirits, while the medium

is entranced, to the account of what plaintiff terms "The X-Faculty" as aforesaid. Plaintiff although a medium—upon no less an authority than said Professor James—is a believer in spiritualism. Plaintiff, while considering spiritualism a crude, ignorant and benighted form of belief even when spiritualism is regarded by its followers as a religion, plaintiff yet knows that spiritualism is a lawful calling when followed professionally as a medium, and also that spiritualism, when followed as a religion, is as safe from attack as any other religion. In a rather recent case on the Pacific coast where spiritualism, as a religion, was attacked upon the score of absurdity the Court wisely and justly held that common sense was not applicable to religious practices. That if a person considered that said person was communicating with the Deity by merely writing said person's desires upon paper and then destroying said paper that said performance, being to said person said person's religion, was therefore to said person sacred and secure from attack upon any ground of lack of common sense. Said opinion is maintained by Mr. Justice Ingraham of the Appellate Division of the New York Supreme Court in the matter of Beach, 23 App. Div. 411 (First Department, 1897). The learned Justice said: "*It is true that a belief in spiritualism may be consistent with good business instincts and sound judgment; and the mere fact that a person is a believer in spiritualism would not itself justify an inference that such person was incompetent to manage himself or his affairs.*"

Lastly, in this particular the most fruitful field of research in Experimental Psychology is that of mediumship. Modern Psychologists who pursue Experimental Psychology find in mediums a field for investigating the, at present, practically unknown cause or causes of the trance and trance-like operations of the human mind,

find a field which nothing else supplies. Said mediums are what spiritualism has thus given to Science. To return to the said allegations—false allegations—of said Doctors Macdonald and Flint that plaintiff had said that plaintiff "was Napoleon only when in a trance." Granting merely for the sake of argument that said false allegations were true what do said false allegations amount to in the light of Mr. Justice Ingraham's said opinion that "It is true that a belief in spiritualism may be consistent with good business instincts and sound judgment; and the mere fact that the person is a believer in spiritualism would not of itself justify an inference that such person was incompetent to manage himself or his affairs." Supposing said false allegations true plaintiff would have been proved thereby to be a believer in spiritualism. Taking now the other horn of the dilemma which impales said Doctors Macdonald and Flint. Suppose—but only for the sake of argument—that plaintiff had said that plaintiff "was Napoleon Bonaparte only when in a trance" and also suppose that plaintiff did not choose to protect himself in said assertion by spiritualism. Would plaintiff thereby be proved to be of unsound mind? Far from it. For plaintiff could fall back upon one or both of two sufficiently strong supports, to-wit: Philosophy and Religion. Plaintiff could fall back upon Philosophy and upon the ancient Greek doctrine of Metempsychosis, or plaintiff could fall back upon the religion of Brahma, which teaches the reincarnation of the dead in the living. *Upon the above line of argument therefore plaintiff is not insane or incompetent upon the main count—in fact, the only count worthy the name—in the indictment against plaintiff's reason in said proceedings in* 1897, *and said proceedings in* 1899: the former of which are practically wholly upon trance or trance-like utterances, while the latter

are based practically wholly upon said Napoleonic trance; in neither of said proceedings is there one word said against plaintiff's "good business instincts and sound judgment" to cite once more the language of Mr. Justice Ingraham. As was said above the said proceedings in 1897 and the said proceedings in 1899 were void *in toto* from lack of proper evidence. Unless there is clear proof of insanity a judgment against the party founded thereon runs foul of the constitutional provision. On the maxim that "Only the best evidence procurable is admissible," no evidence short of the alleged lunatic's or incompetent's personal appearance in Court, or before a Committee of the Commission as well as of the jury can be *the best evidence procurable* of said alleged lunatic's or said alleged incompetent's mental and physical condition. Anything short of said personal appearance is purely *ex parte* and therefore void. In as old a case as that *of ex parte* Smith, 1 Swanstrom, 4, in 1818, Chancellor *Lord Eldon observed, "It is a practice by no means uncommon in cases of lunacy * * * that when the lunatic cannot be removed to the jury and it is inconvenient for the jury to go to the lunatic, one or two of the jury examine the lunatic and report their observations to the rest."* In Lord Ely's case (*supra*) "try by a jury and personal examination." The reasons adducible to support said salutary practice of allowing a citizen to lay eyes upon the jury who is about to deprive said citizen of both liberty and property are too obvious to require pointing out. But in said connection a point comes which is not so obvious—to-wit: Under ordinary circumstances an affidavit of service of notice is the best proof as to service of said notice. But when said party to be served with notice is in duress of imprisonment and therefore is illegally confined against said party's will said affidavit of service loses said affi-

davit's force for the following reason, to-wit. *Where a party to be so served is at liberty the temptation to perjury upon the part of the process-server is rendered negligible.* Not so, however, when said party is in duress of imprisonment surrounded by persons—said party's physicians and keepers—whose business interests are involved in retaining said party as a prisoner and "pay patient." In said instance the door of temptation to fraud and perjury upon said part of said process-server at the paid instigation of said physicians and keepers, whose business interests are as aforesaid, involved as well as whose personal interests are endangered, that is to say said physicians reputations would be endangered should said party be fortunate enough some day to secure said party's day in court. In said instance the *real evidence* and therefore the *best evidence* as to whether said service of notice took place or whether, instead of taking place said service of notice was fraudulently sworn to as having taken place, in said instance the best evidence aforesaid is the appearance of said party to be served—said defendant—in court, or if this is not possible said defendant's word of mouth on said subject before said Commission and said jury, or before said Committee—made up from said Commission and said jury—upon visiting defendant at said defendant's place of imprisonment. Unless said Court orders said defendant's production in court or failing that, that said Committee—made up from said Commission and said jury—visit said defendant as aforesaid—unless said action upon said Court's part takes place said Court itself, as shown above, opens wide the door to perjury. As we said above on the maxim that "only the best evidence procurable is admissible" no evidence short of the alleged lunatic's or alleged incompetent's personal appearance in Court or before a Committee of the Commission as well as of the

jury can be the *best evidence procurable* of said alleged lunatic's, or said alleged incompetent's mental and physical condition. It seems palpable enough that the best evidence as to said alleged lunatic's or said alleged incompetent's mental sanity and mental competency should be the mental evidence thereof in each said instance. It also seems palpable enough that said mental evidence of said alleged lunatic's and said alleged incompetent's mental sanity and mental competency is the only real evidence procurable in said premises. All other evidence being secondary and in the nature of hearsay. For instance: Suppose the question were in a suit concerning damages recoverable through carelessness proved by the breaking, on a train in transit, of a bolt. Undoubtedly the production in court of said bolt through whose alleged fracture said accident is alleged to have occurred is the only *real evidence* and therefore the *best evidence* as to said alleged fracture. In the same way said "best evidence" rule is in operation where a written instrument is at issue. In said case said instrument itself is better evidence of the contents of said instrument than statements concerning said contents made by persons under oath, and the latter would be inadmissible until either said instrument is produced or said instrument's absence accounted for. To conclude said point we append the following:

State v. *Goodwill*, 25 Am. St. Rep. 876 (W. Virginia, Nov., 1889).

THE LIBERTY OF EACH PERSON AND HIS RIGHT TO ACQUIRE AND RETAIN PROPERTY must always be considered in connection with the rights, liberties and welfare of others, and each person must submit to such reasonable restrictions as must necessarily be imposed for the better protection of the whole community, and even for the protec-

tion of a particular class, and it will hence always be difficult, if not impossible, to define or prescribe any precise test from which to determine with unvarying certainty what restrictions upon the liberty of individuals, or of classes of individuals, are sustainable and what are not. While the courts properly hesitate to formulate definitions of liberty and of due process of law, or to give enumerations of all that may be conceded to one person or denied to another without denying to "any person the equal protection of the laws," yet they have, in some instances, given general descriptions or definitions which, while not intended to be applicable under all circumstances, are usually applicable, and therefore worthy of restatement here. Thus it was said in *People* v. *Gillson*, 109 N. Y. 389, 4 Am. St. Rep. 465: "The following propositions are firmly established and recognized: A person living under our Constitution has the right to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit. The term 'liberty,' as used in the Constitution, is not dwarfed into mere freedom from physical restraint of the person of the citizen, as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." "The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all countries from time immemorial, must therefore be free in this

country, to all alike, upon the same conditions. The right to pursue them without let or hindrance, except that which is implied to all persons of the same sex, age, and condition, is a distinguishing privilege of the citizens of the United States, and an essential element of that freedom which they claim as their birthright. * * * Civil liberty exists only where every individual has the power to pursue his own happiness according to his own views, unrestrained, except by equal, just and impartial laws." *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 757.

Real Evidence.

Real evidence is such evidence of the thing or object as is addressed directly to the senses of the court or jury without the intervention of the testimony of witnesses, as where various things are exhibited in open court.

When, for instance, the condition or appearance of any thing or object is material to the issue, and the thing or object itself is produced in court for the inspection of the tribunal, with the proper testimony as to its identity, and if necessary to show that it has existed in this State since the time at which the issue in question arose, this object or thing becomes itself "real evidence" of its condition or appearance at the time in question.

Gaunt v. State, 30 N. J. L. 491, where resemblance of a child to alleged father was material to the issue, and the child was in court, *Held*, not error for the court to refuse to charge the jury that they must not consider the question of resemblance at all, and that if they did consider it, it must be from verbal testimony, not from view.

As a class, resemblances are admitted wherever rele-

vant. In cases involving handwriting a comparison of hands is pertinent. In sales of samples, in patent cases, in trade-mark and infringement suits resemblance is of the essence of the proof. In New York State operas have been performed in court, comic songs sung, and plagiaries of papers read. In Pennsylvania a contrivance called the Keeley Motor was exhibited with a view to the determination of the resemblance to a model described in plaintiff's bill.

In *Garvin* v. *State*, 52 Miss. 207, indictment rested on the ground that defendant was a colored man. Of this there was no proof, but as the defendant had been before the jury the court held that their inspection did away with the necessity of proof.

Jones v. *Jones*, 45 Md., 148, the Court permitted the jury to judge as to personal resemblances.

Mulhado v. *Brooklyn City R. R.*, 30 N. Y. (Court of Appeals), 370, held in action to recover damages for personal injuries that there could be no valid objection to exhibition of injured limb before the jury.

Other instances of real evidence, exhibitions of weapons, or missiles, marks of identity, race, color, age, sex, models, diagram, maps, photographs, *situs* of action, &c.

As has been said above: "Real evidence is such evidence of the thing or object as is addressed directly to the senses of the court or jury without the intervention of the testimony of witnesses." * * *

"*When, for instance, the condition or appearance of any thing or object is material to the issue, and the thing or object itself is produced in court for the in-*

spection of the tribunal, with the proper testimony as to its identity, and if necessary to show that it has existed in this State since the time at which the issue in question arose, this object or thing becomes itself 'real evidence' of its condition or appearance at the time in question."

It seems equally patent that when an alleged lunatic or an alleged incompetent asserts that said alleged lunatic or said alleged incompetent is physically incapacitated from coming to Court and presenting himself before said Commission and said jury it seems equally patent that in said case the only *real evidence* and *ergo* the *best evidence* concerning said alleged physical disability would be an examination upon the part of said Commission and said jury or a Committee made up of their respective members of said alleged lunatic or said alleged incompetent in said alleged lunatic's or said alleged incompetent's place of confinement. Suppose an expert in lunacy or two experts in lunacy, hired by the other side, swear that said defendant says said defendant is unable to attend court owing to a broken leg but—said experts—swear said broken leg is a "*delusion*" and does not exist in fact. Would it be heard that such said oaths could outweigh the weight of VISIBLE proof concerning said fracture of said limb?

POINT 15. Plaintiff's sanity at the time of arrest is proved by plaintiff's letter to Hon. Micajah Woods, dated July 3rd, 1897: upon Mr. Justice Harlan's opinion in the Runk case which holds that a written instrument by a person accused of insanity may successfully offset *prima facie* evidence of insanity.

(*From Trial Brief of Chaloner* against *Sherman,* pp. 482-495.)

TWO EXCERPTS FROM THE TEXT OF MR. JUSTICE HARLAN'S OPINION IN THE RUNK CASE.

SUPREME COURT OF THE UNITED STATES.

No. 142—October Term, 1897.

A. Howard Ritter, Executor of William M. Runk, deceased, Plaintiff-in-error, *v.* The Mutual Life Insurance Company of New York.	On a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

(January 17, 1898.)

Mr. Justice Harlan delivered the opinion of the Court:

* * * "Besides these facts, it appeared that on the day before his death he avowed that his debts must be paid, and that they could only be paid with his life. That avowal was in a letter written to his partner, in which he said that he had deceived the latter, and could only pay his debts with his life. That letter concluded:

"'This is a sad ending of a promising life, but I deserve all the punishment I may get, only I feel my debts must be paid. This sacrifice will do it, and only this. I was faithful until two years ago. Forgive me. Don't publish this.' On

the same day he wrote to his aunt, to whom he was indebted in a large sum, saying, among other things: 'Forgive me for the disgrace I bring upon you, but it is the only way I can pay my indebtedness to you.' In addition he left for the guidance of his Executor a memorandum of his business affairs prepared just before his death, and which tended to show that he was at that time entirely himself.

"In view of these and other facts established by the evidence, the Court did not err in disaffirming the first and second of plaintiff's points. We may add to that, under the charge to the jury, it became unnecessary for them to inquire whether the policies were taken out with the intention of defrauding the insurance company or of committing suicide. The Court said to the jury:

"'What constitutes insanity, in the sense in which we are using the term, has been *described to you, and need not be repeated.* If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others, if he understood the wrongfulness of it, as a sane man would, then he was sane, so far as we have occasion to consider the subject; otherwise he was not. Here the insured committed suicide, and, as the evidence shows, did it for the purpose as expressed in his communication to the Executive of his will, as well as in letters written to his aunt and his partner, of enabling the Executor to recover on the policies and use the money to pay his obligations. I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of

> his act, his suicide is a defense to this suit. The only question, therefore, for consideration is the question of sanity. There is nothing else in the case. That he committed suicide and committed it with a view to the collection of this money from the insurance companies and having it applied to the payment of his obligations, is not controverted, and not controvertible. It is shown by his own declaration, possibly not verbal, but written. The only question, therefore, is whether or not he was in a sane condition of mind, or whether his mind was so impaired that he could not, as I have described, properly comprehend and understand the character and consequences of the act he was about to commit. In the absence of evidence on the subject he must be presumed to have been sane. The presumption of sanity is not overthrown by the act of committing suicide.' "

The said Runk had been guilty of what any expert in insanity would denominate the act of a madman, under the plea that suicide is the act of a man suffering from "suicidal mania." The Court below agreed in said presumptive evidence of insanity, which is furnished by the act of suicide. Said Court said, to wit: "Suicide may be used as evidence of insanity." Mr. Justice Harlan affirmed said *dictum* of said lower Court by saying, to wit: "Nothing said by the Court upon the question of insanity was erroneous in law." *Ergo,* Mr. Justice Harlan held that the act of suicide is *prima facie* evidence of insanity. But Mr. Justice Harlan also agreed with said lower Court in holding that said *prima facie* evidence of insanity might be offset. *Mr. Justice Harlan agreed with said lower Court that said prima facie evidence of insanity might be offset by what? By*

expert testimony to the contrary? By sworn allegations by eye witnesses to the contrary? No. By a far simpler, by a far surer means, to wit: By the acts of said alleged insane person's mind, as shown by a written instrument upon the part of said alleged insane person: By a letter in short.

Said Runk had written a letter to said Runk's business partner and to said Runk's aunt touching upon the motive of said suicide, as well as a business memorandum to said partner. As nothing to the contrary is alleged it may be presumed that said letters and said memorandum were rather brief, or at least nothing comparable for length with said letter written by plaintiff to said Hon. Micajah Woods, July 3rd, 1897, within less than four months from the time of plaintiff's arrest and imprisonment as a lunatic in said Society of the New York Hospital at White Plains, and almost four years before plaintiff was able to escape from said false imprisonment. (Transcript of Record, folios 306-339.)

Furthermore. It may be presumed that said two letters and memorandum upon the part of said Runk were necessarily—from their said rather brief nature—far less sustained specimens of argument and memory than said letter of plaintiff presented.

Said letter of plaintiff was over thirty pages of typewriting in length. Said letter of plaintiff contained an exhaustive examination of the causes which led up to plaintiff's arrest and incarceration upon a false and perjured charge of lunacy, besides an exhaustive account of plaintiff's business affairs directly connected therewith, besides a legal discussion of plaintiff's status and plans for legal redress, which said plans were carried out, almost to the letter, by plaintiff years later, upon plaintiff's escape. Furthermore, said letter, which was written by plaintiff by hand in ink, is presumptive

proof, of the strongest, of plaintiff's entire sanity and self-control at the time of the writing thereof. Handwriting is a prolific proof of unsoundness of mind. The "paretic tremor" is a technical phrase employed by alienists to describe the shakiness of handwriting upon the part of a certain class of lunatics. Moreover, lunatics show their lack of balance in their chirography, by the untidiness thereof, the meaningless flourishes therein, the slovenliness of the formation of the characters, and the general wild look of the written page. Nothing of the sort is discoverable in plaintiff's said letter of July 3rd, 1897. There is no sign of tremor. There is no sign of slovenliness. There is not a single blot, not a single erasure, nor a single word crossed out. Considering the circumstances under which said unusually lengthy letter was written, namely, secretly, at night, with a keeper in the next cell, and another on watch —or supposed to be—outside said cell's door, considering said circumstances plaintiff maintains that such a performance in penmanship was a feat any man not a teacher of handwriting might feel proud of. Furthermore. Said letter furnishes proof in abundance of one of the strongest proofs of sanity, namely, memory. Said letter goes as far back as 1888 in tracing the causes of the family feud. Said letter goes most minutely into the business occurrences at the Hotel Kensington, New York, December, 1896, which led up to plaintiff's said false arrest and false imprisonment, upon a false charge of lunacy, a few weeks later.

Fortunately for plaintiff, plaintiff had kept the original* of the letters: Letter from a female relative of plaintiff, to plaintiff, under date June 23rd, 1888, signed —Daisy: Two of said letters are from plaintiff's said

*On file in Chaloner against Sherman.

brother, Mr. Winthrop Astor Chanler, to said sister of plaintiff under date June 19th, and June 22nd, 1888, signed W. The last of said letters is from said Mr. Winthrop Astor Chanler to plaintiff under date June 21st, 1888, signed—W. received by plaintiff as far back as June, 1888, which amply prove the ill-feeling engendered by plaintiff's said wedding in said month and year. The fact that plaintiff accurately stated said ill-feeling's date, corroborated as said date and said ill-feeling are by said letters, is ampler proof of plaintiff's power and accuracy of memory. Said letters, of course, were in plaintiff's despatch box at plaintiff's home in Virginia at the time of plaintiff's arrest and imprisonment, and at all other times until plaintiff escaped to Virginia and recovered them.

Furthermore. Truthfulness is not a sign of insanity, in fact truthfulness is quite the reverse. Insanity is even more prolific of untruthfulness than many persons' sanity. Not a single material statement made by plaintiff in said letter has failed of endorsement by proof since plaintiff's escape.

The letter from the late Sylvester J. O'Sullivan,* formerly New York manager of "The United States Fidelity and Guaranty Company," 66 Liberty St., New York," proves plaintiff's assertion that plaintiff never was a resident of said Hotel Kensington, particularly not in 1896 and 1897, since said O'Sullivan was the proprietor of said Hotel Kensington from April, 1894, to April, 1897.

If two, presumably brief, notes and a business memorandum offset the actual undoubted presence of presumptive proof—suicide—of insanity in the case of the unfortunate Runk, how much more should such a letter as that of plaintiff offset, not so strong a thing as

*On file in Chaloner against Sherman.

presumptive proof, but so fishy a thing as the bought and paid for affidavits of two professional Examiners-in-Lunacy? In conclusion: A further written instrument upon the part of plaintiff—the extract from plaintiff's said letter to said "first New York lawyer"—under date of March 26th, 1900—proves plaintiff to be possessed of almost prophetic powers of observation: for plaintiff therein describes the dishonesty of the then New York State Commission in Lunacy, and in less than twelve months from date, President—then Governor—Roosevelt had removed the President of said Commission from office owing to charges preferred and proved against said President.

Plaintiff maintains that sanity is proved by what a person can do with said person's mind. *That sane thinking is a proof positive—the ultimate and final test —of sanity.*

To refer once more to Mr. Justice Harlan's said opinion, quoting the lower Court:

> "Suicide may be used as evidence of insanity, but standing alone it is not sufficient to establish it * * *. If you find him to have been insane, as I have described, your verdict will be for the plaintiff, otherwise, it will be for the defendant."

It thus appears that the case was placed before the jury upon the single issue as to the alleged insanity of the assured, at the time he committed suicide, and with a direction to find for the plaintiff if the assured was insane at that time, and for the company if he was then of sound mind.

Assuming that the jury obeyed the instructions of the Court, their verdict must be taken as finding that

the assured was not insane at the time he took his life. We must then inquire whether the observations of the Trial Court on the subject of insanity were liable to objection.

We have seen that the plaintiff asked the Court to instruct the jury that if the assured intentionally killed himself when his reasoning faculties were so far impaired by insanity that he was unable to understand the moral character of his act, even if he did understand its physical nature, consequences and effect, such self-destruction would not of itself prevent recovery upon the policies.

This was the only instruction asked by the plaintiff which undertook to define insanity, and as before stated, it was given by the Court. But in giving it the Court said:

> "We must understand what is meant and intended by the term 'moral character of his act.' It is a point which has been used by the Courts, and is correctly inserted in the term; but it is a term which might be misunderstood. We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others—in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would—then he is to be regarded by you as sane. Otherwise he is not."

Substantially the same observations were made in that part of the charge, which is above given.

The plaintiff insists that the definition of insanity, as given by the Trial Court, was much narrower than was required or permitted by the decisions of this Court. It is said that the impairment not only of the moral vision, but also of the will, leaving the deceased in a condition of inability to resist the impulse of self-destruction, has been accepted by this Court as describing a phase of insanity or mental unsoundness. One of the cases to which plaintiff referred in support of this view is Davis *v.* United States, 165 U. S., 373, 378, which was a prosecution for murder. It was there held that the accused was not prejudiced by the following instructions given to the jury: "The term insanity, as used in this defense means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he was committing; or where, though conscious of it and able to distinguish between right and wrong, and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control." This was substantially what had been held by this court in previous cases. Life Ins. Co. *v.* Terry, 15 Wall, 580; Bigelow *v.* Berkshire Ins. Co., 93 U. S. 284; Insurance Co. *v.* Rodel, 95 U. S. 232; Manhattan Ins. Co. *v.* Broughton, 109 U. S. 121; Connecticut Ins. Co. *v.* Lathrop, 111 U. S. 612; Accident Ins. Co. *v.* Crandall, 120 U. S. 527. In Terry's case above cited—which was an action upon a life policy declaring the policy void if the assured died by his own hand—it became necessary to instruct the jury on the subject of insanity. The Court said: "We

hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary act of the assured, he, knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

Recurring to the ruling of the court in the present case, it is not perceived that the plaintiff had any ground to complain that its definition of insanity was too strict or too narrow. His fifth point, in general terms, defined insanity as being a condition in which the reasoning faculties are so far impaired that the person alleged to be insane when committing self-destruction was unable to understand the moral nature of his act, even if he understood its physical nature. This definition was not rejected. On the contrary, it was accepted, the court at the time making some observations deemed necessary to show what, in law, was meant by the words "moral nature of his act." By these observations the jury were informed that if the assured understood what he was doing, and the consequences of his act or acts to himself and to others—that is, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man

would—then he was to be regarded as sane; otherwise, not.

It is suggested that the attention of the jury should have been brought specifically or more directly to the fact that unsoundness of mind exists when there is an impulse to take life which weakened mental and moral powers can not withstand—a condition in which there is no continued existence of a governing will strong enough to resist the tendency to self-destruction. But the words of the charge, although of a general character, substantially embodied these views. The Court stated the principal elements of a condition of sanity as contrasted with insanity. What it said was certainly as specific as the instruction asked by the plaintiff. If the plaintiff desired a more extended definition of insanity than was given, his wishes, in that respect, should have been made known. The court having affirmed his view of what was evidence of insanity, and such affirmance having been accompanied by observations that brought out with more distinctness and fullness what was meant by the words "moral character of his act," the plaintiff has no ground to complain; for nothing said by the court upon the question of insanity was erroneous in law or inconsistent with that which the plaintiff asked to be embodied in the charge. No error of law having been committed in respect to the issue as to the insanity of the assured, it is to be taken as the result of the verdict that he was of sound mind when he took his life."

Mr. Justice Harlan says: "*In addition* (to the said letter written by said Runk to said Runk's partner, and the said letter written by said Runk to said Runk's aunt) *he left for the guidance of his executor a memorandum of his business affairs, prepared just before his death, and which tended to show that he was at that*

time entirely at himself." Mr. Justice Harlan says further: "The Court stated the principal elements of a condition of sanity as contrasted with insanity. * *. * Nothing said by the Court upon the question of insanity was erroneous in law. * * * No error of law having been committed in respect of the issue as to the insanity of the assured, it is to be taken as the result of the verdict that he was of sound mind when he took his life." We now insert what said Court said constituted sanity as opposed to insanity: "What constitutes insanity in the sense in which we are using the term, has been described to you, and need not be repeated. If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others, if he understood the wrongfulness of it, as a sane man would, then he was sane, so far as we have occasion to consider the subject. * * * I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit. The only question, therefore, for consideration is this question of sanity. There is nothing else in the case."

A perusal of the above will prove that the Supreme Court of the United States supports plaintiff's aforesaid contention in this point.

Plaintiff maintains that sanity is shown by the action of a party's mind, not by the action of a party's muscles. Plaintiff maintains that sanity is shown by a party's words and acts, rather than by the "reflexes" of a party's knee-joints. Plaintiff maintains that sanity is shown by a party's ideas rather than by involuntary action of a party's eyelids. Plaintiff maintains that sanity is shown by the words issuing from a party's lips rather than by the mechanical action of the party's labial

muscles. Plaintiff maintains that sanity is shown by the words uttered by a party's tongue rather than by the question as to whether the party's tongue was "coated" or not "coated." Plaintiff maintains that sanity is shown by the action of the party's hands as to what the party can do with said party's hands, or write with said party's hands rather than as to whether said party's hands were warm or cold. Plaintiff maintains that sanity is shown by the question as to whether or not said party's ideas are normal rather than by the question as to whether or not said party's pupils are normal. Plaintiff maintains that sanity is shown by the quickness of said party's mind rather than by the quickness of said party's pulse. Plaintiff maintains that sanity is shown by whether or not said party's logical and reasoning powers are firm or tremulous, rather than as to whether or not said party's hands are firm or tremulous. Plaintiff maintains that sanity is shown rather by the question as to whether or not Plaintiff's mind reacts to ratiocination and questions put to Plaintiff rather than by the question as to whether or not said party's pupils re-act to light. Plaintiff maintains that sanity is shown rather by the fact as to whether or not a party thinks well, than by the fact as to whether or not a party sleeps well. Lastly, plaintiff maintains that sanity is shown rather by the question as to whether or not a party's reasoning is regular, than by the question as to whether or not said party's bowels are regular. What is insanity? Suppose a law should be enacted to the effect that certain acts or thoughts would be sufficient proof of mental derangement, and that, upon a trial, the facts appearing, the Court should direct a verdict accordingly, and property or freedom should thus be wrested from the defendant. Would such a proceeding constitute due process of law? And yet such a pre-

posterous, such a mechanical, and such a charlatanish test of sanity is today set by so-called experts in insanity, who glean certain physical, mechanical, muscular actions, which sometimes follow insanity, but in the vast majority of cases exist as mere physical idiosyncrasies, totally free from the slightest taint thereof, and—to use a technical phrase—are auxiliary, but not positive. The result of said quackery is that the public is being gulled into believing that insanity is hidden in a grand arcanum of mystery, to which said grand arcanum only alleged experts in insanity hold the key, which said alleged experts will not turn without the payment of a fat fee. The result of said quackery is that people lose sight of the fact that, as has been said by the Court (*supra*), the citizen is the sovereign, by which we mean that the citizen is the final judge of things medical as well as things practical; of things scientific as well as of things simple; of things literary as well as of things non-literary; of things musical as well as of things non-musical; of things finally, religious, and things non-religious; by which we mean that when any of said above domains of human thought enter a law court, it is the sovereign, it is the plain citizen, it is the juryman and not the Judge, and not the counsel, and not the experts, *bona fide*, or alleged, who pronounce a judgment upon said things—upon the facts. Who ever heard of a patent suit involving, say, the composition of a chemical substance, so technical, so complicated, that none but expert chemists could discuss intelligently, who ever heard of any man's being grossly illiterate and grossly ignorant enough to claim that said question was beyond the reach of solution in a court of law, and, therefore, beyond the reach of a jury, and yet said grossly ignorant and grossly illiterate remark is made daily by intelligent and educated persons today,

concerning insanity; and what is commoner than to hear a party pusillanimously hide himself when asked his opinion as to a party's mental condition by a "I'm not an expert in insanity." The result of said quackery is that a growing danger—growing abreast of the growth of that portion of the medical profession known as experts in lunacy—that a growing danger menaces society today. All that is necessary to jeopardize a man's liberty, property, and happiness and threaten all three with life imprisonment, is to hire two unprincipled alleged experts in insanity to swear that said party is crazy. At once, said party's family and friends fall away from said party as though said party were a leper. At once said party's said family and friends hold up their hands in superstitious horror, and in reply to said party's modest claim that said party is all right, and that said party does not either claim the things said dishonest quacks swear said party claims, as well as that said party does not say the things said dishonest quacks swear said party says, at once said party's said family and said friends hold up their hands in igorant, illiterate horror, and exclaim, "Oh, but the doctor says you do, and that settles it."

We have gone thus deeply into said interesting and entertaining topic for several reasons. 1. *First,* because no one is so well posted upon said interesting and entertaining topic as ourselves since no one save ourselves has had so rich an opportunity to observe and ponder said topic during nearly four years of illegal false imprisonment. 2. *Secondly,* because while behind said bars and while so pondering over our wrecked life with its indelible stigma of insanity—for no matter how false the charge of insanity its stigma is indelible—we determined to do our best to prevent a repetition of such

a crime as has been perpetuated against ourselves if showing up said crime from all the points, from all the view-points, from all the angles said crime admits could do so. 3. *Thirdly*, because unless the public mind is awakened to the danger which threatens every member of the public without regard to age or sex or wealth or poverty, said band of experts in insanity will go on fattening like vampires upon the heart's blood of innocent sane men and women.

In bidding farewell to said topic it might not be amiss to draw public attention to the role played therein by the cream of said Four Hundred, so called. For example. As we said under Point 11: "Lunacy proceedings in New York State are mandatory, in derogation of the common law rights, and must therefore be strictly observed in pursuance of the statute. While said commitment was in fact made to The Society of the New York Hospital, it was not so stated; the term Bloomingdale Asylum being used, an institution unknown to the law. As we showed further said infraction of the mandates of the New York Legislature (by virtue of its agent, the said State Commission in Lunacy, as we have shown, *supra*), said mandates, to wit: line 156 of said commitment papers: "It is essential that the official title of the institution should be correctly inserted" (Transcript of Record, p. 113, fol. 223), and again line 349: "Insert, correctly, official title of institution," and lastly lines 11 and 12, "The blanks should be carefully read and properly filled out to insure the commitment of a patient" (fol. 204). As we have shown further said infraction of the mandates of the said legislature—as aforesaid—was not once, not twice, but thrice repeated and startling as it sounds, each time in a different manner. The said role of said cream of said Four Hundred so called so begins, to wit. Through said cream of said

Four Hundred's agent, said Medical Superintendent of said Society of The New York Hospital, said cream of said Four Hundred became *particeps criminis* in said infraction of said mandates of the said legislature—as aforesaid—as follows: citing now from Section 62 of the Insanity Law of the State of New York, Chapter 545, of the laws of 1896: "The superintendent or person in charge of any institution for the care and treatment of the insane may refuse to receive any person upon any such order, if the papers required to be presented shall not comply with the provisions of this section." Said cream of said Four Hundred's said agent, said Medical Superintendent of said Society of The New York Hospital should, in compliance with said mandate contained in said Section 62, have refused to receive plaintiff, seeing that the three gross infractions of said mandates contained in line 156 and 349 to say nothing of lines 11 and 12 stared said cream of said Four Hundred's said agent, said Medical Superintendent of said Society of The New York Hospital full in the face from said Commitment Papers. The question at once presents itself to the mind of an observer as to why said infractions said gross infractions of said mandates were committed. The answer is simple. In order to avoid damage suits from the army of falsely alleged lunatics who have in the 135 years during which said Society of The New York Hospital has plied said Society's nefarious trade, in order to avoid suits for damages for false imprisonment at the outraged hands of said army of falsely alleged lunatics who have, in the past 135 years, fought said army's way to liberty by the use of *habeas corpus,* in order to avoid said damage suits said cream of said Four Hundred, through said cream of said Four Hundred's said agent, deliberately threw dust in the public eye by allowing the false impression to gain ground, until now said false impression is a deeply rooted con-

viction in the public mind that said Society of The New York Hospital's falsely alleged "Bloomingdale" has no connection whatever with said Society or with any other Society, but is a *public institution*, such as Bellevue Hospital, and that Bellevue Hospital is used to receive poor lunatics, whereas said falsely alleged "Bloomingdale" is used to receive rich ones. It is easy to see that provided said false impression gets a foothold in the public mind there is small chance of damage suits at the hands of said army of falsely alleged lunatics which has successfully emerged therefrom, public opinion naturally presuming that a public institution would have no pecuniary motive in holding sane persons upon a false charge of insanity. Said cream of said Four Hundred have followed in the footsteps of said cream of said Four Hundred's predecessors. Said predecessors would be pleased could said predecessors see with what success said predecessors' scheme to hoodwink and bamboozle the public has worked. It is an amazing spectacle at this day of advanced civilization to be able to catch such men as make up said Board of Governors of The Society of the New York Hospital, to catch such men as SHEPPARD GANDY, President; THEODORUS B. WOOLSEY, Vice-President; J. EDWARD SIMMONS, Treasurer; JOSEPH H. CHOATE, WILLIAM WARNER HOPPIN, ELBRIDGE T. GERRY, PHILIP SCHUYLER, JAMES O. SHELDON, HERMANN H. CAMMANN, JAMES WILLIAM BEEKMAN, CORNELIUS N. BLISS, GEORGE S. BOWDOIN, WALDRON POST BROWN, EDWARD KING, WILLIAM ALEXANDER DUER, HENRY W. DE FOREST, EDMUND D. RANDOLPH, FORDHAM MORRIS, GEORGE G. HAVEN, FREDERICK D. TAPPEN, GEORGE G. DEWITT, AUGUSTUS D. JUILLIARD, FRANCIS LYNDE STETSON, THOMAS H. BARBER, RICHARD TRIMBLE, and DAVID H. KING attempting to fool the public and in order to fool the public having—for the

nonce—to assume the role of *quasi*-law breakers. It is an amazing spectacle, a spectacle replete with the ludicrous to catch such lawyers as Joseph H. Choate, Henry W. de Forest, George G. DeWitt, and Francis Lynde Stetson; and such lights of finance as J. Edward Simmons, Hermann H. Cammann, Cornelius N. Bliss, George S. Bowdoin, Waldron Post Brown, George G. Haven, and Augustus D. Juilliard; and such representatives of all that is blue-blooded and fashionable as William Warner Hoppin, Philip Schuyler, James O. Sheldon, James William Beekman, Edward King, William Alexander Duer, and Thomas H. Barber; and last but very far from least the name of that formidable philanthropist and director of youth, Elbridge T. Gerry himself; it is surely a laughable matter to catch archons of civilization tripping. But amusing as said spectacle is said spectacle has a somewhat serious side. Said spectacle has a decidedly serious side, to wit. The astounding revelations of the Ship-Building-Trust's wreckage—and the still more astounding revelation as to what pillars of finance were wet by the spray thereof—has prepared the public mind for the reception—touching lights of Wall Street—that all is not gold that glitters. But said Ship-Building-Trust's said wreckage was a mere matter—large as said matter was—was a mere matter of dollars and cents, whereas said tripping upon said part of said Governors of said Society of the New York Hospital is much more than a mere matter of dollars and cents, although plaintiff was practically robbed by said Society of the New York Hospital of, in round numbers, twenty thousand dollars. Said tripping means little short of this, to-wit That at this day of advanced civilization and order, and all that, there exists in the Metropolis of the United States, in the centre of wealth, and alleged culture and alleged

knowledge, there exists in New York City today an organized band of, we shall not say robbers, but we shall say robber barons, who like their prototypes of the Rhine, have a stronghold near the bank of the Rhine of America—the Hudson. Who, also like their prototype of the Middle Ages, rally forth therefrom and seize rich travelers who happen to alight within striking distance of said band of organized robber barons. Said organized band of robber barons do not personally issue forth at the head of said robber barons' retainers, as of old, but said robber barons see to it that said robber barons' retainers do so issue forth. Plaintiff was ambushed by a part of said robber barons' retainers under the leadership of the treacherous spy and eavesdropper, Dr. Moses A. Starr, the masquerading "oculist," who intended to drag plaintiff out of bed, a cold winter's night and thereupon drag plaintiff to a mad-house cell. As was said plaintiff declined to be dragged, but said declination was no part of the proposed performance of said party of said robber barons' retainers under the head-ship of said Moses A. Starr. Once within the walls of said robber barons' said stronghold each victim is systematically robbed of thousands of dollars per annum as was plaintiff. Once within the walls of said robber barons' said stronghold said victim is at liberty to follow the advice posted over the entrance to Dante's Inferno—"All hope abandon ye who enter here." Nothing but the strong arm of the law, as represented by *habeas corpus* proceedings, or lack of funds, ever opens the doors of said Inferno. Said menace to life, liberty, and property, hanging over the heads of each and every sojourner in the City of New York, is a rather serious thing. Said menace is a rather serious thing, from more points of view than one. One of said points of view regards said sojourner. One of said points of view regards the future prosperity of

New York City. Said first point of view is too obvious to need discussion. Said second point of view is as follows. Competition has set in between Philadelphia and Baltimore as regards attracting "buyers" away from New York. So soon as "buyers" learn that there is danger of said "buyers" never leaving New York City alive—provided said "buyers" are unfortunate enough as to have any little unpleasantness with said "buyers'" wives or said "buyers'" families which may lead said wives or said families to desire never to see said "buyers" again, or merely to obtain possession of said "buyers'" property, by having said "buyers" secreted for life in the said Society of the New York Hospital—said "buyers" will likely choose a healthier place to buy in. We have gone into said topic rather at length in order that people may know of the traffic in men and women, in flesh and blood, which is being carried on today in the heart of the alleged centre of civilization on this continent. In close connection therewith, however, arises another point. Said point, to-wit. Anybody reading attentively the evidence in plaintiff's said trial in 1899 will be struck by the thinly veiled hostility and bitterness, not to say brutality, and cruelty—coming especially as said testimony does from the mouths of followers of the Healing Art—the thinly veiled cruelty and brutality of said testimony upon the part of the said Messrs. Flint and Macdonald. The cause of said thinly veiled brutality and hostility is this. As will be seen from the following excerpts from said Macdonald's sworn statement, concurred in by the statement, not sworn to, owing to illness, but approved of by said Flint, as will be seen from said following excerpts plaintiff spoke as frankly concerning the turpitude aforesaid of Sheppard Gandy, Theodorus B. Woolsey, J. Edward Simmons, Joseph H. Choate, William Warner Hoppin, Elbridge T.

Gerry, Philip Schuyler, James O. Sheldon, Hermann H. Cammann, James Beekman, Cornelius N. Bliss, George S. Bowdoin, Waldron Post Brown, Edward King, William Alexander Duer, Henry W. de Forest, Edmund D. Randolph, Fordham Morris, George G. Haven, Frederick D. Tappen, George G. DeWitt, Augustus D. Juilliard, Francis Lynde Stetson, Thomas H. Barber, Richard Trimble, David H. King, Jr., Howard Townsend and George F. Baker before said physicians as plaintiff has written frankly above. Of course, being alleged experts in insanity, said Flint and said Macdonald found it beyond their powers to tell the truth, and consequently lied in a most barefaced and villainous manner in said gentlemen's said statements as well as in said gentlemen's sworn testimony against plaintiff's sanity and competency. Said excerpts to-wit. Page 2, Proceedings 1899 (Transcript of Record, p. 120, fol. 234): "the 16th day of March, 1898, when deponent, together with said Doctor Austin Flint, spent two hours in conversation with said Chanler, in his own apartments at Bloomingdale; that at the time of said visit deponent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Doctor Flint and said, among other things, that he was the victim of a gigantic conspiracy on the part of his relatives * * * the other conspirators being prominent citizens of the City of New York were named by the said John Armstrong Chanler, including prominent lawyers and judges of the said city." * * * (P. 122. fol. 238), "Deponent, together with the said Austin Flint, again visited the said John Armstrong Chanler in his apartments at Bloomingdale on April 9th, 1898; that at the said time, the said Chanler was not completely dressed and acted in a strange manner; that, among other things, he took from

under the mattress of his bed a large volume of manuscript, to which he called our attention, stating that it was his case, and that no one but himself knew its contents, and that he intended to read it on the witness stand when his case came up in court." * * * (Page 7, *ibid.*) "that he recited to deponent and the said Doctor Austin Flint, seven or eight sonnets of his own composition (p. 124, fol. 242). * * * He went into a trance at the request of deponent and gave the most vivid illustrations of the death of Napoleon * * * Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted as aforesaid over an hour: and that the said talk was accompanied with denunciations of vile conspiracies against him." * * * (Page 119, fol. 233.) Carlos F. Macdonald being called as a witness, for the petitioners, was duly sworn, and testified as follows: By Mr. Candler * * * Q. "Officially connected with any hospital?" A. "I have been officially and professionally connected with hospitals and asylums—hospitals for the insane and asylums since 1870 * * * and for seven or eight years President of the State Commission in Lunacy, in this State" * * * Q. "During that time you examined many cases of mental disease?" A. "Yes, sir, many thousands * * * several thousand cases a year." Q. "Have you served on a special commission appointed by the governor of the State?" A. "Yes, sir, frequently." Q. "For what purpose?" A. "For the purpose of determining the mental condition of persons under sentence of death. I think I served on every commission under Governor Cleveland, Governors Morton, Hill and Flower, with one or two exceptions." * * * Q. "Are you acquainted with John Armstrong Chanler, the respondent here?" A. "Yes, sir." Q. "Have you visited him in the

Bloomingdale Asylum for the Insane?" A. "Yes, sir. * * * I first visited John Armstrong Chanler at the Bloomingdale Asylum for the Insane on March 16th, 1898, in company with Doctor Austin Flint, of this city. We went up there to the institution and jointly made a personal examination of Mr. John Armstrong Chanler. * * * We informed Mr. Chanler who we were and the purpose of our visit; that we were there to examine him as to his mental condition. He received us cordially and immediately began, as he said, to explain his case. He said he was a victim of a gigantic conspiracy on the part of his relatives—the other conspirators being Joseph H. Choate, Elbridge T. Gerry, Cornelius N. Bliss, Judge Beekman and several others whom he named, that they had subsidized the State and National Government which were arrayed against him; that his case was thoroughly prepared." Q. "He named Mr. Choate and Mr. Gerry and others?" A. "He named, I think, the most of them were members of the Board of Governors of the New York City Hospital, as that is a branch—of which Bloomingdale is a branch." Q. "That is the reason they were selected?" A. "Yes, sir. That they had subsidized the State and National Government which were arrayed against him; that his case was thoroughly prepared and would be taken up by the court." Dr. Samuel B. Lyon, Superintendent of the Society of the New York Hospital, on the stand (Transcript of Record, pp. 117-118). (Page 14 Proceedings, 1899) By Commissioner Fitch. Q. "I notice in the certificate that he (plaintiff) only took certain articles of food about two years ago restricting himself to diet; does he still do that?" A. "He still continues vegetable diet. I am not aware that he has eaten any meat since he was with us." * * * (Page 118, *ibid*). A. "I do not know whether I mentioned it, but he thinks there is a conspiracy of the Wall Street clique. He mentioned

Choate * * * he thinks we are understrappers, and he is very amiable now." Citing finally from the deposition of said Dr. Lyon on Page 82, fol. 158. "That he (said Dr. Lyon) believes the said John Armstrong Chanler to be insane and unable to manage himself or his affairs, and that the grounds of his belief are as follows: That since the patient's admission to Bloomingdale, he has had delusions that conspiracies existed against his life and happiness; he has passed his nights in watching, has often declared his belief in his own prominent talents as a lawyer, pugilist, poet, etc., that while really a very bright man naturally, he has now the delusion that his mental powers are almost supernatural, and that his personality has undergone a change and that he now has a very high mission to fulfill toward the world. His disease appears to pursue the typical course of what is known as systematized delusional insanity, beginning with suspicions of persecution by enemies for a purpose and later developing expansive ideas of his own personality."

Examining now said excerpts in detail. Taking first said excerpt (Transcript of Record, p. 87, fol. 169, page 2, Proceedings 1899). Said Macdonald says: "said John Armstrong Chanler * * * said among other things that he was the victim of a gigantic conspiracy on the part of his relatives * * * the other conspirators being prominent citizens of the city of New York who were named by the said John Armstrong Chanler, including prominent lawyers and judges of the said city." The "prominent citizens" were the said Governors of The Society of the New York Hospital in that said gentlemen were behind said Hospital which illegally—since plaintiff on the evidence arrived at said Hospital sane and remaind sane in spite of the aforesaid efforts of the Medical Staff thereof—exclusive of said Dr. Samuel

B. Lyon, the Medical Superintendent thereof, who never molested plaintiff in any way and did his best to render plaintiff's enforced false imprisonment as little irksome as lay in said Dr. Lyon, the Medical Superintendent thereof, who never molested Staff thereof to argue plaintiff into admitting that plaintiff was insane and thereby becoming insane—the "prominent citizens" were the said Governors of The Society of the New York Hospital, in that said gentlemen were behind said Hospital which illegally, for the reason aforesaid, to say nothing of the utter illegality and nullity of the said Commitment Proceedings before Justice H. A. Gildersleeve aforesaid, which illegally held plaintiff a prisoner upon a false charge of lunacy, at a ransom of one hundred dollars per week, not counting extras. That said gentlemen being behind such a nefarious institution as The Society of the New York Hospital on the evidence, has proved said Society to be, that said gentlemen being behind such a, so to speak, "dead-fall" such an oubliette, as said Society has upon the evidence proved said Society to be, are conspirators against the public. Taking, second, said excerpt (Transcript of Record, p. 88, fol. 170, page 4) (Proceedings 1899). Said Macdonald says, "at the said time the said Chanler was not completely dressed." When the facts are known the above will appear to be what above is, to wit, a venomous, mendacious inference that there was something insane and unbalanced in plaintiff's being "not completely dressed." The simple fact was that plaintiff had been working over plaintiff's brief rather late the night before and in order to make up for lost sleep had slept later than usual and was still in bed when said Macdonald called. Said Macdonald goes on "and acted in a strange manner; that, among other things, he (plaintiff) took from under the mattress of his bed a large volume of manu-

script, to which he called our attention, stating that it was his case, and that no one but himself knew its contents." What is there strange in that? Plaintiff was alone among people spying upon him day and night as the record proves. Plaintiff had no one to rely on but himself. Plaintiff therefore kept plaintiff's important papers where no one could touch them, while plaintiff slept, without rousing plaintiff. When plaintiff later obtained a despatch-box plaintiff ceased putting said manuscript under said mattress at night and kept plaintiff's papers therein under lock and key. Taking, third, said excerpt (p. 119, fol. 234) (by Mr. Candler) Q. "Have you served on special commissions appointed by the Governor of the State?" A. "Yes, sir, frequently." Q. "For what purpose?" A. "For the purpose of determining the mental condition of persons under sentence of death." It is to be hoped that upon said sinister occasions said Macdonald showed more learning and more honesty than said Macdonald has displayed toward plaintiff. Said Macdonald goes on. "We (said Macdonald and Flint) informed Mr. Chanler who we were and the purpose of our visit; that we were there to examine him as to his mental condition." As plaintiff shows in plaintiff's said affidavit the above is only a half-truth. Said Macdonald and Flint did say they "were there to examine him (plaintiff) as to his mental condition." The only difficulty about said statement being that it quite sinks the fact that said Macdonald and said Flint were guilty of gross falsehood when they went into the question as to whom they represented. Said gentlemen saying in reply to plaintiff that said gentlemen represented no one, while the fact is, as the said proceedings prove, said gentlemen were in the pay of the other side. Said Macdonald goes on "He received us cordially and immediately began, as he said, to ex-

plain his case." Why put in the slur, "as he said," unless said Macdonald desired—as said Macdonald's said testimony abundantly proves—unless said Macdonald desired to put in a slur upon plaintiff at all and sundry opportunities for slurs in season and out of season. Said Macdonald goes on: "He said he was a victim of a gigantic conspiracy on the part of his relatives * * * the other conspirators being Joseph H. Choate, Elbridge T. Gerry, Cornelius N. Bliss." The said Governors of the said Society of the New York Hospital were in fact conspirators as aforesaid. Said Macdonald goes on: "Judge Beekman and several others whom he named; that they had subsidized the State and National Government which were arrayed against him; and his case was thoroughly prepared." Plaintiff did not mention Judge Beekman. Neither did plaintiff make the absurd statement attributed to plaintiff concerning the State and National Government. What plaintiff did say was that apparently the proprietors of Private Madhouses in New York State had apparently pretty effectually subsidized the New York State legislature of 1896; for how otherwise could the passage of so iniquitous a lot of laws and so wholly illegal a lot of laws as some of the Lunacy Laws of said legislature, passed in 1896, be accounted for? Q. "He named Mr. Choate and Mr. Gerry and others?" A. "He named, I think the most of them were members of the Board of Governors of the New York City Hospital, as that is a branch—of which Bloomingdale is a branch." Q. "That is the reason they were selected?" A. "Yes, sir. That they had subsidized the State and National Government which were arrayed against him; that his case was thoroughly prepared and would be taken up by the court." Said Macdonald again displays said Macdonald's mendacious venom here. For fear that a true

impression would be created by allowing the fact that the men plaintiff criticized were criticized because said men were Governors of said Society of said New York Hospital so soon as said fact was reluctantly drawn out of said Macdonald, said Macdonald hastens to wipe out the good effect of said fact by reiterating said absurd falsehood *in re* the array of the State and National Governments. Taking, fourth and last, said excerpt (p. 117, fols. 230-231) (page 14, Proceedings 1899) (Dr. Samuel B. Lyon on the stand). (By Commissioner Fitch): Q. "I notice in the certificate that he (plaintiff) only took certain articles of food about two years ago, restricting himself to diet; does he still do that?" A. "He still continues vegetable diet. I am not aware that he has eaten any meat since he was with us." Is it not a laughable thing that the charge of insanity in this day of advanced civilization can be preferred against a party because he happens to be a vegetarian, for the practical reason that said party finds—as all doctors who have studied the subject have found—that all meat red and white is more or less gout-producing and rheumatism producing, especially in a party who happens to have an inherited tendency to gout; which said tendency shows itself if said party indulges in wine, beer and spirits, and eats meat with or without wine, beer or spirits, but not otherwise? (Page 118, fol. 231, *ibid.*) A. "I do not know whether I mentioned it, but he thinks there is a conspiracy of the Wall Street Clique. He mentioned Choate * * * he thinks we are understrappers, and he is very amiable now." The above being interpreted means. When plaintiff was first incarcerated in The Society of The New York Hospital plaintiff, having a fairly good idea of human nature, and plaintiff's fellow man, was, however foolish enough and fresh enough to

think that no men are wholly bad; that no men can play the role of incarnate fiends; strangers to truth, strangers to honesty, strangers to human sympathy, and strangers, finally, to the veriest shred or fragment of anything most remotely resembling common humanity. Plaintiff did not know the Governors of The Society of the New York Hospital and their allied doctors and lawyers. Plaintiff foolishly and freshly surmised that once the Medical Staff of The Society of the New York Hospital had had a couple of weeks to observe plaintiff, and to learn upon questioning plaintiff, that plaintiff's views anent spirits and spiritualism and all and any alleged supernatural agency at work in this practical work-a-day world were precisely what said views were shown to be in plaintiff's said examination at the hands of Professor Horatio Curtis Wood, M. D., aforesaid, *supra;* plaintiff foolishly and freshly surmised that once said Medical Staff had two weeks to examine plaintiff in that then said Medical Staff not being incarnate fiends, not being men who for pay would consign a man to a living tomb, to a fate, in the eyes of any man of intelligence and activity, to a fate worse than death, to a madhouse cell for life; plaintiff foolishly and freshly surmised that in said event said Medical Staff, not being fiends would promptly report to said Dr. Lyon, the Medical Superintendent of The Society of the New York Hospital that plaintiff was sane and therefore, of course, must be released. The said two weeks rolled slowly by. During said two weeks plaintiff was as polite and obliging to said Medical Staff as was possible to be. Plaintiff aided said Medical Staff's efforts at examining plaintiff in every way in plaintiff's power. Plaintiff allowed said Medical Staff to obtrude itself upon plaintiff at all hours of the day or night. Plaintiff always received said Medical Staff upon such occasions cor-

dially. Plaintiff freely discussed all and any of the phases of plaintiff's case that said Medical Staff desired to hear discussed. In short plaintiff was complaisance itself. At the end of said two weeks, however, plaintiff saw that plaintiff had overestimated said Medical Staff, that said Medical Staff were in fact no better than so many incarnate fiends—as incarnate fiends have been above outlined to be. Thereupon plaintiff's attitude toward said Medical Staff instantly changed and plaintiff accused said Medical Staff to said Medical Staff's face of being quacks of the most degenerate and abandoned type. This sort of thing kept up for months, Plaintiff frankly laughing at the open and above-board rascality of said Medical Staff in said Medical Staff's face. Said laugh of plaintiff's did not strike a sympathetic chord in said Medical Staff, but said Medical Staff had to stand said laugh whenever said Medical Staff obtruded itself upon plaintiff. With the lapse of years plaintiff's righteous indignation, not only as a man, but as an officer of the Court, at such criminal doings within the center of the Metropolis of the United States, plaintiff's said indignation not cooled but centered against the leading criminals in said criminal doings, to wit, the said Governors of the Society of the New York Hospital. Plaintiff at once changed plaintiff's tone toward said Medical Staff; Plaintiff sent for said Medical Staff and said in effect: "I have experienced a change of heart—but not of head. I have concluded to practice pretty high Christianity and forgive you, gentlemen, for your share in this game of rascality and not pursue you, gentlemen, in the Courts for false imprisonment, as I had decided. I have determined to let you gentlemen alone and look to The Society of the New York Hospital alone. My reason for so doing is, you are mere understrappers in this affair. You are

hired by the Governors of the Society of the New York Hospital to hold all men and all women run in here under the present illegal laws on Lunacy of the State of New York, to hold all men and all women run in here, whether insane or sane, for so long as the parties who ran said men and women in here put up a sufficiently fat fee for holding sane men and sane women illegal prisoners. This institution is not, as is popularly supposed, a public institution nor is this institution an eleemosynary institution. This institution is a purely money-making concern, travelling under a false name, contrary to law and doing a nefarious trade in men and women. If you did not do the said bidding of the said Board of Governors of The Society of the New York Hospital, you would lose your job. The proof of the pudding is in the eating thereof. If what I allege against the Board of Governors aforesaid, were not strictly unexaggerated, were not strictly true, why is it that there is no case on record of a party committed here against said party's will, ever being set free until said party had called in the strong arm of the law and worked a *habeas corpus* on you? There is hardly a year goes by that one man or woman—sane man or woman, and sometimes more than one in a given year—there is hardly a year by that one man or one woman, perfectly sane, does not fight his or her way out of 'Blomingdale,' falsely so-called. Having come to the aforesaid conclusion, I am prepared to make allowance for human nature and to admit that, from a business point of view, but only from said point of view, you are right to hold your jobs." From that day plaintiff was as said Dr. Lyon says, *supra*, "I do not know whether I mentioned it, but he thinks there is a conspiracy of the Wall Street Clique (p. 118, fol. 231). He mentioned Choate * * * he thinks we are understrappers and

he is a very *amiable* now." The foremost round for said Dr. Lyon's belief that plaintiff was "insane and unable to manage himself or his affairs" was "That since the patient's admission to Bloomingdale he has had delusions that conspiracies existed against his life and happiness." Said Dr. Lyon's second ground for said Doctor's belief that plaintiff was "insane," etc., was "He has passed his night in watching." Dr. Lyon aforesaid here becomes classical in said Doctor's diction, and employs an old English use of the word "sit" or "sit up" at night for "watch." Plaintiff was in the habit of sitting up very late writing or reading at night, for the reason that at that time the lunatics are usually asleep, and therefore less prone to yelling than when said lunatics are awake in the day time. Said Dr. Lyon's third ground for said Doctor's belief that plaintiff was "insane," etc., was that while said Medical Staff were continually calling plaintiff to plaintiff's face—an incompetent person—before plaintiff experienced said change of heart and forgave said Medical Staff, that while said Medical Staff were continually depreciating plaintiff's personal stock — so to speak — plaintiff having no one to say so much as a good word for plaintiff, plaintiff made bold to put in as a plea in rebuttal of the aforesaid charges of insanity and folly the claim to being an all-round man, that is to say a rounded man, one developed physically, intellectually, and artistically, and plaintiff brought forward as proof of said contentions the fact of record, that plaintiff could spar, that plaintiff was a lawyer, and that plaintiff could write sonnets which the witnesses of the other side admitted were "certainly of a most extraordinary nature and very brilliant in a way." To put it mildly, said Dr. Lyon is in error when said Doctor avers "he has now the delusion that his mental

powers are almost supernatural." Said Dr. Lyon is good enough to gild the above monstrous pill with the remark that plaintiff is "really a very bright man naturally." Said Dr. Lyon's fourth ground for said Doctor's belief that plaintiff was "insane," etc. was "and that his personality has undergone a change and that he now has a very high mission to fulfill toward the world." Plaintiff's personality had undergone a two-fold change during plaintiff's long incarceration at White Plains. Said change was partly physical and partly mental. Said physical change was that plaintiff, from being a *quasi*-vegetarian, when plaintiff entered The Society of the New York Hospital, ended by becoming, before the nearly four years of imprisonment were terminated, by escape, ended by becoming a strict vegetarian. Said mental change, to wit. While not caring to undergo the charge of cynicism, plaintiff, to be honest, must admit that plaintiff's experiences with plaintiff's fellow man at The Society of the New York Hospital—and all that that phrase entails—that plaintiff is certainly not open to the charge of being—so far as human nature is concerned, and the depths of murderous rascality to which, upon temptation, human nature readily sinks—plaintiff touching human nature is certainly not open to the charge of optimism. Plaintiff as a lawyer and mindful of plaintiff's oath does not hestitate to assert that plaintiff would be recreant to plaintiff's profession as well as to plaintiff's said oath did plaintiff, as an officer of the Court, allow such a crime and such a criminal combination as is represented by the past action of the other side and all that that entails, to go undenounced. Said Dr. Lyon's peroration—so to speak—is a pretty example indeed of the cry of wolf. Said Dr. Lyon says, "His disease appears to pursue the typical course of what is known as systematized delusional in-

sanity, beginning with suspicions of persecutions by enemies for a purpose and later developing expansive ideas of his own personality." Plaintiff's "disease" was one which attacks all lawyers worthy of the profession, when said lawyer's rights are menaced. Plaintiff's "disease" was one which attacks all honest men, whether lawyers or laymen, who find themselves in a den of thieves. Plaintiff's "disease" in short knew but one cure and said cure was a speedy entry into Court. The cry of "wolf" is shown from the fact that everybody, every sane body that is, who finds himself or herself in the clutches of The Society of the New York Hospital desires redress. Upon fighting their way out by *habeas corpus* proceedings said parties let the matter rest there. Plaintiff fails to find how plaintiff has "developed expansive ideas of his own personality." A close inspection of said proceedings in 1897, as well as of said proceedings in 1899, as well as of said proceedings in 1901, will develop the fact that plaintiff far from "developing expansive ideas of his own personality" has spent time and money in undeveloping the bogus personality which the expansive mendacity of the doctors in the pay of the other side has foisted upon the said record, so-called, of 1897, and the said record, so called, of 1899, where said bogus personality has been allowed to masquerade—owing to the fact that plaintiff has not yet been able to have plaintiff's day in Court—where said bogus personality has masqueraded in veritable harlequin colours in lieu of the quiet law-abiding, studious colours which distinguish plaintiff's true personality on the evidence furnished by the record of said proceedings in 1901. In closing said branch of this question a query obtrudes itself. Said query to wit: Why should Dr. Carlos F. Macdonald and Dr. Austin Flint, Senior, aforesaid display so much thinly veiled venom towards plaintiff? Plaintiff had

never by deed or word injured either of said Medical men. The answer to said query is not hard to find. The answer to said query is as follows. As appears from the said proceedings in 1899 plaintiff has denounced all parties to said conspiracy as freely as plaintiff has denounced said parties in plaintiff's said brief. Plaintiff had said to said Doctors that sooner or later plaintiff, along with plaintiff's said brief, would get to Court. Plaintiff gave as a reason for said bold—under the circumstances, plaintiff being at said time laid by the heels in a madhouse cell—assertion that plaintiff had a pretty thoroughly developed will-power, and that said will-power was ample, not only to preserve plaintiff from succumbing to the force of environment and becoming insane, but also ample to carry plaintiff over all the obstacles which might offer themselves in the path of a complete and public vindication of plaintiff's entire sanity and competency, not only at present but at the time of plaintiff's said illegal arrest and illegal incarceration in The Society of the New York Hospital. That once said vindication took place said vindication would necessarily have carried in said vindication's train an exposure of the New York Lunacy Laws, and an exposure of the New York method of working said Lunacy Laws, together with an exposure of the methods and aims of New York alleged experts in insanity, New York Medical-Examiners-in-Lunacy. Such an exposure would not be pleasing to said New York Medical-Examiners-in-Lunacy. Such an exposure would in the nature of things, and upon the principle that self-preservation is nature's first law, lead the people of the State of New York, so soon as the people of the State of New York grasped the size and hideous character of the danger that might menace any of them—to wit, life imprisonment in a mad-house cell without notice, with-

out a hearing, without a trial and without recourse, upon the slightest family friction—such an exposure would lead the people of the State of New York to repeal the said illegal lunacy laws now doing duty in the Empire State as the Lambert case (*supra*)—parallel in many particulars with plaintiff's case—had led the people of the State of California to at once—upon Lambert's case becoming known—repeal their Lunacy Laws, modeled, by the way, exactly upon the lines of said present New York Lunacy Laws—as the said Lambert case had led to an *instant* repeal of said California Lunacy Laws. Such an exposure would entail two things poignantly unpleasant to said Medical-Examiners-in-Lunacy. It should be observed here that there are two divisions of New York Medical-Examiners-in-Lunacy. *Division one* represents men like Austin Flint, Senior, who are, so to speak, unattached. Who are free lances in Lunacy, whose oath is—on the evidence—at the disposal of the first purchaser with a sufficiently long purse. Said, so to speak, free lance-in-Lunacy makes a large part of said free lance's annual income from declaring people insane. Readers of the newspapers will note the frequency of said Austin Flint, Senior's, name in Lunacy proceedings, and the rather remarkable fact that said Austin Flint is always opposed to the liberty and sanity of the citizen of either sex who is fighting his or her way out of the clutches of The Society of the New York Hospital or out of the clutches of some other Private Madhouse. *Division two* represents Medical-Examiners-in-Lunacy, like Carlos F. Macdonald, aforesaid, who, while being free lances in Lunacy in the sense that said gentlemen are only too eager to earn an honest penny by swearing a sane man into a mad-house cell for life on a false charge of insanity, as said Macdonald has, on the evidence, done in plaintiff's case—as the following excerpt

from the said deposition of said Macdonald proves, to wit: Page 86 *ibid.* "Deponent further says that his opinions expressed at the time of the second interview hereibefore referred to in April, 1898, have been confirmed, and that the *said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.*" Said gentlemen also have a *habitat*, by which is meant said gentlemen are also owners or lessees of Private Madhouses. It may not be generally known, that that all dominating, all pervading monopoly the Standard Oil Company has also had its finger in Lunacy, so to speak as follows: A multi-millionaire Director of the said Standard Oil Company was encumbered by an alleged insane wife. We do not go so far as to say that the lady was not, or, if she be still alive, is not now, insane, but we will go so far as to say that were she perfectly sane the following performance upon the part of the said Multi-Millionaire Director in said Standard Oil could have been put through as smoothly—as thoroughly on oiled wheels as it were—as said performance was, on the evidence, smoothly put through. The said performance to wit: Said Standard Oil Director first placed said wife in the tender keeping of said Carlos F. Macdonald at a snug little retreat, said to be leased by said Macdonald from the widow of the late brother of the Honorable Joseph Hodges Choate—the said defunct brother having been said Private Madhouse's Proprietor in said defunct brother's day. Said snug little retreat is situated in the pleasantly named village of Pleasantville, a few miles north of White Plains on the Harlem Railroad. According to the public prints the price paid by said Standard Oil Director for the lodging and maintenance of said lady at the hands of said Carlos F. Macdonald is enough to raise the doubt as to whether or not said exorbitant, preposter-

ous sum—which makes plaintiff's one hundred dollars per week for lodging and maintenance at the said Society of the New York Hospital look utterly insignificant—said price paid said Macdonald by said Director is sufficient to raise the doubt as to whether said fabulous sum is not more in the nature of a ransom than a payment for value received. Said Standard Oil Director next hies him South to a State where money is not plenty. Said Standard Oil Director next sets to work to control the legislature of said Southern State with the sole view of passing through said Legislature a bill *Making insanity a ground for divorce.* The conservative ideas on divorce in the South are well known. The South boasts the only State in the Union which is more orthodox, more Christian, so to speak, than the Founder of Christianity Himself, Who did admit one ground for divorce, said unique Southern State—South Carolina to wit—admitting none. The indignation aroused in the public mind by such a high handed proceeding—and upon the part of a carpet-bagger at that—was outspoken. However, as is often the case, dollars won the day. Whereupon said Standard Oil Director promptly took unto himself a younger mate.

One would think that said Standard Oil Director had sufficiently whetted said Carlos F. Macdonald's interest in having as an inmate of said Macdonald's said snug little retreat at Pleasantville for as indefinite a period as possible a "patient" who represented such a splendid income as did ex-wife of said Standard Oil Magnate. But said Standard Oil Magnate did not stop here—the methods of said Standard Oil Magnate are thorough and far reaching. Said Standard Oil Magnate next and finally, according to the public prints of the day, had proceedings set on foot for a most remarkable piece of work, to-wit. Said Standard Oil Magnate had, according to

said public prints, proceedings set on foot to have said Carlos F. Macdonald appointed the Committee of the person and estate—which was a large one—of said ex-wife. What became of the matter plaintiff knows not, since said matter was swiftly hushed up thereafter and —so far as plaintiff saw—never again appeared in print. Said extraordinary performance, the putting of a party's jailor into the confidential and equitable relation of Committee of said party's person and estate is so gross an infraction of even common prudence as to need no comment. Let us hear what so fair-minded and learned an authority as Blackstone has to say upon practically the same topic to-wit: "*Guardian and Ward.*" But with Guardian and Ward this differences arises. That although a ward is of tender years, yet a ward has a mind, yet a ward has intelligence, yet a ward has common sense, which can be called upon by said ward to protect said ward from said guardian, should said guardian fail in said guardian's duty toward said ward. Not so, however, in the case of an insane person. Here the said insane person is utterly helpless, utterly incapable of looking out in the remotest degree for said insane person's rights of person and property. And should the Committee of the person and estate of said insane person be tempted to continue to confine said insane person, after said insane person should have become cured what an entrenched position would said committee occupy for throwing obstacles in the way of said now *sane person's* communicating with the outer world and procuring liberty through *habeas corpus* proceeding. Let us hear what Blackstone has to say upon the subject of putting a ward, *i. e.*, a lunatic into the hands of a Guardian, *i. e.*, a Committee of the person and estate.

"Of Guardian and Ward."

"1. The guardian with us performs the office both of the *tutor* and *curator* of the Roman laws; the former of which had the charge of the maintenance and education of the minor, the latter the care of his fortune; or, according to the language of the Court of Chancery, the *tutor* was the committee of the person, the *curator* the committee of the estate. But this office was frequently united in the civil law; as it is always in our law with regard to minors, though as to lunatics, and idiots it is commonly kept distinct." page 175.

"Next are guardians *in socage* * * * These take place only when the minor is entitled to some estate in lands, and then by the common law the guardianship devolves upon his next of kin, to whom the inheritance cannot possibly descend; as, where the estate descended from his father, in this case his uncle by the mother's side cannot possibly inherit this estate, and therefore shall be the guardian. For the law judges it improper to trust the person of an infant in his hands; who may by possibility become heir to him; that there may be no temptation, nor even suspicion of temptation, for him to abuse his trust. The Roman laws proceed on a quite contrary principle, committing the care of the minor to him who is the next to succeed to the inheritance, presuming that the next heir would take the best care of an estate, to which he has a prospect of succeeding; and this they boast to be "*summa providentia.*" But in the meantime they seem to have forgotten how much it is the guardian's interest to remove the incumbrance of his pupil's life from that estate for which he is supposed to have so great a regard. And this affords Fortesque and Sir Edward Coke an ample opportunity for triumph; they affirming that to com-

mit the custody of an infant to him that is next in succession is "*quasi agnum committere lupo, ad deroraudum.*" pp. 176, 177 and 178.

As we see Blackstone says, "as to lunatics and idiots it (the Committeeship of the person and the Committeeship of the estate) is commonly kept distinct." The reason for this is, of course, obvious. But Blackstone is not the only one opposed to *agnum committere lupo ad deroraudum.* Judge Lawrence said in matter of O'Connell, 5 Law Bull. 60 (1883). Motion to appoint a Committee of a lunatic without giving security. Held, doubtful whether Court has power. "*I shall not appoint the keeper of the Asylum as Committee.*" While in England the keeper of an Asylum is so squinted at by the law that said keeper is regarded with disfavor even when attempting to ply the trade of a Medical-Examiner-in-Lunacy, as said Carlos Macdonald so plies said trade, to-wit, mounting the stand and passing judgment upon a person's sanity. "The petition (in lunacy) should be supported by affidavits by medical men—*preferably unconnected with lunatic asylums.* (Note 2) *Re Anon.* 1844, Drur. 286. Here Sugden L. C. *refused to receive, in support of an application for an inquisition, a certificate by the keeper of a private lunatic asylum.*" Renton, p. 259. What would Blackstone have to say about "*turning over the lamb for the wolf to devour,*" could Blackstone visit once more the scene of his former activities, in the case of * * * into the hands of said Carlos F. Macdonald, keeper of the Private Mad-House at Pleasantville? The motive, therefore, for said Carlos F. Macdonald's said thinly veiled venom against plaintiff in said Proceedings in 1899 is not far to seek. Neither is that of said Macdonald's side-partner, so to speak, in the crime said Macdonald and said Flint perpetrated against plaintiff in—upon the evidence—swear-

ing that plaintiff was hopelessly and increasingly hopelessly insane and incompetent, whereas, on the evidence, said gentlemen were forced to observe that plaintiff was merely a student in Experimental Psychology, who could pretty much at will enter a trance. Said Macdonald and said Flint were well aware of plaintiff's attitude towards Medical-Examiners-in-Lunacy. Plaintiff had said to said gentlemen what plaintiff later wrote under date March 26, 1900, to said first New York lawyer, to-wit, "It is a duel to the death between me and the Society of the New York Hospital and its allied private insane asylums—with which this State is honeycombed—and their allied Medical-Examiners-in-Lunacy, whom I'd prove on the evidence to be a gang of professional perjurers, a gang of "cappers," and "barkers," and "pullers-in" for the private insane asylums with which the Empire State is mined." Said gentlemen very well knew that if plaintiff ever emerged alive from the confines of the Society of the New York Hospital aforesaid that said gentlemen's professional emoluments would—to put it mildly—be largely curtailed. Provided the American people ever wake up to the peril and scandal lurking in their lunacy laws, as the English people did upon the appearance of Charles Reade's epochal and revolutionizing book on lunacy practices, entitled "Very Hard Cash." It was therefore to the pecuniary and professional interest of said Macdonald and Flint to so tie up plaintiff in the fetters of insanity and incompetency by said gentlemen's, on the evidence, false swearing that plaintiff could never get out and show said gentlemen up. With plaintiff at large and in a State where plaintiff could speak freely and write freely without danger of life-imprisonment upon a false charge of insanity Othello's occupation would be gone, for said Medical-Examiners-in-Lunacy; by which we mean that the public would,

once the public grasped the real situation, set metes and bounds to the now tyrannical satrap-like power of life-imprisonment exercised in their calling by New York Medical-Examiners-in-Lunacy.

What would Blackstone, Fortesque and Sir Edward Coke have said to naming as Committee of an alleged lunatic, and his large fortune, the law-partner of one of the proprietors of the mad-house to which said alleged lunatic was consigned for life, on perjured charges, without either notice of the proceedings had against him, or opportunity to appear and be heard in defense of his goods and himself?

Here Sugden, L. C., refused to receive in support of an application for an inquisition a certificate by the keeper of a private lunatic asylum." Renton, p. 259.

What would Sir Wm. Blackstone, Fortesque and Sir Edward Coke, what would these profoundly learned jurists and great men, have to say about *agnum committere lupo, ad devorandum?*

We shall now conclude the discussion of the question as to what constitutes sanity as distinguished from insanity.

1. The documents annexed to plaintiff's affidavit and the documents annexed to this brief will show that we shall prove in this case that plaintiff has always been sane and competent. In *note* in 43 Am. St. Rep. 531, it was said: In a lunacy proceeding the unsoundness of the mind is the essential thing, and must be clearly established as an independent proposition: *In re Shaul*, 40 How. Pr., 204; An inquisition *de lunatico inquirendo* simply makes a *prima facie* case.

We here insert excerpts from *Hutchinson* v. *Sandt*, 26 American Decisions, page 127 (4 Rawle, 234).

"An inquisition finding that a person is and for five years has been of unsound mind, and incapable of manag-

ing his estate, is admissible in evidence as against the grantees of the alleged lunatic, for the purpose of avoiding his deed to them.

"Such inquisition is *prima facie* evidence only, and may be rebutted by the showing that the alleged lunatic was not insane, or that he had lucid intervals, during one of which the deed in question was executed. * * *

EJECTMENT, both parties claiming title under Andrew Hutchinson, deceased; the plaintiffs as his heirs, and the defendant under a deed executed by him in 1817. The plaintiffs, to avoid the effect of this deed, offered in evidence an inquisition taken in February, 1818, under a commission in the nature of a writ DE LUNATICO INQUIRENDO, by which, among other things, it was found 'that the said Andrew Hutchinson, at the time of taking this inquisition, is of unsound mind, memory and capacity, so that he is not capable of governing himself or managing his estate; and that said Andrew Hutchinson hath been in said state of unsound mind, memory and capacity for the space of five years last past and upwards.' In April, 1818, this inquisition was confirmed by the court, and committees of his person and estate appointed:

"The defendants then offered evidence tending to prove that Andrew Hutchinson was not a lunatic; that he was subject to fits only, and had many lucid intervals, etc. * * *

"Under the directions of the judge the jury found for the defendants. Plaintiffs moved for a new trial, which being refused, they appealed to this court. * * *

"By the Court, Kennedy, J.: 'The inquisition had been given in evidence by the plaintiffs to show that Andrew Hutchinson was, at the time the deed of conveyance purported to have been executed by him, to wit,

on the fifteenth of November, 1817, and under which the defendants claimed, of unsound mind and incompetent to make such an instrument. It was doubtless admissible for this purpose, although entirely an *ex parte* proceeding as respected the grantees in the deed, but for this reason of its being *ex parte* it is only *prima facie* evidence at most of Andrew Hutchinson's insanity, and liable to be rebutted and done away by the testimony of those who were acquitted and conversant with him during that period, and knew him to be of sound mind, or that he had at least lucid intervals, and that the deed was executed by him at one of those times. * * *

"The decision of the circuit court, overruling the motion for a new trial, is reversed, the verdict set aside, and a new trial granted."

We next insert excerpts from *Titlow* v. *Titlow*, 93 American Decisions, page 691. (54 Pennsylvania State, 216.)

By Court, Strong, J.: "The general principle is, that an inquisition of lunacy found is *prima facie* evidence in cases involving the sanity of the lunatic, and no more; such is the doctrine of all our cases. * * *

Gangweress Estate, *Id.* 417 (53 Am. Dec. 554). In the latter of these cases it was distinctly ruled that an inquisition of lunacy finding the party a lunatic without lucid intervals was *prima facie* evidence only, and not conclusive, and a petitioner for the proceeding was not *estopped* from asserting the truth against it, and showing that the party had lucid intervals: See also *Hutchinson* v. *Sandi*, 4 Rawle, 234.

Den ex Dem. of Aber v. *Clark*, 18 American Decisions, page 417 (5 Halstead, 217). Ewing, C. J., said:

"In *Sergeson* v. *Sedley*, 2 Atk. 412, Lord Hardwicke overruled the objection and said that 'inquisitions of lunacy are always permitted to be read, but are not conclusive evidence; for you may traverse them if you please. * * *'"

In *ex parte* Barnsley, 3 Atk. 184, Lord Hardwicke said: "In all these inquisitions they are not at all conclusive, for they may bring actions at law, or a bill to set aside conveyances. * * *"

In *Hall* v. *Warren*, 9 Ves. 603, The master of rolls said: "That inquisition having been taken in the absence of the plaintiff is not conclusive upon him. But it is *prima facie* evidence of the lunacy. It is, however, competent to third parties to dispute the fact and to maintain that, notwithstanding the inquisition, the object of it was of sound mind at any period of the time which it covers. * * *"

Maddox, in his treatise on chancery practice, states the following doctrine: "An inquisition is only presumptive evidence of insanity, and not conclusive, so that upon an action in respect to any contract or deed, it is for a jury to determine whether at the time of executing it, the party was *non compos*, though by the inquisition he was found to be *non compos* at such a period": 2 Madd. 578.

From these citations the following conclusions are deducible:

1. An inquisition of lunacy is not conclusive against any person not a party to it.
2. When an inquisition is admitted in evidence, the

party against whom it is used may introduce proof that the alleged lunatic was of sound mind at any period of the time covered by the inquisition. The position is, indeed, a corollary from the former, as it would be inconsistent to say the inquisition was not conclusive and at the same time to refuse to receive any evidence to contradict the fact stated in it. * * *

In page 301, Phillips speaks of the inquisition of lunacy. He says it is evidence against third persons who were strangers to the proceedings. He does not directly say whether conclusive or *prima facie*, though his meaning cannot readily be misunderstood; but to support his position he cites the case already mentioned of *Sergeson* v. *Scale*, in which Lord Hardwicke says it may be read, but it is not conclusive. * * *

Such is the diversity of judgment respecting the state of the mind, that on this, more than perhaps any other question, error may be anticipated from uncontroverted proofs and *ex parte* examinations.

The Executors of William B. Hill, deceased, v. *Edward Day, et al.*, 34 New Jersey Equity, 150.

Van Vleet, V. C., said: "*Where there is no reason to suspect fraud, the test in this class of cases is, Did the person whose act is challenged possess sufficient mind to understand in a reasonable manner the nature and effect of the act he was doing, or the business he was transacting? He may be old, or enfeebled by disease, or irrational upon some topics, and yet possess sufficient mind to make a valid disposition of his property. In the absence of fraud or imposition, the only question the court is required to decide is, Did the person whose act is challenged clearly understand and comprehend what he was doing when he did it?* * * *

These remarks show a good memory, and clear under-

standing and judgment. He remembered what he had done, the motive which had influenced him, and that his judgment approved his conduct until new influences were brought to bear upon it, and then that his judgment underwent a change, and he wanted the mortgage returned to him. * * * His conduct and speech not only show that he knew what he was doing, but that he was capable of exercising ordinary caution and discretion. * * *

"Contemporaneous conduct or demeanor, constituting part of the transaction brought under review, is always entitled to very grave consideration in cases of this kind. It generally portrays much more truthfully what a witness understood, thought, or believed, at the moment than words subsequently spoken, even when they are uttered under the sanction of an oath." * * *

Citing again said note in 43 Am. St. Rep. 531, "If the party charged testifies, his conduct is to be considered by the jury as the conduct of any other witness is considered: *Fiscus* v. *Turner*, 125 Ind. 46. And he has the right to appear and testify before the jury: 7 Abb. N. C. 417."

In *Commonwealth* v. *Haskell*, 2 Brewst., 491, we find the following proposition, viz.: "That insanity is a mental disease, and must indicate a change in the normal condition; *that a change is not, of course, conclusive evidence of insanity, for it may be unattended by any symptoms of disturbance, and may be marked by propriety and moderation; that mere eccentricity or peculiarity is not evidence of insanity where it is shown to be the normal characteristic of the defendant;* that mere weakness of intellect is not of itself sufficient to establish insanity, for it may co-exist with some degree of

power; *that one who alleges the insanity of himself or of another must prove it;* that the presence of insanity is to be detected by comparing the symptoms of the defendant with the standard of health, taking into consideration the habits and peculiarities of the defendant when sane, and looking to the causes producing the change; * * * *that the test in cases of insanity lies in the word "power"*—has the defendant in a criminal case the power to distinguish right from wrong, and the power to adhere to the right and avoid the wrong? —in other cases, has the defendant, in addition to the capacities mentioned, the power to govern his mind, his body and his estate? that the issue in a proceeding of lunacy is, whether the defendant has been so far deprived of his reason and understanding as to be unable to govern himself or to manage his affairs; * * * *that the finding of the original jury upon the petition is not evidence before the jury who try the traverse;* that the commonwealth having first shown that the defendant in a lunacy proceeding was insane before the filing of the petition, may prove his mental condition up to the time of the trial; that it having shown violence of the defendant toward his wife, may ask the witness "What was the conduct of the wife?" and that *it having read in evidence as proof of delusion a letter from the defendant charging others with serious crime, it is competent for the defendant to prove that one of the charges was not a delusion, but a fact.* * * * Statutes requiring a party charged with insanity to be produced in open court, when possible, are designed to prevent fraud in the procuring of verdicts of insanity without affording the defendant an opportunity of being heard: *Fiscus* v. *Turner*, 125 Ind. 46."

Mr. Justice Harlan (in the Runk case, *supra*) thus

defined what constituted sanity as opposed to insanity: "What constitutes insanity, in the sense in which we are using the term, has been described to you, and need not be repeated. *If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others,* if he understood the wrongfulness of it, *as a sane man would, then he was* SANE, so far as we have occasion to consider the subject. * * * I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit. The only question, therefore, for consideration is this question of sanity. There is nothing else in the case." A perusal of the above will prove that the Supreme Court of the United States supports plaintiff's aforesaid contention touching sanity and also touching the test as to whether a party is sane or insane. As said above, Plaintiff maintains that sanity is shown by the action of a party's mind not by the action of a party's muscles. Plaintiff maintains that sanity is shown by the words uttered by a party's tongue rather than by the question as to whether the party's tongue was "coated" or not "coated." Plaintiff maintains that sanity is shown by the question as to whether or not said party's ideas are normal rather than by the question as to whether or not said party's pupils are normal. What is insanity? Suppose a law should be enacted to the effect that certain acts or thoughts would be sufficient proof of mental derangement, and that upon a trial, the facts appearing, the Court should direct a verdict accordingly, and property or freedom should thus be wrested from the defendant. Would such a proceeding constitute due process of law? And yet

such a preposterous, such a mechanical, such a charlatanish test of insanity is today set by so-called experts in insanity, who glean certain physical, mechanical, muscular actions which sometimes follow insanity and —to use a technical phrase—mistaking *auxiliary for positive*—impudently place the cart before the horse.

Lastly, as Renton says in "The Law of and Practice in Lunacy," London, 1896, the old way of proving sanity was finding out whether a man could count, could tell who his parents were and knew his own name, etc. With the increase of the complexity of life this simple test falls behind the times now-a-days, but its principle still holds true, namely that the test of sanity is a mental test wholly within the power of the accused to accomplish and without any witnesses professional or lay to back him up. Suppose two paid experts in insanity, in the pay of the other side swear that the defendant can not tell what his past history has been, that said defendant's mind is a total blank upon that subject. Would that professional and paid and interested oath stand against the defendant's refutation thereof by taking the stand and promptly and lucidly giving his past history, provided he were afforded his legal privilege of taking the stand in place of being kept away from Court and having to allow his liberty and property to be perjured away from him in his enforced absence?

The said decision in the said Runk case proves conclusively that a written instrument—written by the party committing suicide prior but close to said time of said suicide—proves conclusively that said written instrument does successfully offset the *prima facie* presumption of, and *prima facie* evidence of, insanity which said act of suicide entails—suicide being in itself presumptive proof of insanity, its name being *suicidal*

mania—in the category of insanity. In a word, that a written instrument written by an alleged lunatic at the time of said alleged lunacy can and does successfully offset medical evidence of said alleged lunacy. In a word, *that the mind—not the body—is the seat of sanity or insanity, and as the mind acts so is the party proved sane or insane thereby.*

Mr. Justice Harlan says "He (Runk) left for the guidance of his executor a memorandum of his business affairs prepared, just before his death, and which tended to show that he was at that time entirely at himself." We confidently rest upon plaintiff's said letter under date of July 3rd, 1897—of over 30 pages of typewriting—written to plaintiff's then proposed counsel, Hon. Micajah Woods, Commonwealth's Attorney of Albemarle County, Virginia, acknowledged by letter and returned by said Woods in 1900; we confidently rest upon plaintiff's said letter written within four months of the date of plaintiff's said arrest and incarceration in The Society of the New York Hospital at White Plains, we confidently rest thereon together with this brief, written by plaintiff, to prove that not only was plaintiff, in the words of the learned Mr. Justice Harlan, "entirely at himself," at the time of said writing and since, but also, on the evidence contained in said letter, corroborated as aforesaid by third parties—that plaintiff was at himself during the period precedent to plaintiff's said arrest, in which said period the said other side falsely, upon said evidence, allege plaintiff to have been of unsound mind; that *Mr. Justice Harlan describes a sane man* (supra) *as one who "understood the consequences and effects of what he was doing;" said letter of plaintiff under date of July* 3d, 1897, *surely proved that plaintiff "understood the consequences and*

effects of what he was doing" when plaintiff wrote said letter; said plaintiff, when plaintiff wrote said letter, according to Mr. Justice Harlan, at all events, was sane; and the same reasoning holds good touching said brief."

POINT 16. The said proceedings in 1899 were void for the reason that the only evidence of plaintiff's alleged incompetency came from two medical men in the pay of the said petitioners, and from the medical man in charge of the Society of the New York Hospital where plaintiff was confined, and to whose pecuniary interest it was therefore—plaintiff being the highest pay (falsely alleged) "patient" in said hospital—to keep plaintiff in said hospital as long as he could; and said paid for or otherwise pecuniary interested, evidence, standing uncontradicted—for the reason aforesaid that plaintiff was by said contrivance aforesaid kept out of Court and therefore was unable to contradict said evidence—said evidence standing uncontradicted was not a valid foundation for the judgment which followed.

Said evidence being, upon the evidence, under said circumstances ex parte *was therefore of no avail.*

POINT 17. Even if the judgment of the New York State Courts in 1897 and 1899 aforesaid, were not totally null and void for the reasons aforesaid, the said judgments are now *functus officio* for the reason that they have nothing to feed upon, a judgment in insanity self-evidently—since insanity is not always incurable—not being a continuing one, and plaintiff having been found to be both sane and competent, as well as a citizen of Virginia, by the said judgment rendered November 6, 1901, by the said Virginia Court (Plaintiff's Exhibit 7 for identification).

POINT 18. Upon the above grounds of fraud, want of jurisdiction, lack of due process of law, unconstitutionality, illegality, nullity and *functus officio* the said New York proceedings may be attacked collaterally; and T. T. Sherman, the so-called committee of plaintiff's person and estate, who is merely a Trustee *ex maleficio* may be assailed as a trespasser upon plaintiff's property.

POINT 19. Plaintiff being a citizen of Virginia, and the said alleged committee of plaintiff's person and estate being a citizen of New York and doing business in New York City, and the amount in controversy being over three thousand dollars, the Federal Circuit Court for the Southern District of New York has jurisdiction.

(In conclusion, if the Court please, let us now hear Blackstone thunder from the Common law—that unsurpassed body of law, which is the law of the United States save Louisiana, under the Code Napoleon.)

THE ABSOLUTE RIGHTS OF THE INDIVIDUAL.

(*From Brief in Chaloner against Sherman, pp.* 845-847.)

(1) "For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature; but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these *absolute* rights of individuals. Such rights are social and *relative* result from, and are posterior to, the formation of states and societies, so that to maintain and regulate these, is clearly a subsequent consideration.

And therefore the principal view of human laws is, or ought always to be, to explain, protect and enforce such rights as are absolute, which in themselves are few and simple; and then such rights as are relative, which, arising from a variety of connections, will be far more numerous and more complicated. These will take up a greater space in any code of laws, and hence may appear to be more intended to, though in reality they are not, than the rights of the former kind," pages 63 and 64.

(2) "To bereave a man of life, *or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism,* as must at once convey the alarm of tyranny throughout the whole kingdom; but *confinement of the person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and, therefore, a more dangerous engine of arbitrary government*" * * * (p. 75).

(3) * * * "In vain may it be urged that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or no. *Besides, the public good is nothing more essentially interested than in the protection of every individual's private right as modeled by the municipal law*" (p. 78).

(4) * * * "In these several articles consist the rights, or, they are frequently termed, the liberties of Englishmen; liberties more generally talked of, than thoroughly understood; and yet highly necessary to be perfectly known and considered by every man of rank and property, lest his ignorance of the points whereon they are founded should hurry him into faction and licentiousness on the one hand, or a pusillanimous indiffer-

ence and criminal submission on the other. And we have seen that these rights consist, primarily, in the free enjoyment of personal security, of personal liberty and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed" (p. 84).

(5) * * * "And hence it is that our lawyers are with justice so copious in their encomiums on *the reason of the common law;* that they tell us, *that the law is the perfection of reason,* that it *always intends to conform thereto, and that what is not reason is not law.* Not that the particular reason of every rule in the law can at this distance of time be always precisely assigned; but *it is sufficient that there be nothing in the rule flatly contradictory to reason,* and then the law will presume it to be well founded" * * * (p. 36).

(6) * * * "When a custom is actually proved to exist, the next inquiry is into the legality of it; for, if it is not a good custom, it ought to be no longer used; *malus usus abolendus est** is an established maxim of the law" * * * (p. 43).

We said above, "arresting and imprisoning a law-abiding member of the legal profession * * * for no other crime than that of entering a harmless trance at the request of *pseudo*-scientists who pretended an interest therein." We were in error. There was one other

*As a law-writer we respectfully submit that against the illegal custom of imprisoning alleged lunatics for life, and sequestrating their estates, sans notice, sans opportunity to appear and be heard, and sans the privilege extended alleged burglars and rapists, to-wit: trial, *not in absentia, not* twenty-five miles off—*not* twenty-five miles out of sight of the jury—but *in their presence in open court,* or, in extreme cases, in their presence *in camera*—as a law-writer we respectfully submit, that against said scandalous custom, aforesaid, should—and without delay—be trained Blackstone's maxim: "*malus usus abolendus est.*"

crime—for which plaintiff was arrested and imprisoned for life by the Supreme Court of New York—that of being a vegetarian. A juror: "Q. I notice in the certificate (of lunacy in the proceedings of 1897), that he only took certain articles of food about two years ago, restricting himself to diet: does he still do that? A. (By Dr. S. B. Lyon): He still continues vegetable diet. I am not aware that he has eaten any meat since he was with us" (p. 14, Proceedings, 1899) (Transcript of Record, pp. 230-231).

BRIEF-IN-REBUTTAL

As we will not have an opportunity to peruse the brief to be filed by counsel for the defendant-in-error in the Supreme Court, before this brief is printed, and as we assume that the contents of the brief of said counsel will be much the same as the contents of his brief before the Circuit Court of Appeals, we will now take up the salient points of his brief before the latter court and reply to the same:

We respectfully submit to this learned Court that the length of this brief is caused by the act of the counsel for the defendant-in-error. By act we intend to imply mental—not physical—act.

The learned counsel for the defendant-in-error in said brief makes a statement which is wholly unwarranted by the facts. He says, p. 13 of said brief: "The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time," (and on p. 14, *ibid.*): "The plain fact is of course that one who is physically unable to attend a trial is by no means denied an opportunity to be heard if he is able to retain and consult freely with counsel. The fact that the plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel (fol. 112, Letter printed as Exhibit 6 for Identification, fols. 305-340), but also from the testimony in the 1899 Proceedings (fol. 232), which shows that at the time in question he was on parole and at liberty to go where he pleased within large limits (fol. 231)."

Whereas the deposition he cites proves beyond a per-

adventure that the plaintiff-in-error was at said time confined to his bed with spinal trouble. And, after an attempt to walk, was forced to return to his bed, and stay there for weeks. We respectfully submit that the counsel for the defendant-in-error has garbled and twisted the deposition of the plaintiff-in-error, which deals with the above period, and conveniently *shifted the facts forward* for some nine months—from the *Spring of* 1899 *to January*, 1900—in order to deceive the learned Federal Circuit Court of Appeals, and thereby buttress his utterly unwarranted hypothesis, that the plaintiff-in-error—instead of being physically incapacitated from walking at all—to say nothing of walking twelve miles in three hours—which the deposition proves he did in—and steadily—after January, 1900, up to the time of his escape in November, 1900—and thereby buttress and bolster up the counsel for the defendant-in-error's utterly unwarranted hypothesis that the plaintiff-in-error was, at the time of the 1899 Proceedings—before a Commission-In-Lunacy and a Sheriff's Jury held in New York City—in vigorous physical health, walking all over the country and meeting and consulting with counsel to his heart's content. The following excerpt from said 1899 Proceedings, being the testimony on the stand of the other side's own witness, namely, Dr. Samuel B. Lyon, Medical Superintendent of "Bloomingdale," utterly disproves the aforesaid allegation by said learned counsel for defendant-in-error, for same shows plaintiff-in-error confined to his bed at the time of said 1899 Proceedings and for some three weeks prior thereto. The statement of said learned counsel for defendant-in-error—to wit—"at the time in question he was on parole and at liberty to go where he pleased within large limits," dwindles down to the pitiful fact that plaintiff-in-error—although at liberty on

parole, to go where he pleased within large limits, was *physically incapacitated by inability to avail himself of said liberty.* Said excerpt to wit. Transcript of Record, p. 114, fol. 225, *supra.*

Q. "When did you last see John Armstrong Chaloner?

A. Last Wednesday or Thursday, about three days ago.

Q. Did you see him in regard to attending before this Commission and Jury, today?

A. Yes, sir; I knew this case was approaching and I visited him and asked him what he wanted to do in regard to it; whatever he wanted to do I wanted to carry out. I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine * * * (p. 115, fol. 225). A little subsequently to that I received a request from him to come over again.

Q. In what place?

A. To his room. He did not wish me to represent him, but I should come in his place or say that he could not come on account of his infirmity * * *.

A. * * * He did not feel as if he could stand up, he has kept his bed for over three weeks at least. (p. 115, fol. 226).

BY A JUROR:

Q. Has he ever made any attempt to escape?

A. No, he has no desire to escape—he has made no attempt to escape. I granted him the privilege of all the grounds—I gave him the parole of our grounds on his honor—he is a very honorable man, he went out by himself an hour or so—and then he ceased to go out because he was physically unable."

We respectfully submit that the said record bears out our allegation, and upsets that of the learned counsel for defendant-in-error.

The latter's aforesaid allegation *in re* plaintiff-in-error's being entirely at liberty to "retain and consult with counsel" is as false as the aforesaid allegation picturing plaintiff-in-error as roaming the country within large limits. While the truth is he was flat on his back. The same regarding the "long and full letters," as said learned counsel for defendant-in-error falsely accuses plaintiff-in-error of writing. We shall presently prove said charges against the veracity and good faith of said learned counsel for defendant-in-error to the hilt in this brief-in-rebuttal. Also we shall show that plaintiff-in-error kept to his parole—though a bogus parole given under duress—for seventeen months of torment. And only escaped when he found that no lawyer from New York or elsewhere had the courage to bring *habeas corpus* Proceedings.

We now come, we respectfully submit, to the cause of the length of this Brief. The aforesaid cause is many-sided.

First. When in 1907 plaintiff-in-error published his law book entitled "The Lunacy Law of the World" some four hundred pages in length, treating of the Law on Lunacy in each of the forty-eight States and Territories of the United States, as well as those of the Six Great Powers of Europe, to-wit: Great Britain, France, Italy, Russia, Germany, and Austria-Hungary; six leading Law Reviews spoke in encouraging terms thereof, and even went so far as to say that the changes suggested by plaintiff-in-error should be enacted into law by the Legislatures of the various States or Territories whose Laws on Lunacy left something to be desired. The following is a list of the aforesaid Law Reviews with a few lines

of criticism from each—the main bulk being found indexed later on in this volume of the Brief:

The Northeastern Reporter, The Ohio Law Bulletin, The Oklahoma Law Journal, The Lancaster Law Review, Law Notes.

The Northeastern Reporter says: "St. Paul, Minn., July, 1907. It is an examination of the laws of each of the States and Territories, and of the Six Great Powers of Europe, on the subject, and is in terms a very severe arraignment of most of them. *It would appear that the iniquitous system against which Charles Reade waged war has by no means disappeared.* People may still be incarcerated in Insane Asylums *without notice*, and *without an opportunity to be heard*, either in person or by attorney * * * Mr. Chaloner holds a brief for the accused, and *puts his case very strongly, but, in view of the cases he cites, it would be impossible to state the matter too strongly* * * * The book should awaken *public interest* in an important matter."

The Ohio Law Bulletin says: "Norwalk, Ohio, July 29, 1907. Chaloner, Lunacy Law of the World. A criticism of the practice of adjudging persons incompetent and depriving them of their liberties *without due process* of law, *fortified by decisions of the courts*, is the theme upon which the author has developed *this interesting and instructive work* * * * The author makes it *conclusively appear* that there is *needed revision* of these laws."

The Oklahoma Law Journal says: "Guthrie, Oklahoma, September, 1907. When the contents are carefully read and reflected upon, it is found *one of the best and most needed books that has appeared for many years.* The subject of Lunacy Law in spite of all the legislation we have had in other departments, *has received little at-*

tention. In fact, it is little better than when Charles Reade wrote his book entitled 'Hard Cash,' * * * *There is much in Mr. Chaloner's book that should be well studied by every lawyer and legislator as to what should be done to secure the constitutional rights of every one alleged to be of unsound mind.* The book carefully goes over the Law of Lunacy in the forty-five States and Territories as well as that of the leading Nations of Europe."

The Lancaster Law Review says: "Lancaster, Pa., September 30, 1907. To those of us who have been accustomed to look with complacency on our Lunacy Laws, remembering how lunatics were thrown into dungeons and chained and tortured but a short time ago, *this book brings home some startling truths.* It shows clearly the dangers of that class of legislation in force in England and many of our States (as our own Act of April 20, 1869, P. L., 78), which permits an alleged lunatic to be incarcerated *upon the certificate of 'two or more reputable physicians.'*

The author contends that in Lunacy Proceedings, *notice to the alleged lunatic ought to be absolutely essential* and that the trial should be by jury in the presence of the alleged lunatic; that any other practice is a violation of his constitutional rights and dangerous, in that it might be used by designing relatives for fraudulent purposes. The importance of a jury trial in such cases has been recognized by Judge Brewster in *Com. ex rel* v. *Kirkbride*, 2 Brewster, 402. The writ of *habeas corpus* is not a sufficient *safeguard. The subject is an important and interesting one, and the book shows extensive and careful research. It is forcefully written and carries conviction.*"

Law Notes says: "Northport, New York, September, 1907. *The exhaustiveness of his research into the ques-*

tion compels admiration, an author who can work through the Lunacy Law from the time of the Emperor Conrad down to the present."

We respectfully submit that with such a serried array of powerful approval of our view-point, regarding the crying need for a reform of the shameful, the scandalous—the fiendish abuses perpetrated under the name of Lunacy Law—it behooved us to search the tortuous depths of the other side—regarding garbling our intentions, aims and utterances—so profoundly, so thoroughly and so *minutely*, that not so much as one stone in their felonious edifice should be left upon another.

Another reason for the length of this Brief is that the case of *Chaloner against Sherman* is the only case on record, we respectfully submit, in our experience in Lunacy Law, which covers all and sundry the vicious spots, the *crooked, crafty and criminal crannies*, studiously exploited by lawyers who are known in professional circles in New York as "Lunacy Lawyers." By which is meant lawyers in general practice in the metropolis, but who are personally or through a partner or partners in their firms, financially and professionally interested in legislation at Albany—in "steering" legislation at Albany so that the Lunacy Laws shall be as outwardly humane, just and constitutional as—at a cursory glance—but cursory glance *only*—appear to be the Lunacy Laws of the State of New York of 1896—while in reality same are the height—or rather the depth—of *infamy*—the *cloaca maxima*—the public sewer of injustice, wrong, felonious craft and unconstitutionality. The firm of Evarts, Choate and Sherman's most illustrious member, whose name appears to this day as counsel on the firm letter paper of said firm, was at the time of plaintiff-in-error's illegal incarceration in "Bloom-

ingdale" a member of the Board of Governors of that Institution. Therefore plaintiff-in-error was opposed by interests from within and interests from without in the infamy which was practiced against his liberty and constitutional rights.

The avaricious interests of the Chanler family lusting after his gold *put* plaintiff-in-error in "Bloomingdale;" the avaricious interests of said law firm of Evarts, Choate and Sherman *kept*—through one of its members, the late Prescott Hall Butler, the predecessor of Thomas T. Sherman—of Evarts, Choate and Sherman—as Committee of the person and property of plaintiff-in-error —*falsely alleged* "Committee"—*kept* plaintiff-in-error *in* "Bloomingdale."

Another reason for the length of this Brief is that since plaintiff-in-error was thrown into "Bloomingdale" he, strangely enough—we respectfully submit—developed rather unusual literary powers theretofore utterly beyond his reach, so much so that an ordinary letter with any literary flavour was beyond him. So diligently has plaintiff-in-error worked this aforesaid literary vein discovered one year after his aforesaid incarceration in "Bloomingdale" that while there he wrote several hundred sonnets, many of which have since been published in book form and obtained high praise from critics all over the United States, as well as the "Academy" of London. In the past ten years plaintiff-in-error has written a more or less satirical—but viridic—history concerning what is known as the "Four Hundred" of New York—or at least the *creme de la creme* thereof—as represented by the avenues of Law, Finance and Society. This book has received most extraordinary praise from the three or four papers, North and South, which had the courage to review same. Said history is entitled *"Four Years Behind the Bars of 'Bloomingdale', or The*

Bankruptcy of Law in New York." The said criticisms are found *in extenso*, or abbreviated, in appendix to this brief, a separate volume indexed as follows: To-wit: "*Criticisms of Four Years Behind the Bars of 'Bloomingdale,' By Eran R. Chesterman, in Richmond, Va., 'Evening Journal,'* " p. 190-197; "*Criticism of Four Years Behind the Bars of 'Bloomingdale' from the New York 'World.'* " p. 198; "*Criticism of Four Years Behind the Bars of 'Bloomingdale,' from the Raleigh, N. C., 'News and Observer,'* " pp. 198-199.

During said ten years plaintiff-in-error has written some ten books in prose or in verse; all of which—without a solitary exception—have received most unusual praise from critics the country through. No attempt has been made to sell said books as yet, for the reason that plaintiff-in-error lacks the means to advertise said books until he should regain his large property. But totally irrespective of any pecuniary remuneration plaintiff-in-error steadily worked at his so to speak—new trade—for the past ten years turning out—not actually, but on an average—a book a year, all and sundry of which were most favourably received. In all of said books plaintiff-in-error has taken the stand that once a man has put his hand to the plough he should not turn back. Since nineteen fourteen plaintiff-in-error has developed his literary turn into play-writing; and written five plays—one in prose, four in dramatic blank verse. The title of the prose play is "*Robbery Under Law, or the Battle of the Millionaires.*" This play has made—we respectfully submit—a decided stir in newspaper circles—as the fifty pages, more or less, of newspaper criticism thereof indicate—said book—as all other of plaintiff-in-error's books —is in evidence.

In conclusion. Another reason for the length of this Brief—and by far the most important concerning this

learned Court's reaching a decision—*is the startling fact that the learned counsel for defendant-in-error has not hesitated to stoop to the depths of misstating the Record —in so far as in him lay—by misstating same in the most scandalous fashion.* This deplorable aspect of this extraordinary case is gone into fully in plaintiff-in-error's Brief-in-Rebuttal. So we shall not further dwell upon this lamentable proof of the degeneracy and degradation of the New York Bar by the acts—the red-handed *in flagrante delictu* acts—of a lawyer, who, we understand on the highest authority, is Chairman of the Investigating Committee of the Bar Association of the City of New York, for the investigation of the ethical records of lawyers brought to the notice of the said Bar Association for disbarment. We shall simply say that an erroneous statement may take up but five lines, whereas the Truth—to refute said statement—may require scores of pages. To take but two examples, *First:* the learned counsel for defendant-in-error does not hesitate to traduce the Virginia Proceedings of November 6th, 1901—finding plaintiff-in-error sane and competent—as being "Collusive and void"—see *Chanler v. Sherman*, 162 Fed. Rep., 19, *supra.* The learned Court said: "The defendant joins issue upon the fact of sanity after the New York orders were made and also sets up that the Virginia decree was obtained by collusion and is void." To offset said false aspersion upon the act of a Court of a Sovereign State of the United States required the insertion *en bloc* of the 13 printed pages of testimony of said Micajah Woods at the 1908 deposition concerning the regularity of said Virginia Proceedings—said Micajah Woods at the time of his testimony being President of the Virginia State Bar Association, and conceded—on the record—to be an expert by said Joseph H. Choate, Jr. Although this was

not the only reason said thirteen pages of testimony were inserted, as is fully set forth where same appear in Brief-in-Rebuttal.

Second: On page 3 of defendant-in-error's brief appears the following monstrous misstatement. To-wit: "At the trial plaintiff-in-error * * * sought * * * to introduce masses of evidence which were excluded as *having no tendency* to show * * * that the proceedings were tainted with fraud."

When this learned Court reaches the above in said Brief-in-Rebuttal the *twenty-odd pages* of the Record there referred to — between *plaintiff-in-error's trial counsel*—in the trial before the learned Judge Holt in February, 1912—and the said learned judge —regarding his admission of evidence—prove that *not once* in the whole course of said three days' trial did the learned Judge animadvert upon the value of the evidence adduced by plaintiff-in-error—as said learned counsel for defendant-in-error erroneously states above. The learned Judge excluded plaintiff-in-error's evidence purely and solely on the ground that the learned Judge *would not* hear any evidence on the subject upon which evidence was excluded. Here once more it required over twenty solid pages of the Record to refute a false statement of only three lines.

When one considers that all the hostile material testimony of the three petitioners, said Winthrop Astor Chanler, Lewis Stuyvesant Chanler, and Arthur Astor Carey, is false; as well as *all* hostile material testimony of Doctors Moses A. Starr, Austin Flint, Sr., Carlos F. Macdonald, and Samuel B. Lyon; and when one considers—as has been abundantly shown—in the case of the learned counsel for defendant-in-error's erroneous statements above—that it requires twenty pages of truth to overwhelm a three-line lie—the cause for the extra-

ordinary, unprecedented, unheard-of length of this brief is—we respectfully submit—not far to seek.

Finally, the last and most compelling reason for the length of this brief is that plaintiff-in-error in 1897 obligated himself by the force of what used to be known as a "Hannibal oath"* in 1897 to spend every dollar of his income—not capital—if necessary—and to spend every year of his life necessary to the achievement of his one aim and end in life, to wit, the reformation of the Lunacy Laws throughout some 40 per cent of the States of the Union, so that a man or woman shall have as fair, open and above-board a trial if accused of insanity, as now every man and woman is assured when accused of an infamous crime.

Before going into the law or the facts of this extraordinary case, it is necessary to observe, we respectfully submit, that Lord Byron's famous dictum: "Truth is stranger than fiction"—is more than sustained by the lurid pages of the following cold statement of law, as practiced in the twentieth century, in the Metropolis of the United States. We are far from overstating the case, we respectfully submit, when we venture to hazard the remark that this learned and experienced Court will be nothing short of amazed—not to say astonished—at the iniquity enthroned in the seats of the mighty, in this age so boastful of its superior civilization, superior culture, superior knowledge—not to say superior virtue. We shall at once proceed to sustain the above indictment.

In the first place the entire case of the defendant-in-error is founded—on the evidence—upon a brazenly admitted crime. The entire foundation of the case of the defendant-in-error is—*on the Record*—rooted in felony

*Indexed Appendix as follows: "Hannibal Oath of plaintiff-in-error *re* reform of Lunacy Laws, 640-642."

and—*on the Record*—brazenly so admitted by him. In a word the Public Prosecutor has been—*on the Record*—cheated of a group of gentlemen to send to Sing Sing or Atlanta—to State or Federal Penitentiary by the—for them—happy accident of the stepping in of the Statute of Limitations. For instance, all of the witnesses against the plaintiff-in-error are, *on the Record*, either confessed and admitted—*on their own Record*—perjurers, or so proved by subsequent events. In a deposition *de bene esse* had by Winthrop Astor Chanler, Chief Petitioner in the 1897 Lunacy Proceedings—brother of the plaintiff-in-error—in 1905—this gentleman confessed—*on the Record*—upon cross-examination, that he had committed perjury—by admitting that he had sworn to falsely alleged acts and words put into the mouth of the plaintiff-in-error by himself and—*on the Record*—his fellow conspirators in the Petition to the New York Supreme Court for having the plaintiff-in-error sequestered, and his estate sequestrated upon—*on the Record*—an utterly unfounded, and malicious, and mercenary charge of insanity. Unfortunately, owing to unpropitious circumstances, the plaintiff-in-error was—in spite of almost Herculean efforts upon his part—by circumstances utterly beyond his control—estopped from bringing the matter to the attention of the District Attorney—State or Federal—in New York before the Statute of Limitations stepped in. In like fashion the only two other lay witnesses* to the falsely alleged insanity of the plaintiff-in-error were—*upon the Record*—proved on the evidence of Mr. Winthrop Astor Chanler to be perjurers.

Coming now to the medical experts in the case. One was such merely in name—being a most distinguished

*The two other Petitioners—Ex-Lieutenant-Governor of New York, Lewis Stuyvesant Chanler, and Arthur Astor Carey.

practitioner in surgery, but—on the evidence—utterly at sea when it came to Psychiatry. His brother Statutory-Medical-Examiner-In-Lunacy, Dr. Moses A. Starr, was not lacking in technical knowledge of the evasive Science of Lunacy, but was—*on the Record*—shockingly so when it came to a question of morality. This member of the Profession of Esculapius, in place of assiduously seeking to alleviate pain, care, anxiety in the human race, did—*on the Record*—his very best to increase the burden of the same—*and for life*—in the case of the plaintiff-in-error, and the same may be said of Dr. Austin Flint, Sr., and Carlos F. Macdonald.

We next come to the *creme de la creme* of New York City's proudest names. Here indeed the mind becomes palsied with horror at the—*on the Record*—spectacle of bloody-minded hypocrisy; cruel, relentless, mercenary lust for filthy lucre; Satanic schemes for entrapping sane and innocent men and women of station and wealth in order to bury them alive in the bowels of their modern Bastile—masquerading under the name of an Asylum. The leaders of Society, Finance, Law, Medicine, and—we had almost said—Religion, are—*on the Record*—found cheek by jowl and heads together, in secret conspiracy against the persons and property, of not only citizens of the "Empire State," but strangers within her gates. The spectacle—*on the Record*—afforded by this prostitution of fine minds, in their—*on the Record*—degraded, depraved and thoroughly degenerate mad rush for ill-gotten wealth, is no more saddening than appalling, when one pauses for a moment to weigh its import as a sign of the alleged civilization of the present day, and whither and to what ends said alleged civilization tends.

Finally, let us respectfully glance at the Bench. This mighty engine—which comes nearer than even the Pul-

pit to representing the Supreme Being at work amidst the haunts and amidst the turmoil of the passions of men—is—we regret to respectfully observe—proved—*on the Record*—in but too many instances *metamorphosed into a machine for achieving a criminal purpose*—we do not say wittingly. In place of being the Holder of the Scales of Justice between Vice and Virtue, the Court—*on the Record*—apparently—we do not say wittingly—sides with Vice against Virtue, and becomes—*on the Record*—indisputably and unequivocally—we do not say wittingly—the champion of a Lie, as opposed to Truth. This side of this sinister and repellant law suit, being no less painful for us as an officer of the Court to state, than for this exalted Court to listen to, shall be touched upon no more.

Turning now to the—so to speak—subsidiary parties and—*on the Record*—allied members, in this—*on the Record*—spectacular conspiracy—staged upon the august boards of a Court of Law. The havoc wrought by the—*on the Record*—corrupting dollar, and the even more corrupting pursuit of the same, is second—*if* second—only to that following in the wake of the—*on the Record*—principal plotters in this modern tragedy. First we have alienists, whose business—*on the Record*—is one of pronouncing sane men and sane women insane for a handsome *honorarium*, in the teeth of the dictates of conscience, and the indications of the facts in the case of the falsely alleged incompetents—to say nothing of the dictates of the noble and philanthropic profession of Medicine. Astounding—almost incredible—as it sounds to the ears of those unfamiliar with the seamy side of life in high places—in wealthy and populous cities in the United States—there exists in such cities today—and their number is steadily on the increase—a Secret Society more pernicious and deadly

than any secret society the sun has ever shone on—not even excepting the Thugs of India. *These human head-hunters are as devoid of the very first instincts of humanity as head-hunters from the Malay Archipelago—as a Dyak from Borneo or Celibes—out for heads*, and *heads only.* These depraved and abandoned wretches have the outward bearing and manners of gentlemen of the highest refinement, and deep learning—to say nothing of an air of false geniality and cordiality, profoundly calculated to lure the innocent and unsuspecting victim to his or her undoing. While in reality no murderer who ever cut his victim's throat at dead of night and from ear to ear was ever freer from anything in the least degree resembling pity, sympathy, or even the ordinary conventional makeshifts for conscientious scruples. *These felons in fact—but not in law—today flourish, for the reason that the laws in forty per cent of the States of the United States are made in their favor, and in order that they may ply their trade undetected and undisturbed by the knock of the detective or the police officer.* This does not mean that the makers of the said abominable, unconstitutional and illegal laws are individually guilty in all cases; because said laws are so wrapped up in specious phrases, and apparently—but apparently only—wholesome safeguards, looking towards safeguarding the liberties of the individual—that the lay mind is at once—and almost invariably—baffled by the chicanery of the legal mind, or minds, craftily drafting said traps and pitfalls masquerading as law.

Next we have lawyers who—*on the Record*—act as go-betweens between the alienists and their victims. By which is meant lawyers learned in the dark and mysterious Laws of Lunacy; and interested—personally and professionally—in keeping said laws in precisely that

condition. These men are frequently personally and financially interested in some one or more Private Insane Asylum, as members of the so-called "Board of Governors," or whatever the high-sounding and deceptive title may be. Their business is to see to it that the laws made at Albany and elsewhere are made in their favor, and emphatically against that of the male or female citizen of wealth—sometimes without wealth—when an even more sinister motive than avarice or malice actuates the gentlemen who control Lunacy Legislation in some forty per cent of the States of the Union.

Lastly we have the Professional Heads of Private Insane Asylums—men so scorchingly handled by Charles Reade in his epoch-making novel "Hard Cash," which revolutionized the treatment of the insane in Great Britain fifty years ago—the powerful preface of which is found on page 137 at the rear of plaintiff-in-error's dramatic work entitled "Robbery Under Law" in evidence with the rest of the literary work of plaintiff-in-error during the past ten years—that we shall not attempt the task.

Of which we now give a five-line extract—p. 143, "Robbery Under Law"—as follows: *"The fact would appear to be that under existing arrangements any English man or woman may, without much difficulty, be incarcerated in a Private Lunatic Asylum, when not deprived of reason. If actually deprived of reason when first confined, patients may be retained in duress, when their cure is perfected, and they ought to be released.*

CHARLES READE.

Magdelen College, Oxford,
October 23, 1863."

As a member of the legal profession, we shrink from

lifting the veil hanging over this sombre and repellant case. But the cause in which we have been embarked for twenty years, demands a relentless and frank exposure of wrong-doing by whomever done.

In closing this section, one other point should be touched upon, which point will go far towards emphasizing the dire need for plaintiff-in-error to leave no stone unturned in putting this learned Court in possession of the essential facts, to-wit. Should this learned Court reverse the opinions—in *Windsor v. McVeigh, Simon v. Craft, and United States against Throckmorton*, all *United States Supreme Court cases*—holding that notice and opportunity to appear and be heard are necessary for a Court to obtain jurisdiction over a party or a party's property, and holding that a decision may be set aside where it can be shown that the defendant did not have his day in Court—where facts were withheld from the Court, where the defendant's whole case was not heard in consequence, where the defendant was not notified of the Proceedings in Court, or was kept away from Court, and where, consequently, there was no real trial—should this learned Court reverse the said three opinions—all of which are cited practically *in extenso* further on in this Brief—*then, in that event, plaintiff will receive a sentence practically of life deprivation of his property and curtailment of his liberties, to-wit, confinement to Virginia and North Carolina, from this learned Court for the following reason.* Nothing, we respectfully submit, should or could induce plaintiff-in-error to again submit to the humiliation of again having the question of his sanity entered into. We respectfully submit that not only reasons of self-respect prohibit such a course, but also plaintiff-in-error's duty to his legatees the Universities of Virginia and North Carolina, to whom years ago he deeded the *corpus* of his entire estate in fee

—valued at a million or more dollars. Said deed, we respectfully submit, is protected for all time by the Virginia decision of November 6, 1901, declaring plaintiff-in-error sane and competent—See 162 Fed. Rep., 19, *supra*: "*The Constitution of the United States rests in its judicial department jurisdiction over controversies between citizens of different States. The Petitioner as a citizen of the State of Virginia in bringing his said suit in the Circuit Court* of the United States, was availing himself of a right founded upon this constitutional provision. And he came into that Court with a decree of the Court of the State of which he was a citizen, declaring his sanity. We cannot disregard that decree,*" supported by the North Carolina decision of 1905, recognizing the validity of said Virginia decree and permitting plaintiff-in-error to bring suit against defendant-in-error in said State in *John Armstrong Chaloner* v. *The United Industrial Company—which suit* plaintiff-in-error won, *infra.*

Furthermore, were plaintiff-in-error ill advised enough to permit the question of his sanity to be once more reopened, that act would instantly jeopardize the aforesaid Virginia decree, now fifteen years old, and under whose aegis plaintiff-in-error has been enabled to bring suit in the entire line of Federal Courts of New York up to the Supreme Court of the United States.

Lunacy Proceedings, we respectfully submit, are of all Court proceedings the most uncertain and doubtful. For Lunacy Proceedings depend for their decision upon the mere opinion of Court, Commission, or Jury, as the case may be. It is not as in ordinary cases where specific acts are *known* to have been committed, specific statements made in the well known and fully charted realm of business, or other normal affairs of life—whether rep-

*Since been changed to the District Court.

utable or disreputable—whether innocent or criminal. Whereas in Lunacy Proceedings the matter is startlingly different. Here we enter a realm in which Court and Jury are wholly at sea—wholly inexperienced from lack of familiarity with insane subjects and their ways—as well as the Literature on Insanity and its theories. Therefore Court and Jury are far from feeling that confidence in rendering a decision which follows Court and Jury, in the aforesaid normal affairs of life. Therefore, the opinions of hostile experts in insanity may entirely sway both Court and Jury in the very best of faith upon the part of Court and Jury—but far—very far—from the best of faith upon the part of these knights of the post—these Medical men—who gain their living by false-swearing—as this Brief will amply prove has been the case with every solitary Medical man who has testified against the sanity and competency of plaintiff-in-error. Therefore in the teeth of the long chain of unbroken evidence of sanity of plaintiff-in-error and of his competency, stretching over a period of fifty years, from his childhood up, plaintiff-in-error might possibly—we do not say probably—but might possibly be found today insane and incompetent by a New York Judge and New York jury, who *believed* what New York experts in Lunacy have audaciously—and falsely as audaciously—brazenly and feloniously sworn to, against the good name and fame of plaintiff-in-error.

This world has been well described upon one occasion as a "Vale of Tears." Such being the case tragedies innocently occur. No greater tragedy can be imagined than a miscarriage of justice. But when the miscarriage of justice is discovered to be a skilfully engineered scheme for the financial betterment of the conspirators and their legal advisers in defiance of Law—in defiance of Equity—and *above all*—in defiance of the facts and

the Truth—it becomes no longer an innocent miscarriage of Justice, but a *criminal* miscarriage—the result of criminal malpractice upon the part of learned but unprincipled counsel working through equally unscrupulous clients. *When it is seen that the Court has been deceived and lied to in the most scandalous and brazen fashion, when it is seen that client and counsel have not hesitated to turn truth into a lie on the slightest opportunity, and—between them—so throw dust into the eyes of a long line of Courts—both State and Federal—for a long term of years—nearly twenty years—that a lie has been enabled for twenty years to trample upon the Truth—and advance to the very portals of the Supreme Court of the United States—in all the pomp, panoply and circumstance of Justice herself—when this startlingly malodorous state of affairs* is grasped by this learned and upright Court—we respectfully submit that this learned and upright Court will be inclined to raise its hands to Heaven and murmur O tempora! O mores!

The above criminal charges have been made by us for nearly twenty years. We have made no secret thereof. What do the other side do? Do they bring criminal proceedings against us in the States of Virginia and North Carolina, where the Courts, years ago, found the plaintiff-in-error sane and competent—do they sue for Criminal libel on account of the words both printed and spoken by the plaintiff-in-error—spoken in public speeches—against the other side? *Far from it. The other side replies to said criminal charge by confession and avoidance!* Hear them—page eleven of defendant-in-error's brief, to wit: "An examination of the offers of evidence made by the plaintiff-in-error, the questions asked and excluded, and, indeed, of the excluded evidence itself as it appears in the deposition which were marked for identification, will show that the alleged

fraud complained of consisted in the giving of testimony, alleged to be false, in the affidavits upon which the commitment was had, in 1897, and in the evidence upon which the plaintiff was adjudged incompetent in 1899. The alleged conspiracy of the relatives of the plaintiff-in-error to deceive the Court by such perjury into deciding as it did decide. Such fraud, however, if proved, is no basis for a collateral attack upon an adjudication. The question whether the testimony, given in support of one side of the case, is or not true is one of the questions necessarily adjudged in every litigation. In the case at bar the question whether the alleged perjurious testimony was true was necessarily adjudged by the Supreme Court of the State of New York in finding the plaintiff-in-error incompetent. This Court could not determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Supreme Court decided when it made the order complained of. In accordance with these principles it is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack."

In closing this painful exposition of the state of morals and honesty prevailing in the Metropolis of the United States at the opening of the twentieth century we need scarcely say that we are fully aware of the unusualness of our strictures.

But we have submitted patiently and silently for twenty years to extortion, insult and injury; and we do not propose to pursue a course which has brought us nothing but disaster piled upon disaster—any longer. Silence has been our ruin. Speaking out can do no worse.

We respectfully submit to this learned and upright Court that because men are wealthy it is—to say the least—fallacious to assume that they can do no wrong.

We respectfully submit to this learned and upright Court that because men are leaders in Society, in Finance and in Law it is—to say the least—fallacious to assume that they can do no wrong. Lastly we respectfully submit to this learned and upright Court that because a man or group of men has or have—never been found out—it is—to say the least—fallacious to assume that said man or group of men—can never be found out. Ex-Judge R. T. W. Duke—the talented and untiring cross-examiner of the plaintiff-in-error during —so far as his professional experience, at least, is concerned—one of the longest—if not the longest cross-examinations of a witness on record—extending over some two weeks of time and occupying some five hundred pages of typed matter—again and again assaulted the plaintiff-in-error's position, in criticising men of the national prominence of the "Board of Governors" of "Bloomingdale" and their—so to speak—allied lawyers, alienists, and citizens of high renown. But all to no purpose—as the pages from said cross-examination appendix to this Brief conclusively prove. *When a man's social, political, legal or financial position precludes just criticism of said man—and any injured party so criticising him is loudly—blatantly accused of suffering under a "delusion of grandeur"—as the high-sounding medical phrase of the day has it—then—we respectfully submit to this learned and honorable Court—we are confronting a most deplorable condition of affairs.*

In opening his statement in his brief to the United States Circuit Court of Appeals for the Second Circuit the learned counsel for defendant-in-error says, p. 1:

"The relief demanded in the action, as in all actions for conversion, is not a return of the plaintiff-in-error's property to him, but a judgment for damages, which would necessarily be measured by the value of the prop-

erty at the time of the alleged conversion. The action having been begun in 1904, and the alleged conversion having, of course, taken place at a still earlier date, the recovery sought has no *relation* to the property now in the *committee's hands*, and a judgment in favor of the plaintiff would *rest defendant*, personally, with title to the property in hand at the time of the alleged conversion, at the same time charging him with damages which would probably be much more or much less than the property's present value. The action can have no *direct* effect upon the very much larger *amount of property* which has come into the committee's hands since it was commenced."

This claim, we respectfully submit, is set forth in an effort to confuse the Court.

It should make no difference to the Court what may result with reference to the property which has come into the Committee's hands since the present action was begun. The question for the Court to determine is whether the present action is maintainable. If this action is decided in plaintiff-in-error's favor, it is true that it will result in a judgment for damages against said Sherman, and that the amount of those damages will be determined by the value of the property which came into his possession prior to the institution of this suit, and therefore the immediate effect of plaintiff-in-error's winning the case would not be of broader scope than the property so involved. *Nevertheless*, if plaintiff-in-error wins the present case, plaintiff-in-error's right to win a case thereafter to be instituted, *which will comprehend within its scope all the property which has come into the possession of* said Sherman since the institution of the present case, will also be established, for the reason that said Sherman's alleged legal status as "Committee" of plaintiff-in-error's estate will be destroyed

by the decision of the Court in plaintiff-in-error's favor in the present suit.

Upon plaintiff-in-error's winning the present case of *Chaloner* v. *Sherman*, said Sherman would be immediately thrown into the position of a trustee, under a *"constructive trust,"* or a trustee *ex malaficio* and a *suit in equity would be maintainable against him, we respectfully submit, in which he would be required to account for everything that has come into his possession in his alleged capacity of "Committee,"* and he would be required to make a full and complete delivery of the same to plaintiff-in-error. See Pomeroy's Equity Jurisprudence, Volume 3, Section 1044, second, constructive trusts, which reads as follows:

> "Constructive trusts include all those instances in which a trust is raised by the doctrine of equity for the purpose of working out justice in the most efficient manner, where there is *no intention of the parties to create such a relation, and in most cases contrary to the intention of the one holding the legal title, and where there is no express or implied, written or verbal declaration of the trust.*"

Again, in Section 1045 of the same work we find the following:

> "The specific instances in which equity impresses a constructive trust, are numberless—as numberless as the modes by which property may be obtained, through bad faith and *unconscientious acts.*"

Again, in Section 1047 of the same work, the following:

> "By the well settled doctrine of equity, a constructive trust arises whenever one party has obtained money which does not equitably belong to him, and which he cannot in good conscience retain, or withhold from another who is beneficially entitled to it; as for example, when money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust, or violation of fiduciary duty, and the like. It is true that the beneficial owner can often recover the money due to him by a legal action upon an implied assumpsit; but in many instances a resort to the equitable jurisdiction is proper *and even necessary.*"

Under the foregoing authority, after winning Chaloner against Sherman, plaintiff-in-error will have only to choose whether he will proceed at law or in equity to recover everything in said Sherman's hands or under his control, received by him after the present suit was brought.

Therefore, we say again, that the learned counsel for defendant-in-error's said claim is made purely for the purpose of misleading and confusing the Court. The Court, we respectfully submit, has only to decide what is before it, and leave those property rights which are not directly involved in the present cause to be taken care of *in appropriate subsequent proceedings.* In passing, it should be noted that the recovery in the case of *Chaloner v. Sherman will, according to the weight of authority, be measured by the highest value of the property between the date of conversion and the date of trial*, 38 Cyc., 2096; *not* "the value of the property at

the time of the alleged conversion," as stated by the learned counsel for defendant-in-error in said claim.

Continuing his statement in his Brief to the United States Circuit Court of Appeals for the Second Circuit, the defendant-in-error says, page 2: "In 1897, by an order of the Supreme Court of the State of New York, dated March 10th, 1897 (Transcript of Record, p. 113, fol. 222-223) the plaintiff-in-error was committed to Bloomingdale Asylum."

An interesting side-light is thrown upon the aforesaid proceedings when it is borne in mind by this learned Court that said proceedings were utterly irregular, illegal, null, void and of no effect, on the strength of the rulings of this learned Court in *Windsor* v. *McVeigh*, discussed at length, *infra*, 93 U. S., where the Court said *infra*, Chief Justice Waite concurring—pp. 277-8—"Until notice is given, the Court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter." And again in *Simon* v. *Craft*, 182 U. S., discussed at length *infra*, this learned Court said, in the opinion written by Mr. Chief Justice White: "The essential elements of due process of law are notice and opportunity to defend." For the Commitment Proceedings show (p. 113, fols. 222-223) that the plaintiff-in-error received no notice whatever of the said proceedings—Mr. Justice Henry A. Gildersleeve, of the New York Supreme Court, who signed the Commitment Papers, dispensing with both personal service and substituted service. Furthermore. The deceit and deception which form the foundation of the defendant-in-error's case—based as it is from its very birth upon perjury and fraud—brazenly admitted by the counsel for the defendant-in-error in as hardened an example of confession and avoidance as it has

been our pleasure to meet since we were admitted to the New York Bar in 1885—find an example in the above paragraph in the words: "Bloomingdale Asylum." "Bloomingdale" Asylum is an institution unknown to the law. The real name of said institution being "The Society of the New York Hospital" with Hospital and offices on 15th Street, just West of Fifth Avenue—or were the last time we saw same some twenty years ago or so. On line 156 of said Commitment Papers (p. 109, fol. 214) in said Commitment Proceedings of March 10th, 1897, appear the following words: "It is essential that the official title of the institution (to which an alleged lunatic is committed) should be correctly inserted," which it is *not* in said Commitment papers, as it again is not by the counsel for the defendant-in-error in his aforesaid statement.

Continuing, the defendant-in-error says, page 2: "In 1899 while he was in Bloomingdale, Proceedings were brought by his relatives to secure an adjudication that the plaintiff-in-error was incompetent and to procure the appointment of a committee. These Proceedings, the record in which was offered and received in evidence (pp. 66-143, fols. 126-285) were regularly conducted and resulted in the order already referred to adjudging the incompetency.".

As "regularly conducted"—it might be added—as proceedings which are utterly irregular, illegal, null, void and of no effect for lack of opportunity to appear and be heard—on the strength of *Windsor* v. *McVeigh*, and *Simon* v. *Craft*, *supra*—may or can *ever* be: "regularly conducted."

Concerning lack of opportunity to appear and be heard, this learned Court said in *Simon* v. *Craft*, *supra:* "The essential elements of due process of law are notice and opportunity to defend." And in *Windsor* v. *McVeigh*, 93

U. S. *supra*, this learned Court said: "Until notice is given, the Court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the purpose of affording the party an opportunity of being heard upon the claim or the charges made. It is a summons to him to appear and to speak, if he has anything to say, why judgment sought should not be rendered. *A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all*, and the sham and deceptive Proceedings had better be omitted altogether." And again at page 278: "The law is and always has been that whenever notice or citation is required, the party cited has the *right to appear and be heard;* and when the latter is denied (*note the distinction between notice and opportunity*) the former is *ineffectual for any purpose.* The denial to a party in such a case of the right to appear is in legal effect the *recall of the citation to him.*" The case of *McVeigh* v. *United States*, 11 Quall, 259, and the case of *Underwood* v. *McVeigh*, 23 Gratt., (Va.) 409, are to the same effect, and grew out of the same general state of facts. In *Underwood* v. *McVeigh*, at page 418, the Court said: "*No sentence of any Court is entitled to the least respect in any other Court, or elsewhere*, when it has been pronounced *ex parte* and *without opportunity of defense*—a tribunal which decides without hearing the defendant or giving him an *opportunity to be heard* cannot claim for its decrees the weight of judicial sentences."

As has been shown, *supra*, the plaintiff-in-error was confined to his bed with an affection of the spine and had been so confined for some three weeks or more, on the testimony on the stand at the 1899 Proceedings before the Commission-in-Lunacy and Sheriff's Jury—had in New York City, twenty miles away from plaintiff-in-error's cell—on the testimony aforesaid of Dr. Samuel

B. Lyon, Medical Superintendent of "Bloomingdale," falsely so-called—legally The Society of the New York Hospital.

Continuing his statement, the defendant-in-error says, page 2:

"The complaint alleges that the order appointing the defendant-in-error depended for its validity upon the order of 1899, adjudging the incompetency and that the order adjudging the incompetency was void because 'made and entered without lawful or reasonable opportunity to plaintiff to appear or to be heard,' and for lack of jurisdiction. It is further alleged that the opportunity to be heard was denied plaintiff-in-error because when the hearing was held he was still in custody in Bloomingdale under the order of 1897 committing him thereto, which *committing order was obtained by fraud and perjury*, and was made possible because his presence in the State, on which jurisdiction to make that order depended, was due to the fact that he had been lured thither by persons acting in the interest of his relatives.

"The answer denies *all these* contentions and sets up in addition as an affirmative defense the allegation that at the time of the alleged making of the demand upon the defendant, upon which the alleged conversion is predicated, and at the time of the commencement of the action the plaintiff-in-error was and *still is, actually insane* and therefore incapable of performing, by attorney, either act."

An eloquent example of erroneous statement is found in the words in the above citation from the defendant-in-error's brief, as follows: "The answer denies *all* these contentions." To take but *one* of "all these contentions" —although this learned Court will see, we respectfully submit, that the law and the facts—both of which are

well known to the defendant-in-error and his learned counsel—would warrant our taking "all these contentions"—to take but one contention, to-wit: that the "committing order was obtained by fraud and perjury." We shall now cite a portion of the testimony of Winthrop Astor Chanler—the chief Petitioner in the Commitment Proceedings in March, 1897, taken from his Deposition *de bene esse*, pp. 35-82.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN ARMSTRONG CHANLER, Plaintiff,

against

THOMAS T. SHERMAN, Defendant.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled action, that the testimony of Winthrop Astor Chanler, a witness who is about to go abroad, may be taken *de bene esse*, before a Notary Public at the office of Evarts, Tracy & Sherman, Number 60 Wall Street, New York, on the sixteenth day of November, nineteen hundred and five, at three o'clock in the afternoon, with the same force and effect as if taken under an order by the Court for his examination; and that such testimony may be taken down by a stenographer to be agreed upon and need not be signed by the witness, but the stenographer's notes, when written out, shall be considered the testimony of said witness. Such testimony shall be subject to all legal objections and exceptions, to be taken upon the trial of said action, when said testimony is introduced, as to competency, relevancy or materiality without the necessity of noting any objections on the deposition excepting as to the form of the question.

Dated: New York, November 14th, 1905.

(Signed) LEO G. ROSENBLATT,
Attorney for Plaintiff.

(Signed) EVARTS, TRACY & SHERMAN,
Attorneys for Defendant.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN ARMSTRONG CHANLER, Plaintiff,

against

THOMAS T. SHERMAN, Defendant.

New York, November 16, 1905.

Examination of WINTHROP ASTOR CHANLER, taken before WILLIAM R. MONTGOMERY, Notary Public, under a stipulation annexed hereto and marked Exhibit A.

APPEARANCES: For the Plaintiff, Mr. Leo G. Rosenblatt; for the Defendant, Messrs. Evarts, Tracy & Sherman.

CROSS-EXAMINATION BY MR. ROSENBLATT.

(Page 35).

Q. Is Mr. Sherman a director?

A. He is not.

Q. Has he taken any active part in the management of the Company? I want to know has Mr. Sherman taken any active part in the management of this Company?

A. No; I should say not.

Q. Not as long as you have had anything to do with it?

A. No; he has never been represented on the board; never been on the board.

Q. Never voted on the stock?
A. Never voted—has he voted on the stock?
Q. Yes.
A. As a committee?
Q. Yes.
A. Yes, he has, by giving me power of attorney to vote.
Q. And you voted for him?
A. I voted it.

(Pages 36-41.)

Q. Is that The Merry Mills?
A. No.
Q. That house?
A. No.
Q. What is the Merry Mills?
A. It is a farm at Cobham, Virginia.
Q. Who owns it?
A. My brother.
Q. How long has he owned it?
A. I do not know.
Q. Haven't you ever seen it?
A. Never been there.
Q. Well, how is that? You never visited your brother?
A. He has never asked me to.
Q. How long is this that you have been estranged?
A. Why, I should not say it was an estrangement, but he has never happened to ask me to go down to stay with him in Virginia.
Q. You have never gone of your own accord?
A. I have never gone of my own accord.
Q. Never sought an invitation?
A. Never sought an invitation.
Q. You have had quarrels with your brother, haven't you?

A. Well, the quarrelling was mostly on his side; he has quarrelled with me very often.

Q. *Were you once President of this United Industrial Company?*

A. *I was when it first started.*

Q. And did you remain President until December, '96?

A. I am not sure of the date.

Q. Well, you said——?

A. *He kicked me out, if that is what you mean.*

Q. That is what I mean. He insisted upon your resigning?

A. He insisted upon my resignation. He always had control of the Company.

Q. And that was at that meeting at the Kensington Hotel, to which you have referred in your direct examination as taking place in December, 1896, wasn't it?

A. December or January, but I am not certain of the date. My impression was it was in December, some time before or after Christmas Day—may have been after the New Year.

Q. Was there any altercation between you at that meeting at which he kicked you out, as you say?

A. Yes.

Q. What was the nature of that altercation?

A. He threatened me in various ways. The thing that brought about—Let me get this straight, because I am on oath, and I want to get the thing——.

* * * * * *

Q. Well, wasn't there some quarrel between you with reference to a suggestion that the plaintiff made about an examination of the books of your father's estate?

A. That is perfectly true.

Q. And that was about this time of this meeting?

A. It was at the meeting, before these gentlemen from the South.

Q. Well, now, will you tell us what you remember of that?

A. He was in bed at the time—in fact, in those days he seldom ever got out of it until night or late in the afternoon. And he got into an altercation with me about what—I mean, it was so frequent that I don't remember that quarrel—every time we met at the business meeting, because he would not let anybody say a word but himself, and he was very rude to the President of the Roanoke Rapids Power Company, Mr. Habliston, on several occasions, and I generally took their side, I mean —it was not fair. And I think that row began that day probably in the same way. He was in a very violent frame of mind, intensely irritated and irritable, generally, with me—I had that effect on him—and finally, as a last word, he told me that he would have my accounts as executor and trustee examined into by a special accountant. I told him that that had been his right ever since I had taken that office, or taken charge of the business.

Q. Who was your co-executor?

A. My brother Lewis. My brother never qualified. He was appointed, but he never qualified.

Q. Lewis is the other petitioner?

A. Lewis is the other petitioner—And that made me, foolishly, very angry, and we had words, and I confess to losing my temper and crossing the room toward his bed and instinctively, as if—*I went over there and if he had been standing near me I should have probably struck him.* But he was in bed, and he got up. He said, "Hold on," and he got up in his night gown and began to shuffle his feet into his slippers and was all doubled up doing that in front of me, and then I saw what a

perfectly absurd situation it was, and I went back to my seat and said nothing more. I do not remember what was said. I did not talk to him any more. The other gentlemen were urging us to keep the peace, and I confess I lost my temper.

Q. Wasn't there really a good deal of ill-feeling between all the members of your family, on the one hand, and John Armstrong Chanler, on the other, ever since his marriage?

A. No; distinctly not.

Q. Wasn't there considerable complaint among your brothers and sisters that they were not invited to his wedding?

A. No more complaint—in fact, one of my sisters was down there; my sister Margaret was present. There was not any feeling.

Q. Didn't you yourself write——?

A. Excuse me. There was no feeling any more than a feeling of being hurt at not having been asked. That was the only feeling there was.

Q. Well, how many of you felt that way?

A. I should say that they all had that perfectly natural feeling about it.

Q. None of them was asked to the wedding?

A. Except my sister Margaret. That is my impression. I know she was present. I do not know whether anybody else was asked or not.

Q. Who is Margaret? What is her full name?

A. Margaret Livingstone Chanler.

Q. Is she married since?

A. No; a single woman.

(Pages 45-48).

Q. Was there a law suit in North Carolina or Vir-

ginia about this Roanoke Rapids Power Company property?

A. In connection with the sale of the machinery?

Q. Yes.

A. Yes.

Q. When was that?

A. I do not know that there was a law suit; I do not know that it got as far as that.

Q. Well, didn't somebody get an injunction?

A. Yes, my brother got an injunction.

Q. In what court was that?

A. In the Court of Halifax County, I think, North Carolina. That is the United Industrial Company; that was not the Roanoke Rapids Power Company; that has never had any law suit.

Q. There was a law suit against the United Industrial Company?

A. Yes.

Q. Was the suit against the United Industrial Company, or was it against the officers of the Company?

A. Against the United Industrial Company, as a company.

Q. Brought by your brother?

A. Brought by my brother, an injunction.

Q. And the injunction was made permanent, was it?

A. It has not been dissolved yet. We are hoping to get it done.

Q. Do you remember the title of that suit?

A. No, I could not tell you that. I can tell you the circumstances.

Q. Well, what were the circumstances?

A. The machinery in the mill was deteriorating right along, for want of use. It was a peculiar machinery, made for the knit goods trade. The mill had always been a failure in making knit goods. The offers that we

had for the property—people coming and wanting to lease it, people wanting to buy, they had always said, "We don't want your machinery." So we decided that the best thing to do was to sell the machinery while it was still of some value, and get rid of it, and have the empty mill standing there for a man to come in and put in his own. After a great deal of trouble we finally succeeded in getting a purchaser who gave us a round sum for it, $8,000—that was the best we could do, and I was advised—we were advised all around that it would be much better to do it, because otherwise it was junk, it would deteriorate and become junk. We sold it to this man, and he went down there with his workmen to remove it from the mill. My brother was informed of the proceeding and instructed an attorney in the neighborhood to get an injunction to stop it, stop the machinery from leaving the mill. We went down there and saw his lawyer, my brother's lawyer, and talked the thing over with him, with the result that my brother agreed to the machinery leaving the mill and the sale going through, on condition that the money for that purpose should be held by the receivers appointed by the Court, one of whom was his lawyer and the other was ours.

Q. When was this injunction obtained? Was it in 1902?

A. Oh, no; quite recently.

Q. In June, 1905?

A. Last summer, yes.

Q. June 20, 1905, wasn't it?

A. It was pretty well——.

Q. The suit was begun in October, 1904, wasn't it?

A. About the injunction?

BY MR. BICKFORD:

Q. The suit on which the injunction was granted?

A. I don't hardly think it was as long ago as that.

Q. That is probably right.

A. That is probably right if you have got it down there. I thought it was in the autumn, but it was probably in the spring. Oh, yes, they held off, they let the stuff go through, providing we sent the money down there, and that was in October, was it?

BY MR. ROSENBLATT:

Q. That was in October, 1904, that the injunction was obtained, and it was made permanent June 20, 1905.

A. That was probably right, yes.

(Pages 50-53).

Q. Well, when were you last an officer of the United Industrial Company?

A. I am an officer now.

Q. Well, you were compelled to retire in December, '96?

A. Yes.

Q. Then your brother was committed shortly after to Bellevue Hospital?

Mr. Bickford: Bloomingdale.

Q. To Bloomingdale, I mean.

A. Bloomingdale.

Q. And when did you again become an officer of the United Industrial?

A. I could not give you the exact date.

Mr. Bickford: I do not think this is material, Mr. Rosenblatt.

The Witness: I do not know. After Mr. White gave it up.

Q. Was it after the order was made appointing Mr. Butler the committee?

A. That I was——.

Q. That you became an officer again?

A. After that; yes.

Q. How long after that?

A. I have to look at the books.

Q. Was it after the order was made appointing Mr. Sherman a committee?

A. I do not know.

BY MR. BICKFORD:

Q. Don't you remember how long you have been President?

A. I do not.

BY MR. ROSENBLATT:

Q. Are you President?

A. I am.

Q. Who owns the controlling interest in the United Industrial Company?

A. My brother, J. A. Chanler.

BY MR. BICKFORD:

Q. Does he own a majority of all the stock of the Company?

A. Yes.

BY MR. ROSENBLATT:

Q. Then you owe your presidency to the votes given by Mr. Sherman as committee?

A. I don't know without looking that up; it is all on record in the book; we could have it in five minutes, when it happened and everything.

Q. Did Mr. Sherman give you his proxy?

Mr. Sherman: Excuse me to interrupt and say that there has never been a meeting of the stockholders. I think the vacancies have been filled by the directors from time to time, in their succession.

Q. Who are your directors in the United Industrial Company?

A. Why don't you get the book, and then I can answer this much quicker.

Q. Who elected your co-directors and yourself as directors in the company?

A. I suppose my brother or his committee did it—must have. He has control, hasn't he?

Mr. Bickford: Well, he has not voted the stock.

Mr. Sherman: I said that the directors filled vacancies from time to time.

Mr. Rosenblatt: I know, but this Mr. Winthrop Chanler was not a director at the time his brother was committed.

Mr. Bickford: No; but the other directors appointed Winthrop Chanler.

The Witness: The other directors appointed Winthrop Chanler.

Mr. Rosenblatt: How can they elect him?

Mr. Sherman: It is a New York corporation, and the directors hold office until their successors are appointed.

The Witness: There has never been the slightest hitch

in the company. It has gone on smoothly and been all right for nearly four years—and there it is; we can show you that at any moment.

* * * * * * *

Q. While your brother was in Bloomingdale Asylum was he able to manage his property?

Mr. Bickford: Objected to.

Mr. Rosenblatt: What is your objection? Put it on the record, and we will get the answer.

A. Do you mean from a legal point of view?

Q. No, I mean was he able physically to manage his property; was he able to give directions as to what should be done with his property?

A. I do not know. How can I tell you?

Q. Did he manage his property while he was in Bloomingdale Asylum?

A. No, I do not think he did.

Q. Were not his hands tied so that he could not manage his property while there?

Mr. Bickford: Objected to.

A. I should say certainly not; his hands were not tied.

Q. In what respect was he able to do anything about his property while he was in Bloomingdale Asylum?

A. He had interviews with Mr. White and had interviews with Mr. Philip, who went up and saw him and would tell him what they proposed to do.

Q. How do you know that? You said that on your direct.

A. Because they would come back and tell me so. That is all I know about it.

* * * * * * *

Q. You said that Mr. White was a friend of his?

A. A very great friend of his; his best friend.

Q. Who told you this?

A. My brother, over and over again.

Q. When did he last tell you this?

A. I can't tell you.

Q. *Did you ever see any power of attorney which Mr. Stanford White had from your brother after your brother was committed to the asylum?*

A. *To the best of my knowledge and belief, I did.*

Q. What was the date of that power of attorney, do you know?

A. I do not know anything about it.

Q. How do you mean, you do not know anything? Didn't you see it?

A. I may have seen it, but I had nothing to do with the making of it.

Q. I know, but did you see it?

A. To the best of my knowledge and belief, I saw it.

Q. When?

A. I do not know when—around about that time.

Q. Who showed it to you?

A. Mr. White.

Q. Where?

A. At his office, probably.

Q. Don't you know?

A. I do not know, no.

Q. What makes you think?

A. He may have shown it to me at Mr. Butler's office.

Q. What makes you think he showed it to you?

A. *Because I have a strong recollection of the thing having been obtained at that time.*

Q. *While your brother was in the asylum?*

A. *While he was up at Bloomingdale, yes.*

Q. Did you suggest to Mr. White that he should obtain a power of attorney from your brother while your brother was in the asylum?

A. I did not.

Q. Do you know who did?

A. I do not.

Q. Do you know who drew the power of attorney? Was it Mr. Butler?

A. I do not know. I presume it was Mr. Butler; he was his adviser in all that Mr. White did, I should say.

(Pages 71-72.)

Q. Your brother was committed March 10th, 1897. Now how long prior to that time did you go South with Mr. White and Dr. Fuller?

A. I didn't say I went South with Mr. White and Dr. Fuller.

Q. Mr. White and Dr. Fuller did go South?

A. Yes.

Q. And you went to Charlottesville, Virginia?

A. To the best of my recollection I met them there.

Q. When was it you met them at Charlottesville; a month or a week before?

A. In the neighborhood of the first of March I should think; the exact date I can find out.

Q. Did you go to Charlottesville purposely to meet them?

A. Yes.

Q. How can you fix the date?

A. I think I have got it in a little diary at my office.

Q. And that is the only way you can fix it?

A. Possibly yes, not probably.

Q. You can furnish that diary to Mr. Sherman, can you?

A. I can furnish the date.

Q. I want the diary.

A. I can give you the leaf of the diary if I can find the diary.

Q. Did you see Hartnett, your brother's valet, when you went down there?

A. I don't remember.

Q. So Mr. John Armstrong Chanler was not in Charlottesville at the time of your visit, was he?

A. No.

Q. Where was he then?

A. To the best of my recollection he was at his place at Merry Mills.

Q. And you did not go with Mr. White and Dr. Fuller to Merry Mills?

A. No.

Q. Did you have any conversation with them before they left Charlottesville to go to Merry Mills as to their plan of action?

A. Yes, sir.

(Pages 76-79.)

Q. Did Dr. Fuller go down there at your suggestion for the purpose of examining your brother?

A. Yes; he didn't examine him. Do you mean examining him for the state of his health?

Q. Yes.

A. Yes, to see what was the matter with him.

Q. What did you tell Dr. Fuller in order to prepare him for such examination?

A. I told him that we were informed that my brother was in a very bad state of health; that nobody could do anything with him; that he was neglecting all his affairs and behaving in a most extraordinary manner and asked him to go down there as his friend's physician and see him.

Q. Did you tell Dr. Fuller that these statements you made to him concerning your brother were statements derived from hearsay from letters?

A. Yes, sir.

Q. Did you tell him you did not know anything of your own knowledge?

A. I don't remember.

Q. Did you tell Mr. White at that time what you had heard from Virginia?

A. Yes.

Q. Now you have very frankly admitted that you and your brother were on very unfriendly terms at that time; is that so?

A. I never said that.

Q. Didn't you say he kicked you out of the office of president of the United Industrial Company in December?

A. Yes, but there is a much better expression; insisted on my resignation.

Q. The phrase that he kicked you out was your own phrase, was it not?

A. Yes, there was no violence of any sort used.

Q. There was a very angry altercation?

A. Yes.

Q. And it reached such a point that you were on the point of assaulting him when you stopped to reflect that your brother was in bad health and it would not be the right thing to assault him; is that so?

A. Practically.

Q. That is a pretty violent altercation, is it not?

A. Pretty violent altercation; he had insulted me before strangers.

Q. Insulted you in what way; you didn't say anything about that?

A. I beg your pardon, I did. I told you that after abusing me he said: "And what is more I am going to have your matters looked into, the estate accounts looked into, and have them examined by an accountant, for I am not at all sure that things have gone right."

Q. And from that time to this day you have never seen your brother, have you?

A. I never have.

Mr. Bickford: You have seen him once?

Witness: I saw him getting on the platform, but I had no chance to talk with him.

Q. Am I exaggerating then if I say your relations to him were unfriendly at the time when you applied for his commitment?

A. On my part, no, absolutely no.

Q. The relations were not brotherly, were they?

A. A man could refuse to see his brother even if he should express his affection or dislike either way for him.

Q. Under those circumstances why didn't you send Lewis Chanler down there to investigate your brother's condition of health instead of going yourself—wasn't Lewis more friendly to him than you?

A. I don't recollect whether Lewis was asked to go or not.

Q. Who asked you to go?

A. I was the only one to go.

Q. Why?

A. Because I was associated with him in business and his friends asked me to do it, and I was the oldest one of the family. I had seen him more recently than any of the others.

Q. How recently had Lewis seen him?

A. I don't know, possibly not for many months.

Q. How do you know that?

A. I don't know it.

Q. Did you have any conversation with Lewis before you went down there?

A. Yes.

Q. Didn't the question come up as to whether he or you should go?

A. I don't think so.

Q. Did Lewis personally know anything about the condition of your brother's health?

A. I don't think so.

Q. Do you know whether Lewis ever visited him at Merry Mills?

A. I do not.

Q. Did Lewis tell you that he had visited him at the time?

A. No.

Q. Did Lewis tell you that he knew anything at all about your brother's, the plaintiff's, condition of health?

A. No.

Q. Now did Mr. Carey know anything about your brother's condition of health at the time of the commitment?

A. Except what Dr. Fuller told him.

Q. I mean in addition to what he was told by Dr. Fuller and by you, did Mr. Carey know anything at all about the condition of your brother's health?

A. No, not at that time.

(Pages 79-80.)

Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of commitment?

A. I don't know that.

Q. Wasn't that discussed between you when Mr. Carey came down here?

A. It may have been.

Q. Now why, I ask you, that is because you probably remember that in your application for your brother's commitment you and Mr. Lewis Chanler and Mr. Carey sign a petition in which you state that "Mr. John A. Chanler has, for several months, while at his home in

Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet; he has burned his hands by carrying hot coals in them; he has devised many peculiar schemes, such as a roulette scheme to beat Monte Carlo, and he has given as a reason of these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions; has neglected his health; has injured his person and has been at times highly excited," and then all three of you sign an affidavit stating that you knew the contents of the foregoing petition and that the same was true of your own knowledge except as to matters therein stated to be alleged on information and belief, and there are no matters in the petition which are stated on information and belief; now how did you come to make that affidavit that you made these facts of your own knowledge?

A. Can I say I was told this and that by so and so and had seen him and talked with him? *You know I didn't see him myself. You know Lewis nor Carey didn't see him.*

(Pages 80-82).

Q. Do you remember that in your petition you did not state the names of a single one of the witnesses on whose reports you claim to have acted?

A. If that is the way the petition reads.

Q. Who framed this petition? Do you know who wrote it out?

A. I do not.

Q. Do you remember whether you did it or whether your lawyer did it?

A. I didn't do it and I had no lawyer. Do you mean at the time of the commitment?

Q. Yes.

A. No; I had no lawyer.

Q. Hadn't you consulted with Mr. Winthrop, Jr., of the firm of Jay & Candler?

A. To the best of my recollection no. *I consulted Mr. Henry Lewis Morris, who was our family lawyer,* but I don't think he had anything to do with drawing the petition.

Q. Who went down with you, what lawyer, to Judge Gildersleeve?

A. To the best of my recollection there was no lawyer except my brother Lewis, who is a lawyer.

Q. Lewis is a lawyer?

A. Yes, sir.

Q. Do you remember whether he drew this petition?

A. I do not.

Q. Do you remember whether you read the petition over before you signed it?

A. Certainly.

Q. You knew that it was a very serious matter you were stating?

A. Yes.

Q. And that the statements contained in this petition were very solemn statements?

A. Yes.

Q. And had to be very carefully considered?

A. Certainly.

Q. And that you considered very carefully this statement, didn't you: "Mr. J. A. Chanler has for several months, while at his home in Virginia, been acting in a very erratic manner?"

A. Yes, sir.

Q. You considered that carefully?

A. Yes, sir.

Q. Why did you speak of his home in Virginia? Did

you know he had a home in Virginia?

A. I knew he had a house there.

Q. Why did you call it a home?

A. I didn't say I called it a home. I didn't write the petition.

Q. You signed it and swore to it?

A. Yes.

Q. And you know what home means, don't you?

A. I do."

How a man with the slightest respect for the truth can deny the contention of fraud and perjury, where the party implicated has been forced, under cross-examination, to admit his wrongdoing as frankly and unequivocally as said Winthrop Astor Chanler was forced to admit his wrong-doing—we respectfully submit—we utterly fail to see.

Furthermore. The same spiteful and malicious spirit again appears in the following gratuitous slur on the plaintiff-in-error upon the part of the counsel for the defendant-in-error—in the very next paragraph of said defendant-in-error's said statement, to wit: "At the trial, the plaintiff-in-error (who did not personally appear) sought by his counsel to introduce masses of evidence." The slur in "who did not personally appear" is palpably intended to convey the idea to the Court that the plaintiff-in-error was afraid to appear. Whereas the proved fact is that the plaintiff-in-error's spine was so injured—a nervous affection thereof—by years of false imprisonment in "Bloomingdale," that he was unable to testify except in a reclining attitude, and only then at certain hours and for a briefer period than that of the daily session of a Court. Therefore—for the above reason—and that reason only, the plaintiff-in-error did not personally appear in New York, but *did*

personally appear in Charlottesville, Virginia, and depose from on or about the first day of October, 1911, to on or about the middle of January, 1912, with continuances on Saturdays and public holidays.

Continuing his Statement the defendant-in-error says, page 3: "At the trial the plaintiff-in-error (who did not personally appear) sought by his counsel to introduce masses of evidence which were excluded as having no tendency to show either that the Supreme Court of the State of New York lacked jurisdiction to make the order of 1899 adjudging the incompetency and appointing the original Committee or that the proceedings were tainted with fraud of any such character as would open the adjudication to collateral attack. Plaintiff-in-error's counsel having failed to introduce or offer evidence sufficient to show even *prima facie* either that the New York Court was without jurisdiction, or that its order was invalidated by fraud, the learned Trial Court at the close of this case directed a verdict for the defendant-in-error."

The foregoing statement is erroneous in the extreme, whether the statement be taken as a whole or separated into its several parts or heads.

The learned Judge Holt flatly refused to hear evidence upon said heads. It was not a question of insufficiency of evidence. The learned Judge Holt simply refused to hear any evidence and frankly so stated.

On this point we refer the Court to the printed record, pages 24 to 43 and 47 to 59, inclusive.

Coming now to the Points, Page 4 *et seq.* in the learned counsel for defendant-in-error's said brief, before the Circuit Court of Appeals.

POINT

I.

"THE LEARNED TRIAL COURT DID NOT ERR IN EXCLUDING EVIDENCE OFFERED TO SHOW THE MENTAL CONDITION OF THE PLAINTIFF A VARIOUS TIMES.

"It is perfectly well settled that the issue decided by an Adjudication of the Court of one jurisdiction will not be relitigated in the Court of another, and that the Adjudication must be taken at its face value, unless shown to have been rendered without jurisdiction or procured by extrinsic fraud."

To which we respectfully submit that the law and the facts in this case prove that said Adjudication was rendered both without jurisdiction *and* was procured by extrinsic fraud—if by extrinsic fraud is meant *fraud which was not known to be fraud at the time of the Adjudication.* Since the question of the perjury of the three Petitioners was never brought forward in the 1897—the Commitment Proceedings—nor in the 1899 Proceedings before a Commission-in-Lunacy and Sheriff's Jury; for the conclusive reason that the plaintiff-in-error was neither present nor represented by counsel at either Proceeding. Continuing the defendant-in-error says, pages 4 and 5 of his said brief:

"Accordingly, the question whether or not plaintiff-in-error was actually insane when so adjudged could not be litigated in this action (Matter of Curtiss, 137 App. Div., 584; 199 N. Y. 36). All evidence tending to prove his sanity in 1899 was therefore utterly irrelevant and properly excluded. The same reasoning holds true with added force as applied to his mental condition in 1897 and in 1901."

To which we respectfully submit, *first,* that since the 1897 and 1899 Proceedings are shown to be null and void, the question of sanity at once becomes a main issue. *Second,* That since the question of the plaintiff-in-error's sanity was set up in the defendant-in-error's answer it becomes more than ever a main issue. See 162 *Federal Reports,* where the learned Judge Noyes says, page 39, *supra:* "The defendant joins issue upon the fact of sanity after the New York orders were made."

Continuing the learned counsel for defendant-in-error says, page 6 of his said brief:

"If and *when* the defendant-in-error offered evidence to show that the plaintiff-in-error was presently insane, evidence on that subject would become highly material. The rulings complained of in these assignments of error, so far as they relate to evidence of plaintiff-in-error's sanity after 1901, simply excluded matter not relevant at the time when offered and which would become relevant only in case the defendant-in-error should offer evidence in support of his affirmative defense."

To which we respectfully submit the words of the learned Judge Noyes, 162 *Federal Reports, supra: "The defendant joins issue upon the fact of sanity after the New York orders were made."*

Continuing the learned counsel for defendant-in-error says, page 6 of his said brief:

"The ruling of the Trial Court, excluding the record of the Proceeding in Virginia in 1901, which purported to adjudge that the plaintiff-in-error was sane, was correct for the same reason. This adjudication might be *important evidence* upon the issue of sanity *whenever that* issue was itself before the Court, but could not be received during the plaintiff-in-error's case."

To which we respectfully submit the words of the learned Judge Noyes, 162 *Federal Reports, supra:*

"The Constitution of the United States vests in its judicial Department jurisdiction over controversies between citizens of different States. The Petitioner, as a citizen of the State of Virginia, bringing his said suit in the Circuit Court (since changed to the District Court) of the United States, was availing himself of a right founded upon this constitutional provision. And he came into that Court with a decree of the Court of the State of which he was a citizen, declaring his sanity. *We can not disregard that decree.*" And also: "The defendant *joins issue* upon the fact of sanity *after* the New York orders were made."

Which in turn is supported by Mr. Justice Harlan in *Arrowsmith* v. *Gleason*, 129 U. S. 86. Mr. Justice Harlan said:—"But this Court observing that the constitutional right of the citizen of one State to sue a citizen of another State in the courts of the United States, instead of resorting to a State tribunal, would be worth nothing, if the Court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress; * * * we have repeatedly held that the jurisdiction of the Courts of the United States over *controversies between citizens of different States, cannot be impaired by the law of the States which prescribe the modes of redress in their Courts, or which regulate the distribution of their judicial power—As said in Barrow* v. *Hinton*, 99 U. S., the character of the case is always open to examination for the purpose of determining whether, *ratione materiae* the Courts of the United States are incompetent to take jurisdiction thereof. State rules on the subject cannot deprive them of it."

Continuing the learned counsel for defendant-in-error says, pages 6 and 7 of his said brief:

"The remarks, in the opinion of this Court, in *Chanler v. Sherman*, 162 Fed. Rep., 19, to the effect that the present sanity of the plaintiff-in-error is at issue in the cause, *do not affect* the correctness of the rulings under consideration. The question before the Court in that Proceeding *was simply* whether the plaintiff-in-error was entitled to a writ of protection to enable him safely to come to New York to try his case. To decide this question the Court was obliged to consider what questions the plaintiff-in-error *might have* to litigate during the entire trial. One of *these questions undoubtedly was that* as to his sanity *at the times* of the alleged conversion and *afterward*. If the verdict had not been directed in favor of the defendant-in-error, the latter *might conceivably have* offered proof in support of the allegations *of continued* insanity, which would then have become a highly important issue. Under the circumstances that issue *was not reached*. The ruling of the Trial Court, therefore, was not in conflict with that of this Court as expressed in that opinion."

To which we respectfully submit the words of the learned Judge Noyes, 162 Federal Reports, *supra*. "*The defendant joins issue upon the fact of sanity after the New York orders were made.*"

Continuing the learned counsel for defendant-in-error says page 7 *et seq.*, of his said brief:

POINT

II.

"THE RULING OF THE TRIAL COURT, EXCLUDING EVIDENCE OFFERED TO SHOW THAT THE PLAINTIFF-IN-ERROR, WHEN COMMITTED TO BLOOMINGDALE HAD BEEN FRAUDULENT-

LY LURED INTO THE STATE OF NEW YORK FOR THE PURPOSE WAS NOT ERRONEOUS.

"In the first place, as has already been stated, the learned Trial Court assumed for the purposes of the case that the plaintiff-in-error had been fraudulently lured (Transcript of Record, p. 39, fols. 73-74). The actual ruling excluding the evidence of the fact assumed *cannot*, therefore, have been erroneous. The Court, however, was also right in disregarding the fact assumed, and treating it as immaterial. The alleged luring, if it took place, occurred before the 1897 Proceeding and before the plaintiff came to New York in February of that year. That Proceeding did not, of course, adjudge the plaintiff-in-error to be an incompetent, but merely provided tentatively for his detention for his own and the public good. It had *nothing whatever* to do *with the Proceeding* two years later by which the plaintiff-in-error was adjudged incompetent. The latter was a wholly new Proceeding, begun by the issue and service of fresh process, and in it the whole question of the plaintiff-in-error's then present sanity was *tried out*. The tribunal was not in any sense governed by the *ex parte* order of commitment, but was free to decide the question absolutely as matter of *first impression*. If the plaintiff-in-error was brought within range of the order of commitment by means of a process of fraudulent luring that might affect the order of commitment, but it *cannot affect* an independent *adjudication made years later*."

To which we respectfully submit that the seven following cases—set forth at large, and rulings given in great fullness under Point 1, The Nineteen Points of Law, *supra*, show that Courts frown down all attempts at fraud, trickery, or misrepresentation—all attempts at

luring a party from one jurisdiction into another jurisdiction. *The sole and only exception is in the case of crime.* The said seven cases, to-wit: *Carpenter* v. *Spooner*, 2 Sandf. (N. Y. S. Super. Ct. Rep.) 717. *The Olean Street Railway Company, Respondent*, v. *The Fairmount Construction Company, Appellant*, 55 App. Div. Supreme Court, 4th Department, 1900, p. 292. *Wyckoff* v. *Packard*, 20 Abb. N. C. 420. (N. Y. City Court, Special Term 1887). *Baker* v. *Wales*, 14 abb. Pr. Rep., (U. S.) 331 N. Y. Super. Ct. 1873, Gen'l Term. *Lagrares Case*, ib. p. 333, note (Supreme Ct. 1st District, Spec. Term 1873). *Metcalf* v. *Clark*, 41 Barb. 45 (1864).

So far, we respectfully submit, from the Commitment Proceedings of 1897, providing—as the counsel for the defendant-in-error claims above—"merely *tentatively* for the detention of the plaintiff-in-error for his own and the public good"—*said Commitment was permanent, definite and for all time.* The only reason why the Chanler family—the parties behind both the 1897 and the 1899 Proceedings—brought the 1899 Proceedings to declare the plaintiff-in-error an incompetent person was —on the evidence—merely to further their own plans and safeguard the property of the plaintiff-in-error which their testimony at the 1899 Proceedings proves they intended to inherit from the plaintiff-in-error and fully expected to inherit from the plaintiff-in-error by holding the plaintiff-in-error a prisoner for life in "Bloomingdale"—falsely so called—and upon the plaintiff-in-error's death inheriting his large property through being the plaintiff-in-error's *next to kin, and heirs at law**—since the plaintiff-in-error was expected to die

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*Winthrop Astor Chanler on the stand at the 1899 Proceedings, (T. R. p. 131, fol. 253). Q. "Those are his brothers. A. Yes, sir, and myself. Q. And his sisters, name them? * * * Q. Those are all of full age? And are all his sisters? A. Yes, sir. Q. Those are his heirs and next of kin? A. Yes, sir."

intestate; since the plaintiff-in-error was expected to be kept a prisoner in "Bloomingdale" until he did die. The only reason for bringing the 1899 Proceedings was in order to prevent the foreclosure of a large mortgage on a piece of Broadway property worth, according to the testimony of Winthrop Astor Chanler—the chief Petitioner in the Commitment Proceedings of 1897—at said Sheriff's Jury Proceedings in 1899—worth several hundred thousand dollars. The property still belongs to the plaintiff-in-error and is known as number 298 Broadway, New York, being a ten story store and office building. The parties furnishing the money for the rebuilding of said 298 Broadway had declined to advance the necessary money unless a Committee of the person and estate of the plaintiff-in-error were appointed, with whom said parties could contract and deal in a regular business way. Such contracts and such dealings being out of the question between said parties and the plaintiff-in-error, since the latter was lying in a cell in "Bloomingdale" under a charge of insanity.

So far from "the alleged luring * * * had nothing whatever to do with the Proceedings two years later by which the plaintiff-in-error was adjudged incompetent" —as the counsel for the defendant-in-error claims above —said luring went to the very heart of the said 1899 Proceedings; tainted them with fraud of an incurable character and *were the sole and only means of bringing the latter*, 1899 *Proceedings, to pass.*

For without the luring in 1897, the 1897 Commitment Proceedings would never have taken place, since the plaintiff-in-error was living quietly at his home, "The Merry Mills," Cobham, Virginia, and had arranged his business affairs in New York in order to permit him to remain at "The Merry Mills" for an indefinite period—and it is *self-evident, therefore, that, without the* 1897

Proceedings, those of 1899 *could not have come to pass.*

So far from the 1899 Sheriff's Jury Proceeding being —as counsel for defendant-in-error asserts above—"a wholly new Proceeding begun by the issue and service of fresh process, and in it the whole question of the plaintiff-in-error's then present sanity was tried out" *the fact is that the* 1897 *Commitment Proceedings were made part and parcel, art and part of said Sheriff's Jury* 1899 *Proceedings by being joined thereto*—as an examination of the record in the New York Supreme Court will show. *The* 1897 *Proceedings were specifically joined* to the papers making up the 1899 Proceedings. And so far from "the plaintiff-in-error's then present sanity being tried out"—as counsel for defendant-in-error alleges above there was no trial at all worthy the name. *It was a mere travesty of a trial.*

"The plaintiff-in-error was ill in bed at the time of said trial."

The Medical Superintendent of "Bloomingdale," Dr. Samuel B. Lyon, so testified, *supra*, and also testified that plaintiff-in-error *had* been confined to his bed with the same trouble *then*—at the time of the 1899 Proceedings—afflicting plaintiff-in-error—namely a pain in his spine which prevented his walking—Dr. Lyon testified that plaintiff-in-error *had been confined to his bed with the same trouble for three weeks previous to the bringing of the said Proceedings.* The plaintiff-in-error —as Dr. Lyon testified—had asked him not to represent him at the said Proceedings but to inform the Commission and Sheriff's Jury that he was physically incapacitated from attending the Proceedings—had twenty miles away from plaintiff-in-error's cell in "Bloomingdale"—namely in New York City.

Plaintiff-in-error was not present at said Proceedings, nor *was he represented by Counsel or even a Guar-*

dian ad litem as was Mrs. Yetta Simon, in *Simon v. Craft, supra:* No witnesses were brought except either those appearing in the 1897 Proceedings two years previous—and in this case *no witnesses† appeared except one of the Petitioners* in the 1897 Proceedings, and interested professional witnesses, such as Dr. Samuel B. Lyon, the said Medical Superintendent of "Bloomingdale" who was naturally interested in retaining the highest pay patient in "Bloomingdale"—which the plaintiff-in-error was—he paying through the late Stanford White—at one time his power of attorney—and later through the late Stanford White's brother-in-law, the late Prescott Hall Butler—*entirely against Plaintiff-in-error's will* in both instances—over five thousand dollars a year into the "Society of the New York Hospital" the legal name of "Bloomingdale." The only two other witnesses at said 1899 Proceedings—also professional witnesses—were the late Dr. Austin Flint, Senior, and Dr. Carlos F. Macdonald, *paid alienist engaged by* the Chanler family—as the record in the New York Supreme Court shows—*to find the plaintiff-in-error insane.* Even Dr. Samuel B. Lyon was not an unprejudiced witness since the same record shows that he *also* was employed by the Chanlers—*though paid out of the estate of the plaintiff-in-error—as were also Drs. Flint and Macdonald.*‡ Continuing, the defendant-in-error says, page 8 of his said brief:

"In the second place, it is not alleged that the defendant-in-error from whom damages are sought was concerned in or privy to the luring, nor was it specifically alleged or proved, nor was there any specific offer to prove, that even the original Committee was connected with the acts complained of."

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†Except an employee whose testimony was strictly confined to property-description. (T. R. pp. 126-130, fols. 246-252.)

‡T. R. pp. 141-142, fols. 273-277.

It is not alleged, we respectfully submit, that the present "Committee"—falsely-alleged Committee of plaintiff-in-error's person and estate—or his predecessor were "concerned in or privy to the luring"—but it is strongly —*most* strongly inferred.

For the following reasons. The first falsely alleged Committee—said Prescott Hall Butler—was the brother-in-law of the late Stanford White, besides being his legal adviser.† His successor, Thomas T. Sherman, is a member of the same law firm of which the late Prescott Hall Butler was a member—namely the then firm of Evarts, Choate and Beaman—now Evarts, Choate and Sherman of 60 Wall St., New York. This firm—as the evidence contained in this Brief shows—was the private Counsel for "Bloomingdale." Moreover, the head of that firm, Joseph H. Choate, Sr.—now counsel for said firm—was—during all said Proceedings and is now for all that plaintiff-in-error knows to the contrary—a Governor of The Society of the New York Hospital: "Bloomingdale"—falsely so-called. It was strongly to the interests of said firm, therefore, from *every* professional and business interest to get so expensive and valuable an asset to the income of the Society of the New York Hospital as plaintiff-in-error would be, into the clutches of said Institution for purely business reasons—and—once there—*keep him there.*

Continuing the defendant-in-error says, page 8 of his said brief.

"Again, the evidence shows that long before the Commitment Proceeding was begun, any luring there may have been had *spent any force* it may have had. He came to New York in February, 1897 (pp. 36-37, fol. 69). The petition on which he was committed was not verified till March 10th (p. 112, fol. 219).

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†Deposition *de bene esse* of Winthrop Astor Chanler—*supra.*

"If, then, he ever was lured, a period of from ten days to several weeks passed between the luring and the taking advantage of it, there was no proof, or offer to prove, that during all this time the plaintiff was *not a free agent here or that any fraud* was used to *induce him to remain.*"

We respectfully submit that the luring had not "spent any force it may have had" as defendant-in-error alleges above. For the following reasons:

First. Had there been no luring the plaintiff-in-error would never have been in New York.

Second. While there the late Stanford White was in constant, even daily, communication with plaintiff-in-error who—trusting the late Stanford White as his best and closest friend confided in said Stanford White all his plans and wishes. Said Stanford White therefore knew that there was no fear of plaintiff-in-error's hurrying back to Virginia without due and ample notice to him—said Stanford White. Since said Stanford White had requested plaintiff-in-error to permit said Stanford White to become the latter's unlimited power of attorney to transact all plaintiff-in-error's business for him in New York when plaintiff-in-error should return to his home in Virginia. As is explained in Plaintiff's Exhibit 6—the letter from plaintiff-in-error to the late Captain Micajah Woods, attorney at law of Charlottesville, Albemarle County, Virginia, dated July 3, 1897—written in "Bloomingdale"—plaintiff-in-error declined to give said Stanford White an unlimited power of attorney, but did give said Stanford White a *limited* power of attorney. This, of course, necessitated frequent business conferences between said two parties and said Stanford White well knew that plaintiff-in-error would not think of returning to Virginia until all his affairs, in a business way, had been fully explained to said Stanford White.

When this had been done—which, of course, required time—said Stanford White being at the head of the great firm of architects, McKim, Mead and White, of New York City, was an extremely busy man and could not spare the time to acquaint himself with plaintiff-in-error's multifarious business interests, North and South, except at rather long intervals. Hence it required about a month—plaintiff-in-error reached New York, February 13th, 1897, and was arrested and taken to "Bloomingdale" March 13th of the same year—to wind up plaintiff-in-error's affairs and put them in such shape that said Stanford White might be in a position to intelligently handle the same. No sooner had plaintiff-in-error done this than he was arrested and carried to "Bloomingdale." Plaintiff-in-error *was* a "free agent" as defendant-in-error asserts above, in so far as a man can be a "free agent"—under *surveillance.*

Continuing, the defendant-in-error says, pages 8 and 9 of his said brief:

"Moreover, even if the Commitment Order of 1897 was made possible by a fraudulent luring of the plaintiff-in-error into the State of New York, the jurisdiction of the court *was not impaired* thereby. As was pointed out by the learned Trial Judge, the jurisdiction of the State over questions of incompetency depends upon very different principles from those involved in questions of individual controversies. The State itself has a vital interest in the proper disposition of incompetent persons and it has the right and duty to determine the mental condition and status of every person *within its* boundaries at any given time. The decisions cited by the learned counsel holding that where the service of a summons in a suit involving an ordinary private controversy is obtained after the defendant has been fraudulently lured into the jurisdiction, the summons will be set aside,

differ from the case at bar in two material particulars. In the first place, the attack in those cases is always direct, by motion in the action itself to set aside the summons, and not collateral, by an action in another jurisdiction. In the second place, the private controversy involves no public question and the court is, therefore, fully justified in declining to give either of the parties the benefit of its assistance when its aid has been invoked by fraud. Where, however, as in *an issue as to insanity*, the State itself has an inherent interest in the controversy, the Court will not decline jurisdiction *even if* the alleged incompetent *is improperly brought within its territorial sphere*. The Court cannot and will not shirk the duty which it owes the whole public of determining whether or not the person in question belongs to the class which requires supervision, merely because the presence of the alleged incompetent within its territorial jurisdiction has been brought about by a fraud upon him. He is there and must be dealt with. No authority yet cited to support the plaintiff-in-error's contention has held that an adjudication as to insanity can be attacked collaterally on any such ground."

Replying to the learned counsel for defendant-in-error's allegation above: "No authority yet cited to support the plaintiff-in-error's contention has held that an adjudication as to insanity can be attacked collaterally on any such ground." We respectfully submit that neither does any authority cited to support the defendant-in-error's contention to the contrary *hold* to the contrary. *Insanity is about the least known branch of law*. It is, therefore, impossible to find authorities which touch at *any* angle, cases where *alleged* insanity is in issue.

Furthermore. This case of *Chaloner* v. *Sherman* is *an unprecedented case in the entire annals of law*.

In support of the above contention, we respectfully submit that we know of no case—short of a Chancery case, dealing exclusively with wills or infants—which has required *more* than twenty years to reach a hearing *—more than twenty years to bring in the evidence—more than twenty years for the plaintiff-in-error to have his day in Court.*

Every step in plaintiff-in-error's case makes new law.

In support of the above contentions, we respectfully submit the unusual words employed by the learned Judge Noyes, in describing said case of *Chanler* v. *Sherman*, 162 Fed. Rep., 19. To wit, 162 Fed. Rep., *supra*. "The *extraordinary relief prayed for here.*" It was, therefore, impossible to find authorities to support our contention against the legality of luring an alleged lunatic into a foreign jurisdiction for the purpose of incarcerating him as a lunatic.

By an alleged lunatic, of course, we mean a person merely accused by a private individual or group of private individuals of being insane—but who has never in any way been convicted of insanity by any sort of judicial process.

The same safeguards which the law throws around all persons in regard to criminal accusations—namely—that all persons are innocent until *proved* guilty; the law throws around all persons in regard to accusations of insanity—namely—all persons are sane until *proved* insane *—until after conviction. As the first becomes a convict* so does the *second become a lunatic—an incompetent.*

The learned counsel for defendant-in-error himself supports our view in the *following phrase*—under Point I of his said brief—to wit: *"The presumption of sanity would no doubt have taken care of the plaintiff-in-error."*

But, we respectfully submit, the soundness of our position requires no authority—beyond the authority of

logic to support. Thus. Were it a question of a regularly declared insane person the matter would bear an entirely different aspect. And there could be no possible objection to deceiving a judicially declared lunatic. But in the case at bar the conditions were utterly different. There was no question of a regularly declared lunatic, of a judicially declared insane person. *Far from it.* There was merely the question of a parcel of unscrupulous and avaricious relatives who had been estranged from the plaintiff-in-error since the time of his marriage in June, 1888; because, at the bride's request, only one member of the Chanler family received an invitation to said wedding. This led to a breach in the natural family relations between the plaintiff-in-error and the Chanlers, which is fully and graphically set forth in sundry letters received from Winthrop Astor Chanler and his wife, on evidence in the deposition of the plaintiff-in-error, mention of which is found on pp. 144-150 of appendix to this brief, which shows the intensity of the animosity thus aroused, and the ominous threat of future trouble in consequence.

LETTERS SHOWING BAD BLOOD BETWEEN PLAINTIFF-IN-ERROR AND THE CHANLER FAMILY, pp. 144-154, Trial Brief.

THE CHANLER FAMILY LETTERS.

"Rokeby,"
Barrytown, N. Y., June 23d, 1888.

(To John Armstrong Chaloner.)

Dearest Brog†:—Many thanks for your delightful letter flowing with metaphorical milk and honey.

I am so glad you are so happy, dear old boy, and that

†Plaintiff-in-error.

you find the dreaded marriage state not such a bugbear after all. I congratulate you with all my heart on your winning such a fair and noble prize in the life race, seeing how richly you deserve all happiness that may come to you. Now I am going to speak quite frankly about a matter which has been exercising us all a good deal, and whose nature you seem entirely unconscious of. Far be it from me to throw the slightest cloud across your sunshine, though in the present state of the thermometer a cloud would be rather a grateful change, for the heat is oppressive, but I don't think you realize in the least how very keenly we all felt your treating us as if we were mere outsiders to be classed with reporters and other noxious and inquisitive bipeds.

The news of your marriage was known to hundreds of people before it reached us. Aunt Caroline Astor was here on Thursday afternoon and said: "Well, I hear Archie† is being married"—we naturally poohpoohed the thing as a newspaper story. The next day the "Herald," "Times," etc., confirmed the *fait accompli,* not until Monday did we get any news from Virginia, and in the meantime, as it happened, we had a stream of visitors who could none of them fail to be surprised at our being left so totally in the dark.

Naturally *we felt very much hurt* at such neglect, poor Alida has cried her eyes out several times feeling that you do not care for her, the boys are all *vexed and affronted.* Wintie and I try to make the best of the matter, *but* for *several days we could not trust ourselves to speak of it.* Your announcement that you will stay in Virginia all summer, read aloud at table last night reopened the wound, poor Bunch's tears rolled down her cheeks into her strawberries. I think you ought to try to come up for a week at least, before

†Plaintiff-in-error.

the girls sail, I assure you the thing is worth a sacrifice. The world which you seem to care about a good deal—as who does not? has got hold of the idea that your family is not overpleased with your marriage, nothing as you know could be falser than this, but it is you who have given it this impression, it rests with you to efface it. You know, without my telling you how *warm your welcome would be here* and I think you owe it to yourselves as well as to us, to let us see you here.

Think it over well, remember how much weight and stress you always lay on duties to your family. I say no more, fearing you take me already for a tiresome old lecturer. Please understand that I write because I think it is best you should know how the land lies about Rokeby, and show you how you may make a difference, I won't say for your whole future, but certainly for several months of it by your present movements, in the whole feeling of the family. Mr. Bostwick has just returned from Baltimore, quite worn out with dodging questions as to why none of the family were present, etc., etc., and he told Wintie last night that you ought really to know how the farmers and people about here are talking at your not coming up nor having had any one down. The only way, you see, to do away with all these false impressions is for you to come up here as soon as possible.

This is not a case for quibbling arguments about insignificant "side issues," you have got yourself into this false position and you owe it to your wife and her future relations to the family to get yourself out of it. Use your own judgment as regards telling Amelie about all this, she has had enough worries and should be spared as much as possible. Give her my love—Wintie

joins me and says *he won't trust himself to talk any more on the subject.*

Very affectionately,

DAISY.

Alida sends love to you both—also give Margaret love from us all.

(From Winthrop Astor Chanler.)

"Rokeby,"

Barrytown, N. Y., June 19.

My Dear Margaret:—I have been waiting until I could control my temper before answering your letter. If ever two people deserved a good spanking those two are Brog and you. Of course you were but as putty in his hands, and backed him up in his absurd mysteries—but still your own common sense, if no other feeling, should have told you that he was quite wrong in acting as he did. Now I suppose you are wondering what I am driving at. Wait a bit until I tell you a story.

A detachment of the British Army in India was on the march. An officer was very anxious to know whether the army was to halt the next day and asked one of the staff officers, who had once been a friend of his, about it. "I really do not know the intentions of the General" was the reply. Then says the Chronicler, returning to his tent disgusted with the airs of his former companion he was met by his servant with the information that the army was to halt the next day. "Where did you learn that?" said the officer. "Major M's (the staff officer) washerman tell me." So Major M. could tell his "washerman" that he might take advantage of the halt to blanch his linen, but he could not communicate it to an old friend; although from the

situation of the army it mattered not, in a military point of view, if the fact were known from one end of India to the other. Just read, mark, learn, etc., this parable and I think you will see how the cap fits. You could write to Mr. Morris† and tell him to be sure the "d" was left out of the name, etc., etc.—and yet you could not send one line or word to any member of your family so that we could drink the bride's health. As it happened Archie's alleged telegram never reached us.

Alida at "Tranquillity"‡ and all of us at "Rokeby" heard it from an outsider and the daily papers. Of course Brog, like Sir Andrew Aguecheek, will have fifty "exquisite reasons" for it all. He always has. *It won't make much difference now what he says.* It is all over the country that not a single member of his family knew he was going to be married so soon. That don't look well, does it? *I am glad he is where he is so much appreciated for his stock is below par up here.* I cabled the news to Bess, lest she too should hear through the papers. Alida wrote me a piteous letter today asking for news—what news can I give her? That you leave Virginia in a week? Another little point for you and Brog to digest at your leisure is this. The outcome of his sublime and fatuous predilection for mystery is that as your name was only in one paper the great majority for whom he poses think that no member of his family was present at his wedding. You can draw your inferences.

This is all I am going to say on the subject, except

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†Said Henry Lewis Morris—the Chanler Family's lawyer. See affidavit of Egerton L. Winthrop, Jr. (T. R., pp. 141, 142, fols. 273-276.)

‡The country place at Allamuchy, Hackettstown, Warren County, New Jersey, of the late astronomer Lewis Morris Rutherfurd.

that it is useless to tell Amelie anything about it. She has nothing to do with it, and need not be made uncomfortable.

Yours,

W.

(From Winthrop Astor Chanler.)

"Rokeby,"
Barrytown, N. Y., June 22, 1888.

My Dear Margaret:—On our return from Albany today, where we had dined and spent the night with Mrs. Pruyn, I found your long letter.

Your reasons for not letting us know are precisely what we all supposed them to have been. Of course, we all knew perfectly well that you wanted to send us word and that Archie would not let you. When you say that you did not consider it proper for you to discuss the matter with and differ from him we disagree with you entirely. It was your business to fight any such proceeding on his part with all your might. Particularly so when you thoroughly realized how we would feel as you say you did. In fact, every word in your letter and in Brog's to Daisy goes to confirm us in our opinion. The Rives had a perfect right to wait till after the wedding before cabling to the Col. if they so wished. They had plenty of relatives in the house to back them up in anything they chose to do—if the *Herald* is to be believed. Besides there are a half dozen ways in which Brog could have let us know the day before if he had wished. He could have written or telegraphed in French. As soon as he had had his interview with the *Herald* reporter he could have sent us word. The whole trouble is that he apparently looked upon the family in the same light as

the public—*with a strong preference for the public. I am not going to discuss the matter any further as regards the disagreeable position he has seen fit to put us all in and its result in the eyes of the world of whom he seems to stand in such dread. Nor am I going to discuss the utter fizzle of his attempt at secrecy. I will simply say that he has done the very thing of all others he should have not done under the circumstances and that he has hurt the feelings of his entire connection on this side of the water* in a way that though they may *say* nothing, *yet will make them show it for a long time to come.* In the most important epoch of his life *he has made a fool of himself* and hurt his wife in the eyes of the public. You can show him both my letters on condition that he does not tell his wife about the contents more than is necessary. I will write to him *as soon as I can talk of something else.*

Yours,

W.

P. S.—*Remember* I want you to show *both my letters to Brog.* You can leave the matter of repetition to his own judgment.

W.

(From Winthrop Astor Chanler to John Armstrong Chaloner.)

"Rokeby,"
Barrytown, N. Y., June 21, 1888.

Dear Brog:—Just a line from an outsider *to disturb the perfect bliss of Armida's garden. Ask for and read* the two letters I have written to Margaret in the name of the Rokebyites and use your own judgment about re-

peating the contents. Love to Armida—We don't want any cuttings from the *Herald* or any other of your friends the Journalists.

Yours,

W.

P. S.—The weather here is very warm, 93 in the shade today—*I wonder if you wouldn't find it cool in spite of the thermometer.*

(From John Armstrong Chaloner to Winthrop Astor Chanler.)

"Castle Hill,"
Albemarle County, Virginia, June 27th, 1888.

Dear Wintie:—I have received your note of June 21st, and I shall want an apology from you in writing, before anything further can pass between us.

Yours,

J. A. C.

Nine years later Winthrop Astor Chanler makes fully good the direful threat contained in the following sinister language—taken from his aforesaid letter of June 22, 1888. To wit: "I am not going to discuss the matter any further as regards the disagreeable position he has seen fit to put us all in; and its result in the eyes of the world, of whom he seems to stand in such dread. Nor am I going to discuss the utter fizzle of his attempt at secrecy. *I will simply say that he has done the very thing of all others he should not have done under the circumstances; and that he has hurt*

the feelings of his entire connection on this side of the water, in a way that though they may say nothing, yet will make them show it for a long time to come. In the most important epoch of his life he has made a fool of himself, and hurt his wife in the eyes of the public."

And when we add to the above the unnatural hatred of his brother—there is no other word for it, we respectfully sumbit, upon the evidence of said Winthrop Astor Chanler's acts—and when we add to the above the unnatural hatred of said Winthrop Astor Chanler for his brother—the plaintiff-in-error—displayed by his—said Winthrop Astor Chanler's—*attempt to physically assault said brother*—the plaintiff-in-error—*even though the latter was in bed and unwell at the time*—as is fully set forth in the portions cited, *supra*, of the deposition *de bene esse* of said Winthrop Astor Chanler.

As was said above, there was no question here of a regularly declared lunatic, of a judicially declared insane person. There was merely the question of a parcel of unscrupulous and avaricious relatives, who had been estranged from the plaintiff-in-error since the time of his marriage in June, 1888; who had subsequently—*one and all*—quarrelled with plaintiff-in-error because of said marriage; and, subsequently, had not scrupled to employ agents to inveigle plaintiff-in-error within the confines of the State of New York with the—on the evidence—indisputable purpose of there incarcerating plaintiff-in-error for life, and, upon the death—in the course of time—of plaintiff-in-error, of possessing themselves of plaintiff-in-error's property of largely over a million dollars in value, and steadily increasing in value.

The balance of the citation above from defendant-in-error's brief is so honeycombed with sophistry, so riddled by fallacy that it is, we respectfully submit, simply and palpably beneath serious notice. We shall, therefore, content ourselves by saying that the learned counsel

for the defendant-in-error *has put the cart before the horse in a manner unparalleled in our professional experience.*

That said learned counsel for defendant-in-error glibly dubs the plaintiff-in-error an "incompetent person" *long before any legal proceedings declaring the plaintiff-in-error a lunatic or an incompetent person had ever been had.* And this in the teeth of the aforesaid remark of said learned counsel for defendant-in-error—page five of his said brief under Point I thereof—to-wit: "the presumption of sanity" (until judicially found insane—"lawfully adjudicated" as said learned counsel puts it—page five of his said brief) "would, no doubt, have taken care of the plaintiff-in-error until such time as an answer setting up the defense should have been served." The following words would have had equal force in said sentence, to-wit. "The presumption of sanity" (until judicially found insane)—"lawfully adjudicated"—*not fraudulently lured into a foreign jurisdiction we might respectfully add* "would, no doubt, have taken care of the plaintiff-in-error until such time as he should be (as the plaintiff-in-error had *not* been) judicially found insane 'lawfully adjudicated'."

The "presumption of sanity" spoken of by the learned counsel for defendant-in-error before a party has been "lawfully adjudicated" insane, is well supported by the following remark from the learned Judge in his opinion in *Evans, Committee* v. *Johnson*, West Virginia Supreme Court of Appeals L. R. A. 737, referred to extensively on page 208, of this brief. The learned Judge says "Will it be said, in answer to this that he is insane, and that notice to an insane man will do him no good? *The response is that his insanity is the very question to be tried.*"

It will be fully shown that there never was, nor ever had been any question of the peace and quiet of the

good people of the City and State of New York being threatened by an irruption upon the part of the plaintiff-in-error. That—strange though it may sound to a New Yorker—the plaintiff-in-error much preferred life in Virginia to life in New York. That the plaintiff-in-error had proved this by relinquishing, far from reluctantly, his citizenship in the State of New York and promptly taking it up in the State of Virginia after buying the four hundred acre estate of "The Merry Mills" and fitting up its old-fashioned house as his permanent home. That plaintiff-in-error found life in Virginia so much to his liking that on the evidence of the record he gave life in New York as wide a berth as possible—only going there at long intervals for short trips and with a specific purpose as the object of each trip—as the following letter from the former proprietor of the hotel at which he stopped when visiting New York proves.

"LETTER TO PLAINTIFF-IN-ERROR FROM THE PROPRIETOR OF THE HOTEL KENSINGTON, NEW YORK (SINCE DECEASED) CONCERNING HIS INFREQUENT VISITS TO THE HOTEL (pp. 100-101 Trial Brief).

Cash Capital, $1,700,000.

John R. Bland, President. Geo. R. Callis, Secretary-Treasurer.

The United States Fidelity and Guaranty Company, Baltimore, Md.

Andrew Freedman, Vice President,

Sylvester J. O'Sullivan, Manager.

66 Liberty Street, New York, March 14th, 1905.

Mr. John Armstrong Chanler,
"The Merry Mills," Cobham, Va.

My Dear Chanler:

In reply to your letter requesting my views regarding your alleged former residence at the Hotel Kensington, Fifth avenue and Fifteenth street, Borough of Manhattan, City of New York, in 1896 and 1897, I beg to state as follows:

I was Proprietor of that Hotel from April 1st, 1894, to April, 1897. I do not think you ever stopped there prior to my assuming control of it. I do believe you came there solely on my account. You never were in any sense a resident guest of that Hotel. You never were any other than a transient guest. You never engaged rooms there other than by the day. Your visits there were infrequent, yet I believe you stopped there every time you came to New York while I conducted that Hotel. As a rule, you came on each year to the Horse Show, and on those visits you, of course, spent the week said Show was in progress, and I believe on one, or possibly two occasions, your visit at that season was prolonged to several weeks. Other than the Horse Show week mentioned above, my recollection is that you did not come to that Hotel more than once or twice a year, and on some of these visits your stay was only for a day or two.

I well remember having several prolonged conversations with you about some large enterprises you had on hand in North Carolina, and that almost the entire year of 1895 was spent by you in the South in the conduct of said enterprises.

You were at the Kensington during the Horse Show week in November, 1896, and *left there for the South in December.*† You *returned again in February*‡ of

†Corroborating the testimony of John Penn Morris. Pp. 16-22, Appendix.

‡Corroborating the testimony of William Kennie. Pp. 57-64, Appendix.

1897, and left in March. Of course, I could not recollect the exact dates of your arrival and departure on those visits, but I again repeat in the strongest terms possible that you never were at any time to my knowledge a resident guest of that Hotel, but were always looked upon by myself and all the attaches of the Hotel as a transient guest.

Very truly yours,
SYLVESTER J. O'SULLIVAN.

The plaintiff-in-error had no intention whatever of visiting New York for a long and indefinite period. That plaintiff-in-error's said letter to Captain Micajah Woods proves said contention where he mentions his desire for a prolonged stay in Virginia as the cause of his arranging his business affairs in New York so that he could leave the Metropolis for an extended and indefinite period. That the unscrupulous relatives of plaintiff-in-error sent out to have, and had him brought within the confines of the State of New York for an illegal, dishonest and nefarious purpose. That the peace of New York was never threatened by the presence within its borders of plaintiff-in-error. That he much preferred to live in peace and quietude in the countryside of Virginia to courting the noise and hubbub of the Metropolis. That all this talk upon the part of the learned counsel for defendant-in-error to the effect that—page 8 of his said brief—"*The State itself has a vital interest in the proper disposition of incompetent persons*"—and again page 9, ibid—"*The Court can not and will not shirk the duty which it owes the whole public of determining whether or not the person in question belongs to the class which requires supervision*" is nothing more nor less than so much sonorous buncombe upon the part of the learned counsel for defendant-in-error.

All this talk upon the part of the learned Counsel for defendant-in-error is palpably hollow—unequivocally insincere.

We respectfully submit that in place of all this absurd sophistical elaboration concerning the protection of the good people of New York from the danger of the presence of the plaintiff-in-error within that populous State's borders, it would be far more germane to the public good to protect the public from the felonious machinations of people as utterly devoid of scruple or principle, or even of natural affection as the Chanler family, male and female, are shown to be in the premises; to protect the public from the machinations of people *so resembling bandits* as do the *Chanler family.*

Continuing, the learned counsel for defendant-in-error says, page 9, *et seq.*, of said brief before the Circuit Court of Appeals:

POINT

III.

"THE LEARNED TRIAL COURT DID NOT ERR IN EXCLUDING EVIDENCE AS TO THE RESIDENCE OF THE PLAINTIFF IN 1897 AND 1899.

"The rulings excluding evidence of this character were certainly correct. The Supreme Court of New York had jurisdiction both in the Commitment Proceeding and in the Proceedings for the appointment of a Committee, whether the plaintiff-in-error was a resident of this State or not, so long as he was within the State when the Proceedings were begun, and had property here.

Finally, the fact that the plaintiff was a resident of New York, was one of the facts at issue and adjudged

in the 1899 Proceedings. The question of his residence was for the New York Court to determine, and its decision is final (*Kinnier* v. *Kinnier*, 45 N. Y. 535)."

We need not go further into the first allegation of said learned counsel—we respectfully submit—than to observe that the Supreme Court of New York never acquired jurisdiction over the person of the plaintiff-in-error for the following reasons. *First:* that he was lured within the jurisdiction of the State of New York by fraud, deceit and trickery. *Second:* that he had no notice of the 1897 Proceedings—the Commitment Proceedings. *Third:* that he was not afforded an opportunity to appear and defend at the 1899 Proceedings—the Sheriff's Jury Proceedings.

Nor need we go further into the second allegation of said learned counsel—we respectfully submit—than to observe that the 1899 Proceedings aforesaid alleged, *never had any existence in law for the reason aforesaid:—lack of opportunity to appear and defend—and that therefore no question thereat determined had any existence in law.*

Continuing, the learned counsel for defendant-in-error says, page 10, *et seq.* of his said brief before the Circuit Court of Appeals:

POINT

IV.

"THE LEARNED TRIAL COURT DID NOT ERR IN EXCLUDING ANY OF THE EVIDENCE OFFERED TO SHOW FRAUD IN THE VARIOUS PROCEEDINGS RESULTING IN THE ORDER OF COMMITMENT OF 1897 AND THE ADJUDICATION OF INCOMPETENCY OF 1899.

"An examination of the offers of evidence made by the plaintiff-in-error, the questions asked and excluded, and indeed of the excluded evidence itself as it appears in the depositions which were marked for identification, will show that the alleged fraud complained of consisted in the giving of testimony *alleged to be false, in the affidavits* upon which the Commitment was had, and in the evidence upon which the plaintiff was adjudged incompetent in 1899. *The alleged conspiracy appears to have* been a *conspiracy of the relatives of the plaintiff-in-error* to deceive the Court by such *perjury* into *deciding as it did decide. Such fraud*, however, if proved is *no basis for a collateral attack* upon an adjudication. The question whether the testimony, given in support of one side of the case, is or is not true is one of the questions *necessarily* adjudged in *every* litigation. In the case at bar the question whether the alleged perjurious testimony was true was *necessarily* adjudged by the Supreme Court of the State of New York in finding the plaintiff-in-error incompetent. This Court could not determine whether or not the testimony in question was perjured without trying over again the *very same issue which* the New York Supreme Court decided when it made the orders complained of. In accordance with these principles it is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack."

(Counsel for defendant-in-error then cites *U. S. v. Throckmorton*, 98 U. S., 61, and says the said case shows:)

"That the fraud which will invalidate a judgment or open it to a collateral attack must be *extrinsic*, or of such a character as prevents the party defrauded from presenting his case or some essential element of it to the Court. None of the offers to prove in the case at bar

suggests that any fraud of this character was practiced upon the plaintiff-in-error."

Replying to which, we respectfully submit the following concerning the case of *U. S. v. Throckmorton*, 98 U. S.

We have more than once been forced to draw this honourable Court's attention to the proneness to sophistry, so brazenly exploited by the learned counsel for defendant-in-error. It would, indeed, be difficult to find more appallingly palpable, brazen sophistries than the following *supra*—so palpable as to be beneath the notice of an honest, truthful and logical lawyer—more than to held them forth for the view of this learned Court in all their nakedness. To wit. "The question whether the testimony given in support of one side of the case is or is not true is one of the questions *necessarily* adjudged in *every* litigation."

Among the present group of fallacies set forth with such assurance by the learned counsel for defendant-in-error the above is, we respectfully submit, surely the captain jewel in the carcenet. For if what said learned counsel for defendant-in-error asserts above were not a fallacy, where then would be the famous case of *Torey v. Young*, cited by the learned Mr. Justice Miller in *United States v. Throckmorton*. And where would be the learned words of the Lord Keeper in the High Court of Chancery?

According to the Lord Keeper perjury can slip by the Trial Judge unnoticed.

Discussion of *U. S. v. Throckmorton*.

Mr. Justice Miller said:

"There is no question of the general doctrine that

fraud vitiates the most solemn contracts, documents and even judgments—in cases where, by reason of something done by the successful party to a suit, there was, in fact, no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practised on him by his opponent, as by keeping him away from Court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff;—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing. In all these cases and many others which have been examined, relief has been granted, on the grounds that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the Court. On the other hand, the doctrine is equally well settled that the Court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed. Mr. Wells, in his very useful work on *Res Adjudicata*, says, Section 499: 'Fraud vitiates everything, and a judgment, equally with a contract; that is, a judgment obtained directly by fraud. The principle and the distinction here taken was laid down as long ago as the year 1702 by the Lord Keeper in the High Court of Chancery, in the case of *Torey* v. *Young*, *Prec.* in Ch. 193. This was a bill in Chancery brought by an unsuccessful party to a suit at law, for a new trial, which was at that time a very common mode of obtaining a new trial. One of the

grounds of the bill was that complainant had discovered since the trial was had, that the principal witness against him was a partner in interest with the other side.

The Lord Keeper said: 'New matter may, in some cases, be ground for relief; but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial, unless it appears by deed, or writing, or that a witness, on whose testimony the verdict was given, were convict of perjury.'" As is conclusively proved by the *originator* of the said principle —namely the Lord Keeper—the perjury of a witness "on whose testimony the verdict was given" *must be discovered and charged* not during, but *after the said trial.*

In other words, the perjury must not have been known to be perjury—and as perjury—to have been considered by the court *during said trial.* The perjured witness—in a word—gives his perjured testimony, upon which "the verdict was given," without either the Court or the other side knowing at the time of the trial that same was perjured. Thereafter said discovery is made and a new trial granted on the strength of the newly discovered perjury.

Counsel for defendant-in-error attempts to show by this very case of *United States* v. *Throckmorton*, that provided a witness has perjured himself in a given trial —and no matter that neither the other side nor the Court knew at the time of said trial that said witness *was* a perjured witness, yet, nevertheless, because the witness gave his said perjured testimony, as aforesaid, at said trial, that therefore the question of the perjury of said witness was *ipso facto* necessarily "actually presented and *considered*" in said trial *as perjury!* Whereas, the truth is the direct antithesis thereof. Namely: that said perjury, *not having been discovered* at the time of said trial, it *could not* have been "presented" at said trial.

Not having been "*presented*" if necessarily *could not* have been "*considered.*"

And counsel for defendant-in-error sapiently holds that although *neither* the Court *nor* the other side *knew* at the time of said trial that it *was* perjury; that *therefore* when—*after* said trial—a *new* trial is sought upon the ground—*upon the totally new question*—of the perjury of said witness—that a new trial cannot be granted because the said perjury—*although unknown and unhinted at at said trial*—"*was* actually presented and considered" at said trial; when—in truth—*it had been neither one nor the other!*

In other words—according to the legal, mental processes of counsel for defendant-in-error—if a perjured witness, *unbeknown* to the *Court* and *other side*—perjures himself at a given trial and "*gets away with it*"—*gets the Court and other side to believe it*, that *therefore, thereafter, when* the other side *catches up with the perjurer*, and *moves for a new trial*—that, *because* the perjurer has—*unbeknown* to the *Court* and *other* side—*perjured himself successfully*, which is to say, of course, *without being caught*,—that then—according to counsel for defendant-in-error—*when* said perjurer is "*caught with the goods*"—his crooked and slick work, *when discovered*, cannot be taken into consideration by the Court—cannot be "considered"!

To conclude. The perjury of Mr. Winthrop Astor Chanler, in the Commitment Proceedings in 1897, aforesaid, is proved upon him in the cross-examination of that gentleman, by counsel for plaintiff-in-error in said Deposition *de bene esse*, *supra*, given by said gentleman in or about November, 1905—on file in the New York Supreme Court.

Said gentleman swore in said Commitment Proceedings—said Commitment Papers—that he had heard and

seen the plaintiff-in-error in *Chaloner against Sherman* say and do irrational things at the said plaintiff-in-error's home in Virginia. Upon the strength of which false oath "the verdict was given," and the plaintiff-in-error lost his liberty and the control of, and enjoyment of his property for years and years. Whereas in said Proceedings in 1905, *de bene esse*—as has been shown, *supra*—said gentleman admitted on the stand—under cross-examination—that he had *never* in his life been at, or in, said home of said plaintiff-in-error in Virginia —*nor* had *any* of the *other* Petitioners!

To resume. A second famous fallacy is now pushed forward by the learned counsel for defendant-in-error in the following bare-faced statement. To wit, "This Court could not determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Supreme Court decided when it made the orders complained of."

And, lastly, we have this pearl from the lips of the learned counsel for defendant-in-error. To wit, "In accordance with these principles it is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack."

And then said learned counsel has the assurance—the *verily desperate hardihood*—to bring forward this very case of *United States* v. *Throckmorton*, in support of said learned counsel's outrageous attempted assault on the Truth as well as on logic.*

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*Mr. Justice Harlan says:

In *Arrowsmith* v. *Gleason*, 129 U. S., *infra*.

"As said in *Barrow* v. *Hunton*, 99 U. S., 80, 85 (25: 407, 408), the *character of the case* is *always* open to *examination* 'for the purpose of determining whether, *ratione materiae* the Courts of the United States are in-

Continuing the learned counsel for defendant-in-error says, pages 11 and 12 of his said brief:

"The contention that the plaintiff-in-error was fraudulently lured into the State of New York in 1897 is not of this character. Such fraud, even if it resulted in the commitment of the plaintiff-in-error to an asylum, did not deprive him of the power, which in *fact he had in this instance,* if he had *chosen to exercise it,* of presenting every essential of his case to the court which adjudged him incompetent. As was pointed out by the Supreme Court of the United States in *Simon* v. *Craft,* 182 U. S., 427, an inmate of an asylum may well be perfectly free to conduct his defense in such proceedings with entire efficiency; and in the *absence of alle-*

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competent to take jurisdiction thereof. *State rules on the subject cannot deprive them of it'.*" * * *

"*The most solemn transactions and judgments may, at the instance of the parties, be set aside or rendered inoperative for fraud.* * * * It is generally parties that are the victims of fraud." * * *

"*Relief is to be obtained not only against writings, deeds and the most solemn assurances, but against Judgments and Decrees,* if obtained by *fraud and imposition.* * * * Such relief being grounded on a new state of facts, disclosing * * * *imposition upon a Court of Justice.*"

And in *Marshall* v. *Holmes,* Mr. Justice Harlan said: 141 U. S., *infra*:

"On the other hand, if the Proceedings are tantamount to a bill in equity *to set aside a decree for fraud* in the obtaining thereof, then they constitute an original and independent Proceeding, and according to the doctrine laid down in *Gaines* v. *Fuentes,* 92 U. S., 10 (23: 524), the case might be within the cognizance of the Federal Courts."

gation, proof, or offer *to prove* that he was interfered with, the Court will presume that he was not. If, then, there was any luring in 1897, it did not affect the 1899 Proceedings."

The hardihood displayed by the learned counsel for defendant-in-error in bringing forward a case so indisputably proving the contentions of his adversary; namely, the plaintiff-in-error, as *U. S.* v. *Throckmorton*, is almost equalled by said learned counsel for defendant-in-error's putting in the case of *Simon* v. *Craft*. For nothing could support the contentions of the plaintiff-in-error more strongly than this same case of *Simon* v. *Craft—unless* it be the aforesaid case of *United States* v. *Throckmorton*.

The case of *Simon* v. *Craft* is again brought forward by said learned counsel for defendant-in-error in support of said counsel's "Point V" in said brief. Therefore we shall touch said case but lightly under Point IV of said counsel's said brief and treat said case at length in replying to said counsel's "Point V."

Said learned counsel for defendant-in-error starts out—we respectfully submit—with two fairly large fallacies where he says: "The contention that the plaintiff-in-error was fraudulently lured into the State of New York is not of this character." To which we respectfully submit that *were it not for the luring there would have been no* 1897 *Proceedings at all*—for the simple reason that there could not have been—for there would have been no plaintiff-in-error to be falsely imprisoned and perjured into "Bloomingdale" had the plaintiff-in-error not been "fraudulently lured" as said learned counsel for defendant-in-error deftly phrases said felonious actions of his allies and backers, the Chanlers.

Continuing, said learned counsel for defendant-in-error says:

"Such fraud, even if it resulted in the commitment of the plaintiff-in-error to an asylum, did *not* deprive him of the power, which in fact he *had* in this instance, *if* he had chosen to exercise it, of presenting every essential of his case to the Court which adjudged him incompetent."

Strange though it sounds, there is not one solitary word of truth in the above sonorous sentence from the learned counsel for defendant-in-error. As will be shown when we come to consider said counsel's next Point—"Point V"—(1) "Such fraud—(*did*) deprive him of the power." (2) "Which in fact he had (*not*) in this instance. (3) "(although) he *had chosen* to exercise it, of presenting every essential of his case to the Court which adjudged him incompetent."

Merely as a sign of *bona fides* upon our part to shortly make good the proof of the above, we now respectfully submit that plaintiff-in-error was bed-ridden at the time of the 1899 Proceedings on the testimony of the Medical Superintendent of "Bloomingdale"—Dr. Samuel B. Lyon, *supra*—had been so for three weeks previous to the said Proceedings which were held twenty miles from his cell in "Bloomingdale"—and—lastly—that plaintiff—*on the record—was neither present at, nor represented by counsel at said Proceedings. Whereas Mrs. Yetta Simon—the alleged lunatic in Simon* v. *Craft*, who, by the way, we respectfully submit, was on the evidence and *indisputably* a *bona fide* lunatic from the incipiency of the case of *Simon* v. *Craft—was represented at her trial*—by a guardian *ad litem*.

Concluding his "Point IV" the learned counsel for defendant-in-error says, "As was pointed out by the Supreme Court of the United States in *Simon* v. *Craft*,

182 U. S., 427, an inmate of an asylum may well be perfectly free to conduct his defence in such Proceedings with entire efficiency; and in the absence of allegations, proof, or offer to prove, that he was interfered with, the Court will presume that he was not. If then there was any luring in 1897, it did not affect the 1899 Proceedings."

The great difference between the case of *Simon* v. *Craft* and *Chaloner* v. *Sherman* is, we respectfully submit, summed up in the above lines. *There was no proof or offer to prove that fraud was employed against Mrs. Simon at any stage of the case.* Whereas fraud shows its foul head from the very incipiency of *Chaloner* v. *Sherman.*

There was no proof or offer to prove that Mrs. Simon was not insane from the incipiency of Simon v. *Craft.* Whereas indisputable evidence—documentary—in the shape of a letter of several thousand words in length written by plaintiff-in-error in his cell within about one hundred days of his arrest and incarceration in "Bloomingdale" to his late counsel, the late Captain Micajah Woods, Commonwealth's Attorney of Albemarle County, Virginia—plaintiff-in-error's home county at said time—in evidence and known as Exhibit 6—*whereas indisputable evidence—documentary and otherwise—is in evidence in Chaloner against Sherman to prove the unimpeachable sanity of the plaintiff-in-error from his birth.*

There was no proof or offer to prove the slightest sign of a conspiracy against Mrs. Simon. Whereas there is indisputable evidence—documentary—in the shape of the letters of June, 1888, from members of the Chanler family* to plaintiff-in-error in evidence *supra* pp. 417-

*As well as the letter from said Stanford White to Princess Troubetzkoy, indexed in Index of Exhibits, Appendix, as *Exhibit C.*

424, of this brief, breathing out threatenings and mutterings of trouble to come, *is in evidence in Chaloner* v. *Sherman.*

There was no proof or offer to prove the slightest ill-feeling towards Mrs. Simon. *Whereas indisputable evidence—documentary—in the shape of the allegation in the plaintiff-in-error's letter aforesaid to Captain Micajah Woods of a violent altercation with Winthrop Astor Chanler—the Chief Petitioner in the* 1897 *Proceedings—is in evidence in Chaloner against Sherman to prove that not a vestige, shred or atom of natural affection exists between a solitary member of the Chanler family, male or female, and the plaintiff-in-error.* That all and sundry the Chanler family dislike the plaintiff-in-error heartily, and lose no opportunity to show said dislike; and that the sole and only interest said Chanler family take in plaintiff-in-error is a *strong and ever present desire to circumvent the wishes and last will and testament of the plaintiff-in-error* in order to *cheat* the *Universities of Virginia and North Carolina* out of the fortune of a *million dollars or more* the plaintiff-in-error has deeded, besides leaving in his will, *to the said Universities.*

There was no proof nor offer to prove that the party or parties in whose custody Mrs. Simon was, was or were inimical to her. Whereas indisputable evidence is in evidence in *Chaloner against Sherman*, that the Medical Staff of The Society of The New York Hospital at "Bloomingdale," as well as the "Board of Governors" of said Private Insane Asylum had every reason to feel chagrined at the freely uttered threats of the plaintiff-in-error to publicly expose them and their methods so soon as he should obtain his liberty.

Lastly, there was no proof nor offer to prove that the party or parties in whose custody Mrs. Simon was, was or were pecuniarily interested in or benefited by retain-

ing her in custody. Whereas indisputable evidence—on the cover of the Commitment Papers themselves—shows that *the proprietors of The Society of The New York Hospital were charging the plaintiff-in-error the outrageous mulct of one hundred dollars per week* for a two-roomed cell with bath attached—a thirty dollar per month or so—Irish keeper—while charging him extra on every possible pretext—*and he a vegetarian and strict abstainer from all alcoholic beverages.* While the mulct aforesaid amounted—including the aforesaid "extras"—to the formidable sum of *twenty thousand dollars*, more or less, at the end of the nearly four years the plaintiff-in-error was illegally and falsely imprisoned in The Society of The New York Hospital at White Plains, Westchester County, New York.

Continuing, the learned counsel for defendant-in-error says, pages 12, 13, 14 and 15 of his said brief. Since this "Point V" of said learned counsel for defendant-in-error's brief is by far the longest, most important and most elaborately argued point in his brief, we shall give said point verbatim and *in extenso.*

POINT

V.

"THE LEARNED TRIAL COURT DID NOT ERR IN EXCLUDING EVIDENCE AS TO THE PHYSICAL DISABILITY OF THE PLAINTIFF AT THE TIME OF THE 1899 PROCEEDINGS.

"The contention, set up in the Thirty-second Assignment of Error, that there was error in this regard is apparently based upon the exclusion of the offers of proof by counsel for the plaintiff-in-error (pp. 57-60,

fols. 109-113). These offers were *vastly* too broad, including matters already ruled upon and others which were clearly irrelevant and immaterial. Assuming, however, that the offer and assignment raise the question of the correctness of the ruling excluding an offer to prove that the plaintiff-in-error was unable, through physical disability, to attend the 1899 Proceedings, we will discuss the question on that basis.

"It is to be noted that nowhere in the Brief or in the Record is it questioned that the plaintiff-in-error actually received due and timely notice of the 1899 Proceeding, as appears from the record thereof, which is in evidence. *The argument is,* however, *that notice is insufficient to confer jurisdiction unless it be such as will afford the recipient an opportunity to defend*, and the *notice* in this case was *vitiated because* when he received it the *plaintiff-in-error* was confined in Bloomingdale, *was physically unable to attend the trial*, and was thus denied his opportunity to be heard. As above noted, however, it has been expressly decided by the Supreme Court of the United States, that confinement in an asylum does not, by itself, vitiate a notice otherwise duly served in such proceedings (*Simon* v. *Craft*, *supra:* see also Woerner on American Law of Guardianship, p. 401). These authorities demonstrate that the mere fact of detention in any asylum upon commitment, at the time notice is served and the Proceedings had, is not in itself sufficient to show that the notice did not give the alleged lunatic opportunity to be heard. They show that *in the absence of evidence* the Court will presume that opportunity to defend was afforded.

"Accordingly, to show that the Supreme Court in the 1899 Proceeding had no jurisdiction, the plaintiff-in-error would have been obliged to prove that opportunity to be heard was denied him, otherwise than by

his mere enforced residence in Bloomingdale. The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time. This is by no means sufficient. If physical disability to attend a trial vitiates notice, how many of the judgments rendered by the Courts in ordinary civil cases would be open to collateral attack? If in any true sense an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard, when the Court tried the case without him every other litigant who is in the same unfortunate predicament is *equally* denied opportunity to be heard. No one, however, has as yet had the temerity to advance this proposition. The plain fact is, of course, that one who is physically unable to attend a trial is by no means denied an opportunity to be heard *if* he is *able* to retain and consult *freely* with counsel. The fact that the plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel (fol. 112, Letter printed as Exhibit 6 for Identification, fol. 305), but also from the testimony in the 1899 Proceeding (fol. 232), which shows that at the time in question he was on parole and at liberty to go where he pleased within large limits (fol. 231).

"Furthermore, even if it were true that the 'opportunity to be heard' to which a person is entitled in such cases, is an opportunity to attend in person, it is nevertheless plain that that opportunity is not denied a party who finds himself physically unable to attend, unless on discovering the situation he asks for and is refused an adjournment. One who knows that his trial is coming off at a time when he cannot attend and lets things proceed without even asking a postponement is in no position to complain. There is no suggestion in the

case at bar that the plaintiff even suggested a wish (see fol. 225) to be present or to have the trial at a later day. On the contrary, it appears from the testimony in the 1899 record that he deliberately and of his own preference refused to attend (fols. 225, 232). The utmost extent to which the offer of proof went was to proffer evidence to show that the conditions imposed upon the plaintiff-in-error by his confinement and illness may have made the conduct of his defense inconvenient. That is by no means sufficient. The Court of Appeals of New York has held in *Happy* v. *Mosher*, 48 N. Y., 313, that a sufficient opportunity to be heard was afforded by proceedings under a statute which made the giving of an expensive bond a prerequisite to the right to defend. In deciding this case the Court said that opportunity to defend is not denied, though made 'difficult, *so long* as it is *not impracticable.*'

"Moreover, as regards this subject, this Court is not in the usual position of Appellate Courts when considering exclusion of evidence. Ordinarily it has to be presumed that the excluded evidence would have shown all that the offer stated. Here, however, the excluded evidence is available, if the Court chooses to examine it, as it apparently consisted wholly in depositions covered by a stipulation (p. 154). From the plaintiff-in-error's own testimony in his colossal deposition, it abundantly appears that he absented himself from the 1899 hearing by his own choice, being free to attend and to consult counsel (Plaintiff's deposition, Vol. V, pp. 122-142). The passages referred to seem to us to demonstrate the fact so completely that no amount of evidence to the contrary could convince the Court that the plaintiff-in-error's failure to appear at the 1899 hearing was because opportunity to be heard was denied him. It is to be remembered that the plaintiff is himself a lawyer, to

whom, if sane, the importance of the 1899 Proceeding was doubtless evident.

"The above reasoning appears to cover all the special assignments of error which require any notice. A number of other questions were, however, discussed at the trial, and to meet the possibility that discussion in regard to them may lurk, undetected by us, somewhere concealed in the vast bulk of the plaintiff-in-error's brief, we feel that we should add a brief discussion of each.

"Most of those which we have not specifically discussed attack only remarks and expressions of opinion by the Court, which were not in any true sense rulings. On such utterances error cannot be assigned (*Gibson* v. *Luther*, 196 Fed., 203)."

A still further reason for giving defendant-in-error's "Point V" above is that it contains a perfect galaxy of fallacies and sophistries, whose brilliancy we would shrink from detracting from, by subtracting therefrom so much as one line.

The learned counsel for defendant-in-error says above:

"It is to be noted that *nowhere* in the Brief or in the Record is it questioned that the plaintiff-in-error actually received *due and timely notice* of the 1899 Proceeding, as appears from the record thereof which is in evidence."

The cynical audacity of the above, fights hard with its sophistry for the mastery. The allies of the learned counsel for defendant-in-error—the Chanlers—are very careful—in the Commitment Proceedings of 1897—as the Commitment Papers show—to deprive the plaintiff-in-error of what the learned counsel for defendant-in-error sonorously dubs "due and timely notice." There is neither hint nor vestige of "due and timely notice" when the plaintiff-in-error is in a physical condition to avail himself of said salutary safeguard of the law, in 1897.

But when—after two years of illegal imprisonment on a purely perjured charge of insanity—the plaintiff-in-error has so far physically—*not mentally but physically* succumbed to the terrible force of his environment, as to be temporarily suffering and bed-ridden—why then the allies of the learned counsel for defendant-in-error make considerable capital—or aim to at least—out of deigning to afford the plaintiff-in-error "due and timely notice" of a Proceeding—*intentionally set* 20 *miles away* from his cell in "Bloomingdale" and of which owing to his physical condition he could not avail himself.

Continuing, the learned counsel for defendant-in-error says, p. 13 of his Brief:

"The argument is, however, that notice is insufficient to confer jurisdiction, unless it be such as will afford the recipient an opportunity to defend, and the notice in this case was vitiated because when he received it the plaintiff-in-error was confined in Bloomingdale, was physically unable to attend the trial, and was thus denied his opportunity to be heard. As above noted, however, it has been expressly decided by the Supreme Court of the United States, that confinement in any asylum does not by itself vitiate a notice otherwise duly served in such proceeding (*Simon* v. *Craft*, *supra*; see also Woerner on American Law of Guardianship, p. 401). These authorities demonstrate that the mere fact of detention in an asylum upon commitment at the time notice is served and the Proceedings had, is not in itself sufficient to show that the notice did not give the alleged lunatic opportunity to be heard. They show that *in the absence of evidence* the Court will presume that opportunity to defend was afforded."

We respectfully submit that the above is a mere repetition upon the learned counsel for defendant-in-error's part of what he said under "Point IV" *supra*.

Continuing, the learned counsel for defendant-in-error says:

"Accordingly, to show that the Supreme Court in the 1899 Proceeding had no jurisdiction, the plaintiff-in-error would have been obliged to prove that opportunity to be heard was denied him otherwise than by his mere enforced residence in Bloomingdale. The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time." * * *

The above is one of the most extreme of all the erroneous statements uttered by the learned counsel for defendant-in-error. To wit. "The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time." Whereas the plain truth is—supported by evidence documentary—such as said letter to Captain Micajah Woods—and otherwise—that the plaintiff-in-error was marooned. Was as completely shut off from contact with or communication with the outer world—when once immured in the cells of "Bloomingdale"—as tho' in the bowels of the Bastile.

He was not allowed to use the telephone. He was not allowed to send either letter or telegram until each had been read and approved by the authorities of "Bloomingdale."

Consequently it was a physical impossibility for the plaintiff-in-error to see a lawyer. It was equally an impossibility for the plaintiff-in-error even to send a letter to a lawyer outside the regular channels of the mail—which channels—as aforesaid—were barred to plaintiff-in-error's free use—it being impossible for plaintiff-in-error to send a letter to a lawyer with a view to retaining him to fight his case, *unless* plaintiff-in-error ran the risk of having the said letter taken to the said lawyer by a false and treacherous friend—by which is meant a former friend of plaintiff-in-error who since

his incarceration went over—body and soul—to the other side—*for reasons and causes best known to said false friend*—while at the same time *pretending* to be the same staunch and loyal friend of plaintiff-in-error that plaintiff-in-error had formerly supposed said false friend to be.

There were a certain number of said traitors who were permitted by the authorities of "Bloomingdale" to pass through the lines—to borrow a military phrase—for obvious reasons. To wit. To act as spies—in the interest *if not also in the actual pay*—of the *Chanler family.*

Two of said false friends were the late Stanford White, and the former law partner in New York City of the plaintiff-in-error, namely H. V. N. Philip.

This false friend so worked upon the confidence of plaintiff-in error that he entrusted him with the delivery *in person*—the going all the way to Charlottesville, Virginia—to Captain Micajah Woods aforesaid—of the vitally important letter aforesaid from plaintiff-in-error to said Woods, written July 3rd, 1897. The object of said Philip being to set said Woods against paying any attention to the prayer for help of the plaintiff-in-error as represented by said long letter. Said Philip was eminently successful. Said Philip handed said letter to said Woods with the following unique and *sole* comment. "*Do nothing in the premises without first consulting me.*" This so alarmed said Woods that he did absolutely nothing towards granting plaintiff-in-error's said prayer in said letter of July 3d, 1897, to bring—in connection with the late United States Senator from Virginia, John Warwick Daniel—*habeas corpus* proceedings looking to the plaintiff-in-error's release from captivity.

The following excerpts—appendix—from the testi-

mony of said Captain Micajah Woods, at the first Deposition of plaintiff-in-error in October, 1908, at Charlottesville, Virginia—at which Deposition the interests of the other side were looked after by the learned counsel for defendant-in-error—supports our above contention, we respectfully submit, that said letter of July 3rd, 1897, was taken personally by said H. V. N. Philip to said Captain Micajah Woods.

PLAINTIFF'S LETTER OF JULY 3RD, 1897—RECEIVED IN FALL OF 1897.

Testimony of Captain Micajah Woods.

"13th Q. Did you receive a letter from the plaintiff in October, 1897?

A. I think that was about the time I received a letter. I don't remember the exact month.

14th Q. How did you get this letter?

A. The letter was brought to me by a New York lawyer by the name of Philip, Mr. Philip."

Furthermore, it should be unnecessary for us to state — we respectfully submit—that the professional caution of a practitioner of law is notorious.

"Abundant caution" is the invisible motto emblazoned on the walls of every well grounded lawyer's chambers. It is, therefore, absurd to suppose that a lawyer could, by any *possible incentive*—save the actual payment of hard cash, in advance, and in hand—which under the circumstances was a physical impossibility for the rich, but unfortunately situated plaintiff-in-error—his funds being in the hands of his false friend Stanford White, and subsequently in those of said false friend's brother-in-law, said Prescott Hall Butler, of the firm of

Evarts, Choate and Sherman, as it now exists—it is, therefore, absurd to suppose, we respectfully submit, that a lawyer imbued with the paramount caution of his profession, would for one moment—consider taking the case of the unfortunately situated plaintiff-in-error who—*before* paying said adventurous and daring lawyer his fee—must have his case *won* by said lawyer—*when said lawyer would first have his ears filled by the false as alarming statements of the emissaries of the Chanler family and the Society of The New York Hospital ("Bloomingdale")* to the unequivocal effect that plaintiff-in-error was a shrewd, crafty, highly educated lunatic; who appeared normal in every particular, but who was, *upon the authority of the eminent* alienists forming the "Medical Staff" of "Bloomingdale"—in reality hopelessly—*even dangerously insane.* We respectfully submit that the word "dangerously" would insure the average lawyer's giving plaintiff-in-error's case a fairly wide berth.

It is therefore, we respectfully submit, as false as absurd to claim—as does the learned counsel for the defendant-in-error—that: "The only offer on this score (that opportunity to be heard was denied him) is the offer to prove the plaintiff-in-error's physical disability at the time."

Continuing the learned counsel for defendant-in-error says, pp. 13 and 14 of his said brief:

"*This is by no means sufficient.* If *physical disability* to attend a trial vitiates notice, how many of the judgments rendered by the courts in ordinary *civil* cases would be open to collateral attack? If in any true *sense* an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard when the Court *tried the case without him every other* litigant who is in the same unfor-

tunate predicament is equally denied opportunity to be heard. No one, however, has as yet had the temerity to advance this proposition."

The sophistry and fallacy of the learned counsel for the defendant-in-error herein shines resplendent. Who ever heard, we respectfully submit, of a sane and competent attorney's comparing a civil case with a criminal? *A case concerning lunacy is, in truth, a criminal case in effect. Which is to say that it concerns the same* elements as does a *criminal case;* namely, the physical liberty and control of the property of the accused. It is, therefore, in the highest degree sophistical and fallacious to attempt—as does the learned counsel for defendant-in-error—a parallel between the two.

Furthermore. In his said claim: "If *physical disability* to attend a trial vitiates notice how many of the judgments rendered by the courts in ordinary civil cases would be open to collateral attack? If in any *true sense* an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard when the court *tried the case without him*, every other litigant who is in the same unfortunate predicament is equally denied opportunity to be heard. No one, however, has as yet had the temerity to advance this proposition." As in his aforesaid claim, pp. 152-153, in his aforesaid Statement, the learned counsel for defendant-in-error again seeks to confuse the Court by his reference to procedure in ordinary civil cases. *There is absolutely no requirement "in ordinary civil cases" that the defendant be present in Court.* He may be present or absent as he chooses, or as circumstances permit, and the validity of the Proceedings, and of the judgment rendered are not affected either one way or the other.

In Lunacy Proceedings, however, we respectfully sub-

mit, *the practice is quite different. As such Proceedings involve the right of the man to his liberty, the policy of the Law*, and generally the letter of the *Law, contemplates and requires* that the alleged lunatic be personally present, although the *Statutes* quite frequently provide that his presence may be dispensed with.

The present case is one which had its origin in fraud and deception practised upon both the alleged lunatic and the Court. That fraud and deception was continuous. By means of it the falsely alleged lunatic was placed in, and confined in "Bloomingdale," *and was reduced to that physical state which prevented his personal presence in Court during the* 1899 *Proceedings. And, therefore, it was by means of that fraud and deceit that he was deprived of his opportunity to be heard* in the said 1899 Proceedings, before the Commission and Sheriff's Jury.

The parties in interest in opposition to plaintiff-in-error were the same throughout the Proceedings. They were guilty of the fraud under which, plaintiff-in-error, a citizen of the sovereign State of Virginia, was induced to leave that Commonwealth and go to New York City within the territorial jurisdiction of the Court, which it was their intention to use *for their fraudulent purpose; namely, for plaintiff-in-error's incarceration; and for the stripping of plaintiff-in-error of his property. They continued the practice of that fraud through the various stages of Procedure under the New York Lunacy Law, to, and including the hearing before the Commission and the Sheriff's Jury; when, by reason of plaintiff-in-error's physical disability, brought on by their fraudulent acts, it was impossible for him to be present.* Fraud practised upon a Court which is conducting a Hearing in Lunacy—that fraud being for the purpose of inducing the Court to dispense with the

personal presence of the alleged lunatic before the Jury, and *actually resulting* in the Court so dispensing with his presence—*should* be held by this learned Court, we respectfully submit, and *will* be held—we confidently believe—on the authority of *United States versus Throckmorton, supra, to vitiate the entire Proceedings.*

Said learned counsel for defendant-in-error says: "The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time."

But this is not the only offer. This is only said learned counsel's way of stating to the Court what he would have the Court construe to be the only offer. The offer really is to prove the plaintiff-in-error's physical disability at the time, *brought on by his incarceration in "Bloomingdale," accomplished by means of fraud and conspiracy, practised not only upon him, but upon every Judicial Official of the State of New York who was in any manner connected with his case.*

As has been said above—*a case concerning lunacy is in truth a criminal case in effect.*

The effect is identical—in plaintiff-in-error's case—with a conviction, on a charge, of *murder in the Second Degree*—namely, *total depriration of liberty for life; total disfranchisement for life; total depriration of the enjoyment* and control of his large estate;* and—what is *worse* than the *fate of a murderer, total deprivation of the disposal of his property after death.*

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*Plaintiff-in-error now enjoys an "allowance" of twenty-four thousand dollars a year—about half the income—at present, of his estate—which is constantly increasing in value. But that is by virtue of two things, to wit, his escape from capivity, *first; secondly,* by the grace of the New York Supreme Court. For while in "Bloomingdale" so far from having an allowance of twenty-four thousand a year, plaintiff-in-error did not enjoy an allowance of twenty-four *cents* a year—or any part thereof. Plaintiff-in-error was not—according to the rules and regulations of the New York Hospital—allowed as much as five cents a week pocket money during the four years he was there. Nor is a murderer, serving a life-sentence, allowed so much as five cents a week pocket money.

The Law *regards the substance—not the shadow of things.* If we are correct in said deduction *what*—we respectfully submit—under the Heavens—*could be more closely analogous to a criminal charge in its substance —in its effect—than an Insanity charge!*

Our three authorities—upon which we base said discussion upon the nature and history of Lunacy Legislation from the year one thousand to date—are Blackstone's Commentaries, Renton—the prominent English authority, author of "The Law of and Practice in Lunacy"—and the Constitution of the United States, as well as the Constitutions of the 48 States and Territories of the United States.

We find the earliest Statute on the subject in England to be the "*Statute De Praerogativa Regis*, 17 Edw. II st. 1, A. D. 1324. Caps IX AND X" Trial Brief, p. 245. And that the practice from that day for centuries—up to 1754—was as follows: "A petition to the Lord Chancellor suggesting idiocy or lunacy in a particular person of competent age and verified by affidavit of facts to issue a writ to the Sheriff or Escheator of the *county* where *his residence was*, to try by a jury and *personal examination* of the party whether that suggestion was true or not."

Here, we respectfully submit, from the dimmest antiquity of the Common Law we find the hall mark of Criminal Procedure branding Lunacy Procedure. We find first: the Sheriff or Escheator—the latter the officer who looked after escheats—or land forfeited to the King by rebellion. The Sheriff—a strictly criminal officer—the Escheator a Politico-Criminal officer. We find *next:* the birth-right of all Englishmen, the most priceless of their political possessions, trial by jury. We find lastly: trials *non in absentia; not* as was plaintiff-in-error's, but trials face to face—confronted by his ac-

cusers. And who *are* his accusers? Men in a *foreign* State—as was the Sheriff's Jury in the 1899 Proceedings. Not—his own neighbors—in "the county where his residence was" like the cloud of witnesses to plaintiff-in-error's sanity in the Virginia Proceedings of November 6, 1901; and in the Deposition at Charlottesville, Virginia in 1908*

At this point it is necessary to point out, we respectfully submit, that it is a mistaken notion of the origin of the Law of Lunacy to suppose—as some New York State decisions hold—that the jurisdiction of the Lord Chancellor over persons of unsound mind in England was in its origin a Chancery or Equitable Jurisdiction, such as the jurisdiction over married women, for it was originally in the King as *pater patriae*, one of whose prerogatives it was to guard lunatics, idiots, etc., and take care of their lands.

Although there are several New York decisions holding that procedure in lunacy cases, being derived from the Court of Chancery, is within the power of the Supreme Court of that State to modify at its pleasure, without constitutional or common law restrictions as to notice, trial by jury, etc., these cases proceed upon a mistaken notion of the English law at the time of the adoption of the New York State and Federal Constitutions.

The accompanying authorities show the following to be the case. The jurisdiction of the Chancellor over persons of unsound mind in England was not in its origin a chancery or equitable jurisdiction such as the jurisdiction over married women, but was originally in the king as *pater patriae*, one of whose prerogatives it was to guard lunatics, idiots, etc., and take care of their lands.

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*Appendix, pp. 1-120, inclusive.

Statute

De Praerogativa Regis 17 Edw. II. st. I., A. D. 1324.

Caps IX and X.

Cap IX.

(Concerning idiots.)

"The King shall have the custody of the lands of natural fools" (idiots) "taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden. And after the death of such idiots he shall render them to the right heirs; so that by such idiots no alienation shall be made, nor shall their heirs be disinherited."

Cap X.

(Concerning lunatics.)

"Also, the King shall provide when any (that beforetime hath had his wit and memory) happen to fail of his wit, as there are many having lucid intervals, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the issues of the same; and the residue beyond their reasonable sustentation shall be kept to their use, to be delivered unto them when they recover their right mind; so that such lands and tenements shall in no wise within the time aforesaid be aliened; nor shall the King take anything to his own use. And if the party die in such estate, then the residue shall be distributed for his soul by the advice of the ordinary."

This prerogative was *exercised* by the *King* through his chancellor, not *qua* Chancellor, *but merely* as a ministerial officer or *agent*. The right and duty to act for the King *could have been* delegated *to any other* Crown officer.

The *royal prerogative in regard to lunatics might be delegated to other great officers of State*, 4 Bro. C. C. 233. *An instance is recorded* of the *warrant having been given* to the *Lord High Treasurer*, 2 Dick. 553.

The *true* source of the Chancellor's power in cases of lunacy, idiocy, etc., *is always recognized* by the *English* courts, is *mentioned* by Blackstone, and *was applied* in *Sherwood* v. *Sanderson*, 19 Ves. Jr., 280.

Lord Eldon, Chancellor (18-5) at p. 285 said: "This application (for costs made by the petitioners in an unsuccessful proceeding to declare Kitty Sherwood lunatic) considered first as made in the lunacy alone is made to the Lord Chancellor *not as Chancellor*, but as the person having *under the special warrant of the crown* the right to exercise the *duty of the crown* to take care of those who cannot take care of themselves. The *application* has therefore *no concern* with *anything* passing in the *Court* of Chancery, *but is made to the person holding the Great Seal*, to whom the Crown has usually thought proper to vest this jurisdiction, *as it would be made to any other person having that authority.*"

The Lord Chancellor "or Lord Keeper (whose authority by statute 5 Eliz. Ch. 18, is declared to be exactly the same) is with us at this day created by the mere delivery of the King's Great Seal into his custody * * * is the general guardian of all infants, idiots and *lunatics;* and has the general superintendence of all charitable uses in the kingdom. *And all this over and above* the vast and extensive jurisdiction which he exercises in his *judicial capacity* in the court of chancery; where-

in, as in the exchequer, there are two distinct tribunals; the one ordinary, being a court of common law; the other extraordinary, being a court of equity * * * In this ordinary, or legal, court is also kept the *officina justitiae* out of which all original writs that pass under the great seal, all commissions of * * * bankruptcy, idiocy, *lunacy* and the like do issue."

Bl. Comm. Bk. III. Chap. III. pp. 641, 642.

In a note to *Ex Parte* Ogle. 15 Ves. Jr., 112, the reporter refers to the Lord Chancellor sitting in lunacy as "the great officer who administers this branch of the Crown's prerogative."

From time immemorial it was held in England that the King, and *a fortiori*, his Chancellor, *had no power* to seize the lands or person of a lunatic or idiot *without previous adjudication* of the fact of idiocy or lunacy *through the verdict of a jury founded on personal examination.*

"The Crown as *parens patriae* has by virtue of its prerogative the care and custody of the person and estate of those of non sane memory and who, from want of understanding are incapable of taking care of themselves. *This royal prerogative seems to have existed anterior to the statute of* 17 *Ed. II., called Prer., Regis.*, which is declaratory only; the date of its origin is not easy at this remote period to ascertain with certainty. *It is, however, a right which is never exercised but upon a previous office (or Inquisition) found.*"

Elmer, Pr. in Lun. p. 1 and author. cit.

In Lord Ely's Case, 1 Ridgw. Parl. Ca. 515 (1764), the Court charging the jury empaneled in a commission *de lunatico* said:

"In order to come at this proof (required to rebut

the legal presumption of sanity) the practice in former times was on a petition to the Lord Chancellor suggesting idiocy or lunacy in a particular person of competent age and verified by affidavits of facts to issue a writ to the sheriff or Escheator of the county where his residence was, to try by a jury and *personal examination* of the party whether that suggestion was true or not. The practice of latter years has been to try these matters under such a special commission as this upon which you have been sworn." (Pp. 520-1.)

In 1751, the Chancellor said:

"The old way was by writs directed either to the Escheator or the Sheriff; the modern way, and for a long time, is by commissions in the nature of these writs; and so it is called a writ *de lunatico inquirendo.*"

Ex parte Southcot, 2 Ves. Sen. 401.

At the common law and down to the act of 1833 (3 & 4 William IV, C. 36) the English lunacy practice was as follows:

"The question whether a person was idiot or lunatic was determined either by writ or by commission. The former procedure which was the more ancient, consisted in the issue of a writ to the *Sheriff* or Escheator of the *county* where the alleged idiot or lunatic *resided* to *try by a jury and personal examination* of the party whether he was idiot or lunatic or not. The writ was issued by the Lord Chancellor on a petition suggesting idiocy or lunacy, and verified by affidavits of facts, and was returnable into the Court of Chancery, and any person found idiot or lunatic in this way had a *right of appeal* to the Court of Chancery or the *King in Council.*

"In the course of time the second mode of inquiry above referred to superseded the first. Commissions were issued by letters patent under the Great Seal from

the common law side of the Court of Chancery, directed to five persons as commissioners, who, or any three or more of them, were to inquire upon the *oaths of good and lawful men* of the *county*, whether the party named in the commission was idiot or lunatic or not, and as to the extent or value of his property. The commissioners held their inquiry generally *in or near the place of abode* of the *supposed* idiot or *lunatic;* the inquisition, which was required to be made by indenture, and *sealed with the seals of twelve jurymen*, was returned into Chancery, with the commission, within a month after it was taken; and thereafter, if the verdict was one of idiocy or lunacy, the Lord Chancellor referred to one of the ordinary Masters in Chancery the matter of the lunacy, and in particular the duty of ascertaining and reporting upon the property and next-of-kin or heirs-at-law of the person so found by inquisition—questions which although included in the commission were not, in later practice at any rate, investigated by the Commissioners or their jury."

Renton. "The Law of and Practice in Lunacy, pp. 329-330. (London 1896.)

Matter of Runey Dey, alleged to be a lunatic, 9 N. J. Eq.

Rep. 181 (1852). Chancellor Benj. Williamson said:

"No person can be deprived of the right to manage his own affairs or of his personal liberty without the intervention of a jury, and in cases of lunacy the verdict of the jury is to be founded, as in all other cases, upon satisfactory and unexceptionable evidence submitted to their consideration."

The *verdict of the jury* in such cases, *unlike a verdict on feigned issues framed by a Chancellor* in an equity suit, *was held conclusive on the Chancellor,* and did

not merely serve to inform his conscience. If the jury decided in favor of sanity, the *Chancellor* had *no power to act further*, and the *verdict related back* and *annulled his* previous proceedings. *If the jury* found the *alleged incompetent insane*, it was a matter of *absolute right* on the *latter's part to traverse* the return and have the *issue tried the second time.*

A *traverse* to the *return* to an *inquisition finding* a person *lunatic* is a *right* by law, *even though* the Chancellor is *satisfied:*

Ex parte Wragg & *Ex parte* Ferne, 5 Ves. Jr. 450.

"The traverse is *de jure.* It is *no favor.* The parties apply by petition, stating that they are dissatisfied with the finding; and that stops the commission."

Per Loughborough, Ch.

Ex parte Ferne, 5 Ves. 832.

In re Farrell, 6 Dick, Ch., (N. J.) 353. (51 N. Y. Eq., 353.) 2 & 3 Edw., VI. c. 3 & 6.

(1815) *Sherwood* v. *Sanderson*, 19 Vesey Jr., 280.

"It is remembered that originally the King as *parens patriae*, had custody of idiots and lunatics and their property * * * and that it was his habit to commit such persons and property to the care of committees.

"Later, to avoid solicitations and the shadow of undue partiality in the bestowal of such offices, he became accustomed by warrant under his royal sign manual to *delegate his power* in such matters to the *Chancellor* who was the keeper of the Great Seal under which grant, by letters patent, to the *committee* was made.

"It became the practice of the Chancellor first to in-

quire into the idiocy or lunacy, and to that end to issue a commission under the Great Seal directed to persons as commissioners, who were to inquire *through a jury* as to the matter given them in charge by the commission; and *after* a return to the commission, finding idiocy or unsoundness of mind, as the case might be, and trial of a *traverse* of the *inquisition*, if the subject of the inquisition should possess sufficient intelligence to wish to traverse, to proceed to grant the custody of the person and the property of the idiot or lunatic to a *committee*."

(Per Chancellor McGill, 1893.)

In re Farrell, *supra*, at p. 358.

If the second jury found him sane, the proceedings theretofore taken were annulled, and the Chancellor had *no power* to award *costs* out of the *alleged incompetent's* estate, having *no jurisdiction whatever* over it.

Sherwood v. *Sanderson*, *supra*.

In the matter of Clapp, 20 How. Pr. 385, *held,* if the inquisition finds the alleged lunatic sane, the Court has never acquired jurisdiction to charge the expenses on his estate. "*But after a jury has passed upon the question* and found the alleged lunatic of unsound mind, the Court upon confirming the inquisition acquires complete jurisdiction over the lunatic and his property." (P. 389.)

(Per E. D. Smith, J., 1861.)

The only instance in which the Chancellor could take charge of persons alleged to be incompetent before the question of their competency had been determined by the verdict of a jury, was where such care was necessary to preserve the person of the incompetent or the public

peace, *and in this case it was an extraordinary exercise of what we here call the police power, and limited to its precise and narrow end of preserving the person of the incompetent or the safety of the public. The interference must be temporary, pending the execution of a commission.*

TEMPORARY COMMITMENT PENDING INQUEST.

"While the rule is fully recognized that the *Chancellor can not permanently* assume the custody of a supposed lunatic's person or estate *without the verdict of a jury*, yet it has been held that he may *temporarily* interfere and take care of persons as to whom a commission has been allowed, *until* the *jury* have passed upon the case."

Barb. Ch. Pr. Bk. V, Chap. 6 (Vol. 2, p. 240.)

COMMITMENT ONLY FOR SAFE CUSTODY WHILE AWAITING TRIAL BY JURY.

"When a delinquent is arrested * * * he ought regularly to be carried before a justice of the peace * * * The justice before whom such prisoner is brought is bound immediately to examine the circumstances of the crime alleged; and to this end by statute 2 & 3 Ph. & M.; ch. 10, he is to take in writing the examination of such prisoner, and the information of those who bring him; which Mr. Lambard observes, was the first warrant given for the examination of a felon in the English Law. For at the common law *nemo tenebatur prodere seipsum;* and his fault was not to be wrung out of himself, but rather to be discovered by other means and other men. If upon this inquiry it manifestly appears that either no such crime was com-

mitted; or that the suspicion entertained of the prisoner was wholly groundless, in such cases only it is lawful totally to discharge him. Otherwise he must either be committed to prison, or give bail; that is, put in securities for his appearance, to answer the charge against him. *This commitment, therefore, being only for safe custody*, wherever bail will answer the same intention, it ought to be taken, as in most of the inferior crimes." Page 1001 Black. Comm.; Chase.

In the case of *Bryce* v. *Graham*, which came before the House of Lords, sitting as a court to hear appeals from the courts of Scotland, the *Chancellor* said, with reference to the English practice:

"The *Court itself can do nothing* except to interpose some temporary care when that temporary care is found to be necessary, and to *send the matter to a jury*." The *Chancellor* said that it was *unquestionably the law in England* that the *Court* had *no power to take* upon itself the *care* of *any individual*, either as to his person or as to his property, *on the ground* of *insanity*, *without* the verdict of *a jury*.

In *Bryce* v. *Graham* (*supra*), 2 Will's 7 Shaw's App. Ca. 481 at pp. 514-515, *et seq.* the Chancellor in the House of Lords, sitting as a Court of Appeals to hear appeals from the courts of Scotland, discussing the power of the Court to appoint a curator of an alleged incompetent before a jury had passed upon his sanity said:

"*The Court can do nothing except to interpose some temporary care, when that temporary care is found to be necessary, and to send the matter to a jury.*" p. 517 * * * after much reflection, the Chancellor could not bring himself to think "that the Crown has in Scotland

what it unquestionably has not in England, namely, the power of taking upon itself the care of any individuals either as to their persons or their property, on the ground that they are of unsound mind, without the verdict of a jury."

This was also the ancient law of Scotland.

So Elmer, Pr. in Lun. and author. cit. (*supra.*)

"The Crown as *parens patriae* has, by virtue of its prerogative, the care and custody of the person and estate of those of non-sane memory and who from want of understanding are incapable of taking care of themselves. This *Royal prerogative* seems to have existed anterior to the Statute of 17 Ed. II. called *Prær. Regis*, which is declaratory only: the date of its origin is not easy at this remote period to ascertain with certainty. It is, however, a right which is never exercised, but upon a *previous office (or inquisition) found.*"

So Lord Erskine in the Cranmer Case.

"I have no authority to act upon his liberty and his property, *except* upon a *verdict.*"

In Cranmer, *Ex parte*, 12 Vesey Jr. 445. (1806).

A commission was issued to inquire whether H. C. is a lunatic. The jury found that he was so debilitated in mind as to be unable to manage his affairs. On motion to confirm: *held*, return should be set aside and a new inquiry ordered for the failure of the jury to find a "lunatic" or not in the words of the commission. The Chancellor (Erskine) observing:

"I have no authority to act upon his liberty and his property, except upon a verdict, expressed in legal words."

Hence the jury must find on the issue of the alleged

incompetent's sanity, unambiguously; *else the court is improperly substituted for the jury.* Accordingly, the Chancellor quashed the inquisition and ordered a new one.

On the second application for a fresh commission (instead of a fresh execution of the former one, be it remembered) the Chancellor said (apparently in response to the query of counsel):

"The party certainly *must* be *present* at the *execution* of the *commission.* It is his *privilege.*"

(p. 455.)

That the foregoing is a correct statement of the origin of the powers of the Chancellor in lunacy cases is admitted in *Hughes* v. *Jones,* 116 N. Y. 67.

"The origin and history of lunacy proceedings throw some light upon the subject. It was provided by an early statute in England that "the King shall have the custody of the lands of natural fools (idiots) taking the profits of them without waste or destruction, and shall find them in necessaries, of whose fee soever the lands be holden; and after their death he shall restore them to their rightful heirs, so that no alienation shall be made by such idiots, nor their heirs be in anywise disinherited."

(17 Ed. II. Chap. 9.)

The same statute provided for lunatics or such as might have lucid intervals, by making the King a trustee of their lands and tenements, without any beneficial interest, as in the case of idiots, who were the source of considerable revenue to the crown. (*Id.* chap. 10; Beverley's case, 4 Coke 127*a*; 1 Blackstone's Comm. chap. 8, No. 18, p. 304.)

This statute continued in force from 1324 until 1863. (Ordronaux Judicial Aspects of Insanity, 4.)

The method of procedure thereunder is described by an early writer as follows: "And, therefore, when the King is *informed* that one who hath lands or tenements is an idiot, and is a natural from his birth, the king may award his writ to the Escheator or *Sheriff* of the *county where* such idiot is to inquire thereof." (Fitzherbert de Nat. Brev. 232.) The *object* of the *writ* was to *ascertain* by *judicial investigation whether* the person proceeded against was an *idiot or not,* so that the King could act under the statute, *for his right to control idiots or lunatics and their estates did not commence until office found.* (Shelford on Lunatics, etc., 14.) *Subsequently authority* was *given* to the Lord Chancellor to issue the writ or commission to inquire as to the fact of idiocy or *lunacy,* and the method of procedure was by petition *suggesting* the lunacy.

(*Id.; In re* Brown, 1 Abb. Pr. 108, 109.) It was the ordinary writ upon a supposed forfeiture to the crown, and the proceeding was in behalf of the King as the political father of his people. (*Id.;* Fitzherbert de Nat. Brev. 581.)

As the means devised to give the King his right by solemn matter of record, it was necessary before the Sovereign could divest title. (3 Bl. Com. 259; *Phillips* v. *Moore,* 100 U. S. 208, 212; Anderson's Dict. tit. Office Found.)

It was used to establish the fact upon which the King's rights depended, as in the case of an alien who would hold land until his alienage was authoritatively established by a public officer upon an inquest held at the instance of the government. Whether the basis of the action was lunacy or alienage, or otherwise, the proceeding was in behalf of the public, represented by the King. (*Id.*)

The inquisition was an inquiry made by a jury before

a Sheriff, Coroner, Escheator or other government officer, or by commissioners specially appointed, concerning any matter that entitled the sovereign to the possession of lands or tenements, goods or chattels, by reason of an escheat, forfeiture, idiocy and the like. (Chit. Prerog. 246, 250; Staunt. 55, Rappalje & Lawrence Law Dict., tit. Inquest of Office.)

"Thus the law came to us from England, and after the Revolution the care and custody of persons of unsound mind, and the possession and control of their estates which had belonged to the King as a part of his prerogative, became vested in the people, who, by an early act, confided it to the Chancellor, and afterwards to the Courts. (Laws of 1788, chap. 12, 2 Greenl. 25; Laws of 1801, chap. 30; Laws of 1847, chap. 280; I. R. S. 147; 2 *id.* 52.)

"*But while the same power was confided*, the *practice* or *method* of *exercising that power* was *not regulated by the legislature, so that, almost of necessity,* the *English course* of *procedure* was followed. (Matter of Brown, *supra.*)

"For nearly a century there was no statute authorizing any court or officer to issue a commission of inquiry, except as the right to judicially ascertain who were lunatics, etc., was implied from the acts committing their care and custody at first to the Chancellor and later to the Supreme Court. The right to judicially learn whether a person was a lunatic or not was inferred from the right to his care and custody, provided he was such. Thus it appears that these Proceedings have *always been instituted in behalf of the public*, at first *in behalf* of the *King*, as the *guardian* of his *subjects*, and *then* in *behalf* of the *people of the State*, who *succeeded* to the *rights of the King* in this regard.

"In *both countries* the *theory* of the *proceeding* was

the *same*, resting upon the *interest of the public*, as is apparent from an examination of the various statutes, and decisions upon the subject already cited. That interest is promoted by taking care of the persons and property of those who are unable to care for themselves, and, by preserving their estates from waste and loss, preventing them and their families from becoming burdens upon the public. *The inquisition is an essential step preliminary to assuming control.* It is a judicial determination that the person proceeded against is one of the class of persons whose care and custody has been *delegated to the courts* by the *public*."

If the foregoing is correct, it follows that the phrase "due process of law" as used in the New York State and Federal Constitutions, implies the right of trial by jury before the liberty of an individual could be interfered with by the court of Chancery in the exercise of its Lunacy powers, except where the police power, in cases of furious madness, requires a temporary restraint *pending an adjudication of insanity by "due process of law."* In other words the right to trial by jury "*in all cases in which it has heretofore been used*" includes the right in Lunacy cases, *which* right the New York State Constitution provides (Art. I, Sect. 2) shall "*remain inviolate forever.*" Compare Art. I, Sect. 1, of the Constitution as follows:

"No member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."

Where crime is concerned nothing could be fairer or more equitable than the safeguards the law of all civilized countries throws around the absolute rights of the accused criminal. By what process of reasoning does it come to pass, that it is safer in this day and genera-

tion for a man to be accused of murder, arson, theft, or what not, so be that it is strictly and unqualifiedly criminal and vile in its nature, how comes it to pass nowadays, that crime is safer than insanity? How is that result obtained? How is it got at? On the charge of the vilest crime the alleged criminal is notified of the charge, summarily or otherwise, he is then allowed free and untrammeled access to counsel, and if too poor to employ counsel, the law presents him with one. Thereupon he has his day in court, protected by all the laws of evidence and procedure in the regular course of justice, being confronted with the accusation against him and the witness or witnesses thereto—and being allowed to rebut their testimony and by his counsel cross-examine them. What on the other hand is the case with the unfortunate, law-abiding citizen, accused of insanity, or incompetency?

With the honorable exception of a few States* of the United States, which give an alleged lunatic or incompetent as fair a chance for his liberty and property as an alleged criminal; with the said exception, no country of the first class today gives the said alleged lunatic or incompetent any show at all for his liberty or property.

The alleged lunatic or incompetent in said countries is summarily arrested without the slightest warning. In nine cases out of ten he does not even know that he has been "examined" as to his sanity, by alleged experts therein; as the universal rule among alleged experts in insanity, among so-called "alienists," is to grossly deceive the party they allegedly "examine," and to lie to him, and cheat him in every way possible of the truth of their occupation and errand.

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*Michigan, Mississippi, Texas, Colorado, and Washington, all afford trial by jury to an alleged lunatic.

Sometimes they come—as Dr. Moses Allen Starr came to Chanler on his alleged "examination" in March, 1897—in the guise of an oculist.

Sometimes they come in the guise of gentlemen of leisure, who have no business on earth but to amuse themselves, and whose present pressing business is to amuse the alleged lunatic.

Sometimes they come as business men, with a business proposition to advance and, after a few convivial drinks, and a few such bogus business visits, clap their unsuspecting victim into a mad-house cell.

The above are a few of the tricks of the medical trade as practiced by so-called experts in lunacy.

There are three ways in which the alleged lunatic may obtain his freedom. *First*—by a procedure *de lunatico inquirendo* before a sheriff's jury. In that event the alleged lunatic must be more fortunate than Chanler was, or he will not be able to get before that august body.

If there is the least likelihood of the alleged lunatic's desiring to go before said body, he will encounter such craft as Chanler encountered at his trial in 1899, before a sheriff's jury.

Chanler was confined in the mad-house branch of the "Society of the New York Hospital," said mad-house being falsely known in his proceedings as "Bloomingdale." Said bogus "Bloomingdale" is situated at White Plains, the county seat of Westchester. Chanler had, will he, nill he, been an enforced resident of Westchester County for over two years, from 1897 to 1899.

That would seem to give Chanler an enforced domicile in Westchester County. Such being the case it would seem only natural that any legal proceedings to inquire into his mental and physical state of being should justly be held at the Court of competent jurisdiction, nearest

his said enforced domicile. There he has been living for more than two years; there he is, therefore, more or less known; there he is to be got at and examined by the said Sheriff's Jury, provided said Sheriff's Jury is an honorable body of men, worthy of their weighty responsibility of deciding on the earthly fate, on the earthly happiness, of a fellow citizen of the United States, who is charged with no crime, whose reputation is that of a law-abiding, decent citizen, held on the innocent charge of a mental affliction. The nearest Court of competent jurisdiction to said bogus "Bloomingdale" was the Supreme Court sitting at White Plains.

All the necessary machinery of justice was at hand —at the very cell door of Chanler—to be set in motion by the Sheriff's Jury in *de lunatico inquirendo* proceedings instituted as it turned out, by the same parties, or two out of three of the same parties, who ran him in as an alleged lunatic, without notice, trial, or opportunity to be heard in 1897.

Such was the situation. Add to said situation the fact that Chanler was suffering from a nervous affection of the spinal cord, superinduced by the fearful nervous strain he had perforce undergone, for more than two years past. This said nervous affection of the spine left his mind perfectly clear—as his letters from his cell to lawyers he attempted to retain in his case duly prove—but it rendered him so physically weak, and so physically ailing that for three weeks before said *de lunatico inquirendo* proceeding in 1899, as the Medical Superintendent of "Bloomingdale" swore on the stand in said proceedings, Chanler had not only kept his cell, but kept his bed. There was no doubt, on the evidence furnished by the medical witnesses for the other side at said proceedings—there could be no possible doubt of the genuineness of Chanler's said spinal trouble, for the said

medical witnesses of the other side swore at said trial that Chanler was wearing porous plasters, and that he said they brought him relief. Now anyone who has ever worn a porous plaster knows that, unless it is worn as a counter-irritant to counteract an internal ailment, it becomes a cause of ailment in itself, and blisters and irritates the surface of the skin to such an extent as to render its presence on a person whose skin is anything short of a hide in thickness, as to render its presence on a person with an ordinary sensitive skin little short of torment.

Such being the fact, it is impossible under the circumstances, and on the evidence, to doubt that Chanler was a real sufferer from said nervous ailment, which was relieved by the irritation on the surface of the skin, set up by the said porous plaster. It being therefore proved conclusively, on the evidence of the sworn witnesses of the other side that Chanler was ill, and had been so for three weeks past, it becomes an interesting question why,—if fair play upon the part of the parties instituting the said *de lunatico inquirendo* proceedings, if fair play upon the part of Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler was intended when the said proceedings were brought in 1899, and whether or not these gentlemen desired to give their brother a run for his money, a chance to be examined by the Sheriff's Jury which sat on him—*why* said proceedings were not brought at White Plains.

Here was a large and spacious County Court House, awaiting Chanler within less than a mile of his cell door. Chanler, in spite of his said nervous ailment, might have been brought into Court on a stretcher that short distance. Or if that was not desired the Sheriff's Jury, or part of them, could readily and without great inconvenience, step into one of the spacious "Bloom-

ingdale" omnibusses, and without effort, be carried to the door of Chanler's ward in "Bloomingdale." Instead of which, what was done? The Proceedings *de lunatico inquirendo* were held twenty miles or more away from Chanler's sick bed, were held in Manhattan, and at the extraordinary, the unheard of hour of four P. M. Why was such an hour set by the Commission for such a serious proceeding as the disposal of the property, freedom and happiness for life of a law-abiding citizen of the United States?

Why but for the purpose of depriving said law-abiding citizen of the United States of all three, of property, of freedom and of happiness as the result proves. *First.*—At said proceedings the alleged experts in insanity of the other side, swore two opposite ways. Said alleged experts in insanity swore white was black. Said alleged experts perjured themselves on the evidence—until, figuratively speaking, they were black in the face. Said alleged experts first swore to the effect that Chanler had nothing the matter with him, in spite of the presence upon his person of the said porous plaster, in spite of his being in bed upon their visit to him in 1899, and in spite of his having been so far at least three weeks previous to said visit. Whereupon, a question having arisen—on the strength of said swearing—of having Chanler brought before the Sheriff's Jury at said proceedings, whereupon said question of having Chanler brought before the Jury at said proceedings, having arisen upon the strength of said swearing, a pitiful spectacle is produced, to wit. At once, and in the twinkling of an eye, the three alleged experts in insanity of the other side, proceed at once to eat their own oaths, and in a body, swear to the exact contrary of what they had previously sworn. For example. When they thought there was no chance of Chanler's be-

ing brought before the jury, said alleged experts swore to the effect that he had nothing the matter with him and could readily come to court if he chose. So soon, however, as a chance cropped up of Chanler's being brought to court—or possibly if fair play had been intended, of a committee made up of members of the Sheriff's Jury, of a chance of said committee of the Jury's visiting and examining Chanler in his cell—so soon, however, as said chance cropped up, the said alleged experts in insanity, one and all, solemnly mounted the stand and as solemnly swore that Chanler was not able to be brought to court without detriment to him. If such a spectacle in an alleged court of justice is not open and palpable perjury, what is it? As might be imagined by anyone reading said proceedings a slight discrepancy such as perjury, however open, however palpable, passed without a hitch. Nay, more. The distinguished body sitting as the Sheriff's Jury on said occasion, not only swallowed the above palpable perjury without blinking, but on top of such a feat performed —so to speak—a juridical "stunt" of its own, by rising in the person of its distinguished foreman and protesting to the effect that it mattered not to them what condition Chanler was in, whether he was well or ill, that the only thing they desired was to cut the Proceeding short—said Proceedings did not last three hours, all told—and that to do that they were perfectly willing to consign Chanler to a living death upon their verdict that he was a madman and a fool.

As Chanler observes in his affidavit "I shan't say that the jury was bought, but I shall say that if they *had* been bought they could not have acted differently." So much for the first of the said three ways in which an alleged lunatic may obtain his liberty.

Second.—By being fortunate enough to communicate with the outside world in spite of the Cerberus-like vigilance of mad-house doctors, employees, and keepers. Under the rules of New York mad-houses, every letter that goes out from them must be inspected by the authorities of said mad-houses. What chance has an alleged lunatic to communicate with counsel?

Third.—If as fortunate as Chanler, he may escape.

DISCUSSION OF THE UNITED STATES CONSTITUTION, SHOWING CRIMINAL PROCEEDINGS AND LUNACY PROCEEDINGS ANALOGOUS IN NATURE.

As we said above. In the Proceedings in 1899 before said Commission and said Sheriff's Jury, a palpable breach of constitutional privilege was perpetrated, (1) by the Court's failure to order Chanler's production before said bodies in court; (2) failing this the Court's failure to order that said Commission as well as said jury, or, at least committees made up of members of those bodies, visit Chanler in his cell in the Society of the New York Hospital, at White Plains, for the purpose of examining him. Upon the maxim "Analogy holds good in law" how would it look to read in a Court report that the alleged burglar was pronounced by a brace of doctors as physically incapacitated from appearing in court at his trial, and that in consequence the trial went on in said alleged burglar's absence and the jury duly finding said alleged burglar guilty of the crime alleged, duly convicted said burglar, whereupon the Court duly sentenced said burglar in said burglar's absence to ten years penal servitude? By what right has an alleged burglar more right to a hearing before the Court and jury that tries him and condemns him, than an honest alleged lunatic, or an honest alleged in-

competent, before the Court and jury that *tries him* and *condemns him?* By what right has an alleged burglar more right to the enjoyment of a speedy and public trial by an impartial jury, than an honest alleged lunatic or an honest alleged incompetent? By what right has an alleged burglar more right to be informed of the nature and cause of the accusation than an honest alleged lunatic, or an honest alleged incompetent? By what right has an alleged burglar more right to be confronted with the witnesses against him than an honest alleged lunatic, or an honest alleged incompetent? By what right has an alleged burglar more right to have compulsory process for obtaining witnesses in his favour than an honest alleged lunatic, or an honest alleged incompetent? By what right, lastly, has an alleged burglar more right to have the assistance of counsel for his defense, than an honest alleged lunatic or an honest alleged incompetent? We maintain that not only is it by no *right, but that all proceedings* before juries, or Sheriff's Juries, or before a judge, referee, or commission, are flagrantly illegal and profoundly unconstitutional when an alleged lunatic, or an alleged incompetent is declared insane, or incompetent, or both—as was the case in Chauler's case—either without having been brought before the aforesaid judge, or referee, or commission, or jury, or Sheriff's jury, or—if for any reason this is not done—a Committee made up of members of the aforesaid jury or the said Commission and Sheriff's jury have not taken the trouble to investigate the cause of the absence, from his trial, of the said alleged lunatic or the said alleged incompetent by visiting him and inquiring into it personally.

Otherwise the door to perjury and even *murder*—as indicated by the instances thereof hereafter cited in said Preface—is opened wide; otherwise said Proceed-

ings take on a farcical character analagous to proceedings at which the astral body of an alleged lunatic is sat upon by a Commission and a Jury of—*phantoms.*

Otherwise the Fourteenth Amendment to the United States Constitution would be contravened. It says, Section 1, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws." The right * * * "*to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor; and to have the assistance of Counsel for his defense*" *are the* "*privileges*" of alleged-criminals in jeopardy—in consequence of their alleged crimes—of life, liberty, or property, according to the aforesaid Sixth Amendment to the United States Constitution. If the said "privileges" of alleged criminals are denied to honest alleged lunatics and honest alleged incompetents in jeopardy—on a charge of lunacy or incompetency—of liberty or property, or to *any person* without distinction of race, colour, honesty, or lack of honesty, intelligence, or lack of intelligence, health, or lack of health, wealth, or lack of wealth, sanity, or lack of sanity, competence, or lack of competence, in jeopardy—on any charge that entails loss of liberty or loss of property—of liberty or property, such a proceeding does *ipso facto* "*abridge* the privileges" of alleged criminals in the case of said honest alleged lunatics, and said honest alleged incompetents, as well as in the case of said *any person*, in contravention of the aforesaid Fourteenth Amend-

ment which says "No State shall make or enforce any law which shall *abridge the privileges* * * * of citizens of the United States."

It is therefore unconstitutional to "abridge the privileges" of alleged criminals in the case of said honest alleged lunatics and said honest alleged incompetents, as well as in the case of said *any person*. It is therefore unconstitutional to guarantee "The right * * * *to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of Counsel for his defense*," wherever the liberty or property of an alleged felon is at issue, and withhold them wherever the liberty or property of a law-abiding citizen, on a charge of lunacy or incompetency, is at issue, or wherever the liberty or property of said *any person*, on said any charge is at issue. If the above propositions are correct it follows: (1) that "the right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of Counsel for his defense"—forms part of the "privileges" of alleged lunatics and alleged incompetents in jeopardy—on a charge of lunacy or incompetency—of liberty, or property; as well as of said *any person* in jeopardy—on any charge that entails loss of liberty or loss of property—of liberty or property: (2) that so forming part it cannot be abridged. Furthermore. To "abridge the privileges" of alleged criminals in the case said honest alleged incompetents, and said *any person*, is *ipso facto* to create class distinction in legal procedure in favour of alleged criminals, and opposed to said honest alleged lunatics, and said honest alleged incompetents, as well as opposed to *any person* without distinction of race, colour, honesty or lack of honesty, intelligence or lack of intelligence, health or lack of health, wealth

or lack of wealth, sanity or lack of sanity, competence or lack of competence in jeopardy—on any charge that entails loss of liberty or loss of property—of liberty or property. Such an absurd anomaly *ipso facto* upsets an equal protection of the laws, and throws more protection of the laws around the rights of an alleged criminal than those of an honest alleged lunatic, or an honest alleged incompetent, or those of said *any person*. Such an absurd anomaly is in direct contravention of the Fourteenth Amendment to the United States Constitution, aforesaid, which says "Nor shall any State * * * deny to *any person* within its jurisdiction, *the equal protection of the laws.*" It is therefore unconstitutional to create class distinction, in legal procedure, in favor of alleged criminals and opposed to said honest alleged lunatics, and said alleged incompetents, and said "*any person.*" It is therefore unconstitutional to guarantee "The right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense," wherever the liberty or property of an alleged felon is at issue, and withhold it wherever the liberty or property of a law-abiding citizen, on a charge of lunacy or incompetency, is at issue, or wherever the liberty or property of said "*any person*" on said any charge, is at issue. Furthermore. If the above propositions are correct we have shown: (1) that "The right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defense,"—forms part of the privileges of alleged lunatics and alleged incompetents in jeopardy—on a charge of lunacy or incompetency—of liberty or property, as well as of said "*any person*," in jeopardy—on any charge that entails loss of liberty or loss of property—of liberty or property; (2) that so forming part

it cannot be abridged. It follows therefore that "The right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defense," in the case of said alleged lunatics, and said alleged incompetents, as well as in the case of said "*any person*" is due process of law. It follows, therefore, that due process of law in said respect, touching said alleged lunatics and said alleged incompetents, as well as touching said "*any person*" is identical in said respect, with due process of law touching alleged criminals and alleged malefactors. *Concluding remarks in reply to brief of defendant in error before Circuit Court of Appeals.*

COMPARISON OF A CIVIL CASE WITH A CASE IN LUNACY

We shall now, we respectfully submit, in closing this section, give a brief instance which throws into somewhat dazzling relief the audacity, sophistry and fallaciousness of the learned counsel for defendant-in-error. Said learned counsel says, with *impudence little short of brazen*, we respectfully submit, that: "If in any true sense an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard when the Court tried the case without him, *every other litigant who is in the same unfortunate predicament is equally denied opportunity to be heard.*" Let us take the civil case of a Commission Merchant in New York City sued for the defective condition of a carload of onions shipped from Flint, Michigan. The commission merchant is seized at the time of the civil suit with a nervous affection of the spine which forces him to keep his bed. He, of course, has free access to counsel. The latter draws up the Answer to the Complaint in said civil suit, and brings same to the

Commission Merchant, who signs and swears to same in bed before a Notary. Thereupon the case is called. Thereupon the case is heard and the Answer to the Commission Merchant read out in open Court. And a portion —say a bushel—of the *res gestae*—said carload of onions—whose physical condition is in dispute—duly attested—is brought into Court, and marked "Defendant's Exhibit A." The onions are found to be sound, and in a healthy condition, and the Commission Merchant wins the case.

Take now the case of an alleged lunatic whose sanity and competence are in question. In the first place he *cannot* send a sample—a bushel—as in the former instance—of the commodity whose condition is in question. *He cannot send a bushel of his brains*, and of his physical condition, to be inspected by the Court and Jury—*neither a bushel nor any measure whatsoever, less or more, than a bushel.*

Continuing the learned counsel for defendant-in-error says, page 14 of his said brief before the Circuit Court of Appeals:

"The plain fact is, of course, that one who is *physically unable to attend* a trial is *by no means denied an opportunity to be heard*, if he is able to retain and consult freely with counsel. The fact that the plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel. Letter printed as Exhibit 6 for Identification," (Transcript of Record, p. 156, fols. 305-340).

The learned counsel for defendant-in-error truly observes: "*If* he is able to retain and consult freely with counsel." To which, we respectfully submit, we reply: "Yes, *if.*" We respectfully submit that we grieve to say that the learned counsel for defendant-in-error here once more grievously errs. Thus. "The fact that the plain-

tiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel."

The idea, we respectfully submit, of calling one unique letter, got out by stealth after waiting over 90 days for an opportunity to get same out unbeknown to the authorities of "Bloomingdale"—but really not unbeknown to them since the bearer, H. V. N. Philip, was, as it turned out, a false friend to plaintiff-in-error and in reality a spy on him, in the interest of plaintiff-in-error's enemies—the idea of calling *one letter* got out under such circumstances—and the last that *was* got out until *January*, 1900—*fifteen months later*—to call this *one* letter "long and full letters" is characteristic of the learned counsel for defendant-in-error.

All of which—we respectfully submit—is more than amply supported by the heart-breaking experience undergone by plaintiff-in-error in his efforts to procure counsel to bring his case to the attention of the Courts. As the Record shows plaintiff-in-error took immediate steps—upon finding himself in "Bloomingdale"—to procure counsel. He called upon his friend the celebrated journalist, Arthur Brisbane—at that time on the New York "*World*," and since then editor of the New York "*Evening Journal*"—for relief. The futility of plaintiff-in-error's well-meant efforts is shown by the account of his failure to secure the professional services of no less a personage than the late former United States Senator and former Governor of New York, David B. Hill, through the good offices of his aforesaid friend, said Arthur Brisbane. This is indexed—in Appendix of this Brief under the caption "Hill, Hon. David B., Connection With of plaintiff-in-error, pp. 597-601."

We desire to impress upon this learned court the fact

—we respectfully submit—that the printing of the appendix of this Brief was forced upon us by the action of the learned counsel for defendants-in-error, who misinterpreted the Record, and whose misinterpretation was followed by the Lower Appellate Court. This, of course, forced us to print the true version of that portion of the Record so misinterpreted. It thereupon occurred to us that nothing but the publication of all the more salient portions of said Record could protect us in the event of further misinterpretations. We respectfully draw the attention of this learned Court to the fact that *we* did not infringe upon the *facts* in the Record—we did not trespass upon the facts—in the slightest degree, in our Brief, to the Lower Appellate Court. That was left for the learned counsel for defendant-in-error to do as said counsel did not hesitate to do—we respectfully submit—and thereby open up and unloose the—so to speak—floodgates of plaintiff-in-error's "colossal Deposition"—to borrow the eloquent language of said learned counsel for defendant-in-error.

We respectfully submit, that it might be well to observe at this point that we based our statement on page 597, Appendix of this Brief, that said David B. Hill had been employed by the Chanler family in a case concerning the Laura Astor Delano inheritance tax before this learned Court—that we stated that, on the authority of the daily papers. *We saw said statement in the daily press.* The learned counsel for defendant-in-error avers in his Opening Speech to the Jury in the trial of *Chaloner against Sherman* before the learned Judge Holt in February, 1912—indexed under the caption "Exhibit I" in the "*Index of Exhibits*," Appendix of this Brief—said learned counsel says, on page 831 of said Appendix, that said David B. Hill appeared against the Chanlers and not for them. It is immaterial wheth-

er said David B. Hill was employed by the Chanlers or against the Chanlers. We mention it merely to *show our good faith in the premises* in making the aforesaid statement based on what *we saw in the newspapers.* Plaintiff-in-error, we respectfully submit, was, at the time—utterly cut off from all communication with his own business affairs—dependent upon the *newspapers* for *all information regarding his own private affairs of whatever nature—as he is today.* But it is far from immaterial—the use said learned counsel for defendant-in-error attempts to make of our error—*if* error it be—by labeling it a "delusion" and "*the work of an insane man*"—to quote the exact words of said learned counsel for defendant-in-error, page 831 *ibid.* Our inference—on page 597 *ibid*—that the Chanlers had exerted influence of some sort upon said David B. Hill in order to induce said Hill to desert the plaintiff-in-error after visiting plaintiff-in-error in his cell and *hearing that foul play had been used against plaintiff-in-error—that perjury had been had recourse to—among other* things—our said inference was based, we respectfully submit—upon the hypothesis that no lawyer mindful of his oath to protect the laws would have allowed such a suspicious circumstance as the presence of foul play—the presence of perjury—to pass unnoticed—we respectfully submit—without good and *substantial* reasons.

It might be well to state—we respectfully submit—that said two letters from said Woods were dated *March* 20th, and *March* 30th, 1900. *Plaintiff-in-error, though placed on "parole" in the early summer of* 1899—*at the time of the* 1899 *Proceedings—was physically unable to walk at all until August of said year—as will be shown shortly by the Record.* He then began to walk, and kept it up until by January, 1900, he was able to walk *twelve*

miles in three hours—a distance sufficient to enable him to post letters under his "Bloomingdale" alias, one alias he employed for this purpose while in "Bloomingdale"—of "James Chilworth" at Kensico Postoffice, six miles from White Plains, wherein "Bloomingdale" is located?

The next effort plaintiff-in-error made to procure counsel was the sending of a letter to Attorney George H. Barnes, of New York City, a former classmate of plaintiff-in-error at Columbia University—asking his good offices to employ the distinguished counsel Delos McCurdy of New York City—personally known to plaintiff-in-error—besides both said McCurdy and plaintiff-in-error being members of the Manhattan Club, New York City—to bring *habeas corpus* proceedings looking to plaintiff-in-error's release from "Bloomingdale." Through no fault of his, said Barnes signally failed in retaining said McCurdy for plaintiff-in-error. The history of this is fully given in the deposition of plaintiff-in-error. It is touched on here—in the case of said Barnes—on pages 260-278 and 465-471 and 477-484 and 601-602, Appendix.

The next effort plaintiff-in-error made to procure counsel was the sending of various and sundry letters to his venerable friend the late Thomas Jefferson Miller of the said Manhattan Club, New York City—from Kensico, Westchester County, New York, aforesaid, under plaintiff-in-error's then alias aforesaid of "James Chilworth"—which alias was changed each time plaintiff-in-error fled from and into a different State of the United States in the pursuit of liberty and happiness. For instance: upon fleeing from "Bloomingdale" Thanksgiving Eve, 1900, into the State of Pennsylvania, plaintiff-in-error assumed the alias of "John Childe." At the expiration of some nine months—more or less—and upon plaintiff-in-error's departure from the State

of Pennsylvania into the State of Virginia, plaintiff-in-error assumed the alias of "James Chilton" for the six weeks, more or less—during which he was at the "Arlington Hotel," Lynchburg, Virginia, in which city of Lynchburg, the late United States Senator John Warwick Daniel had his law offices and home.

As aforesaid: The next effort plaintiff-in-error made to procure counsel was the sending of various and sundry letters from Kensico, Westchester County, New York, under plaintiff-in-error's then alias of "James Chilworth"—in order to enable plaintiff-in-error to send and receive letters unbeknown to the "Bloomingdale" authorities—by whom the sending of uncensored letters was—as aforesaid—forbidden—to plaintiff-in-error's old and tried friend, the late Thomas Jefferson Miller, of the Manhattan Club, aforesaid, by whom plaintiff-in-error had been introduced to said Delos McCurdy. Said somewhat voluminous correspondence is indexed—Appendix—under the caption: "Miller, Thomas J., Correspondence with plaintiff-in-error *re* Delos McCurdy," 457-470.

We respectfully submit that the letter from said Thomas Jefferson Miller to plaintiff-in-error dated merely "September 24th—on page 462 ibid—should have the year "1901"—*affixed thereto;* since said letter was in reply to one from plaintiff-in-error written in September, 1901, after plaintiff-in-error's escape from "Bloomingdale" and arrival in Virginia.

To resume. Said Thomas Jefferson Miller had done his best to induce the learned Delos McCurdy, of New York, to take plaintiff-in-error's case, but, through no fault of his—said Thomas Jefferson Miller—said Delos McCurdy did not take plaintiff-in-error's case.

The next effort plaintiff-in-error made to procure counsel—and this was plaintiff-in-error's *last* and final effort

prior to his escape in despair of procuring counsel on *any* terms while in so inauspicious a locality as a Madhouse—the final effort plaintiff-in-error made to procure counsel was a correspondence instituted with an old college classmate and brother New York lawyer—touched upon on pp. 470-472, *ibid*—Halstead H. Frost, Jr. This proved as unfruitful as all plaintiff-in-error's former correspondence in the premises. *So plaintiff-in-error concluded to escape and did thereupon, Thanksgiving Eve,* 1900—*escape, and fled to Philadelphia, where he remained in a private sanatorium for six months under observation at the hands of leading alienists at his own request in order to offset the nearly four years of enforced confinement in "Bloomingdale." A very few weeks of observation sufficed to prove plaintiff-in-error's entire sanity and competency; at the end of which time the alienists pronounced plaintiff-in-error sane and competent, and assured plaintiff-in-error that they would so testify at the proper time.* Whereupon plaintiff-in-error —after said six months in said sanatorium followed by six weeks in the country, in the county of Delaware, Pennsylvania—went to Lynchburg, Virginia, and prepared with his counsel, Daniel, aforesaid, and other counsel to bring forward his case of *Chaloner against Sherman.* He voluntarily prolonged his stay till the full six said months were up. In order that this learned Court may get a clear and succinct idea of plaintiff-in-error's untiring efforts to procure counsel—spread over a period of nearly four years—from March, 1897, to November, 1901, and *in the teeth of as bitter and monotonously regular disappointment*, we respectfully submit, *as the human heart ever received*, we here insert the first eight pages from plaintiff-in-error's Trial Brief, which with its Appendix, are stipulated by counsel to be treated, on appeal, as a model exhibit—see page 154, Transcript of Record.

The melancholy spectacle of lawyer after lawyer falling by the wayside as the burden and heat of temptation played upon said lawyer's professional interests, hopes or fears—the melancholy monotony of collapse—moral collapse—upon the part of this stately, sedate and eminent procession of distinguished counsel; as each softly, steadily, and stealthily went by the board, is surely—we respectfully submit—substance to employ the pen of a satirical Historian of our enlightened and allegedly aspiring times. One would suppose that the parable of the good Samaritan had never fallen upon the ears of that celebrated assemblage known as the Bar of the "Empire State." One would suppose that: "Do unto others as you would they should do unto you," was a new and strange hypothesis smacking of adventure and rashness. One would suppose—finally—that the duty of honest men to stand shoulder to shoulder against dishonest even in high places—even in the "Seats of the Mighty"—had been so swamped by the ill-smelling flood of commercialism which has—alas! in the past forty years almost changed the character—as it surely *has* changed and lowered the morality, the truthfulness and the honesty—of the old-time lawyer, down to the degraded and degenerate level of a dishonest business man; whose slogan is: "*Get rich!* Get rich—honestly if you *can*—but *get* rich *anyway*"—one would suppose—finally—that the duty of honest men to stand shoulder to shoulder against thieves in high places, thieves in High Society; thieves in High Finance—*who did their stealing, however, within the law*—had been so swamped by the sewer-like tide of commercialism, now flooding so many law offices in the Metropolis of this great Nation, that the old-time lawyer had given way to the stock broker, the stock jobber—not to say the "stock-rigger."

This language, we respectfully submit, may not ap-

pear flattering to the Legal Profession, but nevertheless said language is scarcely less flattering to said profession than the language of one of its most eminent and widely respected lights—namely Edward G. Whitaker, Esq., President of the New York State Bar Association, 1897 and 1898. Here are his words, of course, veiled and suave as the language of a lawyer naturally and always is—taken from "Four Years Behind the Bars of 'Bloomingdale,' Or the Bankruptcy of Law in New York," published by plaintiff-in-error in 1906, and of record in this case, pp. 281-285.

"Resume."

"The following editorial taken from New York *World* of January 23rd, 1898, sheds light upon said species of degeneracy:

"A STARTLING INDICTMENT."

> When President Whitaker, of the State Bar Association asserted, in a public address, that 'perjury is committed in some form or other in at least five out of every ten litigated cases,' it seemed that he had made about as startling an indictment of current morals as it was possible to make. But he went on to cap it with an amazing climax: '*If the lawyers of this State would positively discourage false swearing on the part of their own clients*, and honestly endeavor to have it punished when committed by the clients of their adversary the crime would grow suddenly less.'
>
> "Organized Society is founded upon law and held together by Statute. And law does not mean printed pages of Statute Books, but the effective operation of Courts of Justice—lawyers,

Judges and Juries working together to secure to every man his rights. One of the essentials of the true court of justice is the veracity of witnesses. If it should come to pass that men did not, as a rule, tell the truth in courts, justice would cease, and the reign of law be tottering to the fall.

"*Yet this eminent lawyer tells us that nowadays false witness is borne in half of all the cases in our courts*, and that the responsibility for this state of affairs is not only indirectly but also *directly upon—the lawyers!* The lawyers sitting in Legislatures are the chief makers of intentionally cloudy and ambignous laws. The lawyers acting as 'counsel' are the chief teachers of law-defying and law-evading. And finally *by the admission of one of their eminent representatives*, they are *busy procurers of false swearing and false witness.* These are indeed amazing manifestations of the perverse spirit of destructiveness. *Here are those who ought to be the chief defenders and upbuilders of organized society toiling to bring it down in ruins.*"

We now insert said portions of said address of Edward G. Whitaker, former president of the New York State Bar Association.

FROM THE TWO ADDRESSES OF EDWARD G. WHITAKER, DELIVERED BEFORE THE NEW YORK STATE BAR ASSOCIATION, AS ITS PRESIDENT, AT ITS ANNUAL MEETINGS IN 1897 AND 1898.

* * * "In closing, I desire to say a few words upon what I consider the greatest exist-

ing evil in the administration of Justice—the prevalency of the crime of perjury in legal proceedings—and to make one or two suggestions towards a partial remedy. *The profession, I believe, generally concedes that perjury is at the present time the most prevalent and dangerous crime—and the most seldom punished. It has come to such a pass that men, standing high in the community, apparently think nothing of swearing falsely to pleadings, in order to delay and defeat justice.* Most of this false swearing to pleadings is made safe and possible by the use of that *great perjury-begetting provision of our Code*—which allows allegations upon information and belief, and denials upon want of information or belief. But, in addition to swearing falsely to affidavits and pleadings, many men have no regard at all for the sanctity of an oath administered in a court of Justice. To such men the actual defeat of Justice, if it be to their pecuniary benefit, is viewed with complacency, even though affected by perjury.

I think it is the observation of judges and of practicing lawyers that the crime of perjury is committed in some form or other in at least five out of every ten litigated cases. After talking to many lawyers and judges upon the subject, this is the lowest estimate I have received. When we consider the thousands of litigated cases that are tried in our State each year, it is simply appalling. *It is an awful, but, I believe, a true confession. It is a shame on the administration of Justice and a disgrace to our nineteen centuries of Christian civilization.* Were David now alive, he might again exclaim: 'All men are liars.'

"The cause of the increase and prevalency of perjury is not hard to find. It arises largely from a weakening in the belief of future punishment, and apparent certainty of freedom from present punishment.

"The chief test of the obligation of an oath is based upon a belief in future punishment, as is evidenced by the form of the oath, and manner of its administration, as recognized by law. If, therefore, we eliminate all idea of future punishment for perjury, and inflict no present punishment, *or in other words, abolish all punishment,* both here and hereafter, it is not to be wondered at that the crime will prevail, and that men will not hesitate to commit it to further their interests. *For punishment is the great deterrent to crime.* From the year 1830 to 1896 there have only been on an average three convictions a year for perjury. And during the last two years only one conviction. *The crime is increasing, and the punishment decreasing. Unless the commission of the crime of perjury be checked, the enforcement of rights or prevention of wrongs through the administration of Justice will become a farce.*

"Can the commission of perjury be checked, and how. Most emphatically, yes, by the bench and bar; by the Judges directing investigation to be made by the District Attorney in all cases tried before them, when they have reason to believe perjury had been committed and can be proved. *And by members of the Bar simply being honest* and true to their profession. If the lawyers of this State would positively discourage false swearing on the part of their own clients, and honestly endeavor to have it punished when

committed by the clients of their adversary, the crime would grow suddenly less. It is the professional duty of every lawyer to do this. He owes it to himself; he owes it to his fellow man; he owes it to his country, *and he owes it to his God.*

"In populous Counties there should be a Department in the office of every District Attorney, devoted entirely to the prosecution of the crime of perjury, where lawyers, who desire to do their duty, could take such cases." * * *

No more striking example of one of the "five out of every ten litigated cases" mentioned by President Whitaker, in which perjury is committed, could be imagined than the spectacle thereof afforded in the documentary evidence in this case.

The desertion of plaintiff-in-error by the late David B. Hill, already touched on in pages 597-601, of Appendix of this Brief—is plainly outlined in the letter of that distinguished statesman to plaintiff-in-error, presented herewith, taken from Volume III of plaintiff-in-error's aforesaid Deposition, pages 833-835.

"Woolfert's Roost,"
Albany, N. Y., May 19, 1897.

Mr. John Armstrong Chanler,
P. O. Box 175, White Plains, N. Y.

My Dear Mr. Chanler:—

Your recent letter and telegram were both duly received. Agreeably to your request, I forward you herewith a certified copy of those commitment papers from the Lunacy Commission office here.

I had expected to be in New York earlier, but professional engagements have kept me busy here. I had

hoped to be there last week or this week, when I intended to see you personally after consultation with our mutual friend, Mr. Brisbane, but find myself unable to get away at present. It was important before taking any action that I should learn more of your situation from mutual friends. Under the circumstances by reason of my other engagements and the absence of more authentic information in regard to your situation I do not see my way clear at present to take up your case.

I regretted to learn of your illness, and trust that by complete rest you may speedily recover your health.

With kindest regards, I remain,

Very truly yours,

DAVID B. HILL.

We respectfully submit that the above letter is surely a remarkable one to emanate from a lawyer in the practice of his profession—as said David B. Hill then was—who has had a *colossal crime* shown to him by a man fully capable of satisfying his pecuniary compensation—to put it somewhat mildly—so soon as said lawyer should have had the honour, the courage, the character and the sense of Professional duty—not to speak of public duty to the administration of Justice and the support of Law and Order—not to hint at Patriotism or any of the *political catchwords so frequently sonorously falling from the rarely closed lips of the Hon. David Bennett Hill*—to set the wheels of Justice revolving and enabling the unfortunately situated plaintiff-in-error to avail himself of that—to a lawyer at least—surely reasonable, surely Constitutional privilege—to wit—his day in court. But no. Said distinguished Statesman and defender of Democratic principles for so many years in the very centre

of the arena of National politics supinely folded his hands and then swiftly and craftily "sidestepped"—so to speak—any future consequences of his aforesaid desertion of an American citizen in distress and the palpable victim of as vile, venal and bold-bloodedly malicious and nefarious a conspiracy as history holds any record of—*by creating an utterly false impression in his said letter.* Which conveys the idea that said David B. Hill has merely *heard* of plaintiff-in-error's trouble—in the first place—and that said trouble is merely a *physical* one as insignificant, in fact, as a passing physical indisposition! Said David B. Hill would never for one moment be suspected—from the perusal by a third party of said letter—of having discussed a great crime with a brother member of the Bar of New York—plaintiff-in-error—in the cell of said lawyer for some two hours, as he did (Appendix, 598), and been put thoroughly in touch with the whole nefarious situation to such an extent that all any competent attorney needed to have done would have been to verify the allegations of plaintiff-in-error; which would have resulted in convincing any competent attorney that perjury and nothing more legal or substantial than perjury, *supported by family dissensions of years' standing, was the foundation of the situation.* The reason said David B. Hill had the recklessness to write such a letter to a brother lawyer in the aforesaid almost unparalleled predicament of distress, lawlessness and reckless disregard of the least vestige of his Constitutional rights, is that said David B. Hill very well knew the reputation of "Bloomingdale" for ability to hold on to a good thing, that chance and the unconstitutional Lunacy Laws of New York—permitting permanent incarceration without either notice or opportunity to appear and be heard—to the accused—to hold on to a

good thing that chance and the Lunacy Laws of New York had obligingly brought its way. Said David B. Hill well knew the powerful coterie, the gilded clique, consisting of the proudest, wealthiest, oldest and most prominent members of Metropolitan society—in all of its various walks—Law as well as Medicine, Politics as well as Finance, Philanthropy as well as what is popularly known as the "Four Hundred"—who stood shoulder to shoulder, bank account to bank account, and reputation to reputation, a formidable—an even impenetrable—Phalanx of wealth, experience, assurance and resource—behind "Bloomingdale." Said David B. Hill very well knew that at the first sign of attack upon the fastnesses of "Bloomingdale" the practically limitless resources of said gilded Phalanx would instantly silence the timid and venal press of the Metropolis, as well as the timid and venal Bar thereof, as well as the surely not audaciously bold Public Prosecutors—either State or Federal on Manhattan Island.* Furthermore, said David B. Hill very well knew that the most prominent attorneys would be at once retained by the plaintiff-in-error's enemies, which said prominent attorneys would† fill the air with loud outcries

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*Where rich men who are socially prominent are concerned—not where East Side "gangsters" are in issue. *Vide* the utter collapse of the formerly truculent W. Travers Jerome *in re* the prosecution of the Traction Magnates after said doughty Public Prosecutor's visit to said magnates "*inner* offices." After—as a New York City paper expressed it editorially—said Jerome: "Caught his foot in a Traction frog."

†As does said Joseph H. Choate, Jr., in his said Opening Speech—"Exhibit I," Brief, Appendix, p. 830—"*The most eminent and respected citizens of this city!*" And again, when Hon. Frederick A. Ware—in his Opening Speech, p. 820, Appendix—spoke the simple truth about "Bloomingdale," and described it as said Dr. Samuel B. Lyon did [(T. R., p. 114, fol. 224). Q. "Is the Bloomingdale Asylum for the Insane part of any Institution in this city? A. It is the Insane Department of the New York Hospital."]—adding what is vouched for by the outrageous mulct of some twenty thousand dollars aforesaid of plaintiff-in-error's money—vouched for by

against the preposterousness of asserting that men in the position—social, financial and otherwise—of the so-called "Governors" of "Bloomingdale" could under any conceivable circumstances err or go astray—as is so frequently the case with less wealthy, prominent and powerful men than said "Governors" of "Bloomingdale." Said David B. Hill well knew the proneness of the mob to admire and stand in awe of wealth and position, and therefore the tendency of the mob to disbelieve any attack upon the rectitude of the rich. Lastly, said David B. Hill well knew that plaintiff-in-error was *civiliter mortuus* in New York and would in all probability be in *articulo mortis* and *beyond*—before he emerged—or at least his corpse—from "Bloomingdale." There was, therefore, little risk in writing such a false and deceptive letter as the one said Hill did.

The extraordinary—the *monstrous*, *inhuman*—attitude of said Delos McCurdy towards plaintiff-in-error is not far to seek. Either said Delos McCurdy was as afraid of said embattled and gilded Phalanx—said Board of "Governors" of "Bloomingdale" as, on the evidence—was said David B. Hill—or said Delos McCurdy happened to be in the employ, professionally, of some member of said Board of "Governors"—or was on terms of friendship so strong with one or more mem-

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the cover aforesaid of said Commitment Papers stating that plaintiff-in-error was charged *one hundred dollars* a week (*not counting extras*) at "Bloomingdale." Hon. Frederick A. Ware, to-wit: "'Bloomingdale,' by the way, gentlemen, is a department of the Society of the New York Hospital of this city. It is practically the Psychopathic Ward. *It is a great, big, money-making proposition.*" Said Joseph H. Choate, Jr.,—for reasons best known to himself flies to the aid of the Bastile of the "Four Hundred" and makes a desperate attempt to intimidate Mr. Ware with the following brazen, bald, braggadocio bluff. To-wit: Mr. Choate: "*You do not mean to make that statement in earnest to this jury?* Mr. Miller: It will be proved in evidence. I don't think Mr. Ware is stating anything that will not be in evidence in this case. Mr. Ware: I have not one word to retract, if your Honor will allow me to proceed."

bers of said Board, that even the spectacle of a hideous crime against the liberty, property, happiness and Constitutional rights of an American citizen and a brother member of the Bar of New York must become subservient thereto.

The amazingly peculiar attitude of plaintiff-in-error's old friend, the late Captain Micajah Woods, Commonwealth's Attorney for Albemarle County, is chargeable first, last and all the time to the poisonous venom injected into said Woods' mind by plaintiff-in-error's aforesaid false friend and former law-partner, said H. V. N. Philip. It will be remembered that said Philip succeeded in ingratiating himself into the confidence of plaintiff-in-error sufficiently to induce plaintiff-in-error to entrust to his keeping the most precious document in the world to plaintiff-in-error. To wit, the long letter aforesaid to said Captain Micajah Woods, setting forth the iniquity of the conspiracy concocted against plaintiff-in-error by plaintiff-in-error's unnatural millionaire brothers and sisters, to possess themselves of plaintiff-in-error's large and steadily growing estate. It will be remembered that said H. V. N. Philip was false to said trust and instilled a fatal doubt into the mind of said Woods by saying to him in effect: "Do nothing in this matter without first notifying me." The fatal effect of said words is readily discernible from the tenor of said Woods' letter brought to plaintiff-in-error by said H. V. N. Philip upon the latter's return from Charlottesville, Virginia, where said Woods resided. Said letter promised to give the whole matter the most careful consideration, to advise with the late United States Senator, John Warwick Daniel, of Virginia, and then to let plaintiff-in-error hear from him. We here insert said letter.

"LETTER FROM CAPTAIN MICAJAH WOODS TO PLAINTIFF-IN-ERROR, DATED OCTOBER 14, 1897; pp. 258, 259, 260, Appendix.

Q. By Counsel for Plaintiff: Mr. Chaloner, I hand you a letter and the envelope that contains it, and ask you to describe both the envelope and letter, and the circumstances under which they were received?

A. This is an envelope addressed 'John A. Chanler, Esq., N. Y. Politeness of,' name underneath blotted out by me for fear that the asylum authorities would get hold of it. This letter was received by me, as a pencil note in blue pencil indicates, made under the signature of the writer in the following words 'About three, Saturday afternoon October 16th, 1897. J. A. C.' This is a letter that I received from the late Micajah Woods, the Commonwealth's Attorney of Albemarle County, Virginia. I was in 'Bloomingdale' (falsely so called), The Society of the New York Hospital, White Plains, and reads as follows:

'Charlottesville, Va., October 14, 1897.

In the left hand top corner appears the following in print:

'Micajah Woods,
Attorney at Law,
Commonwealth's Attorney.'

'John Armstrong Chanler, Esq.,

My Dear Sir:—'

'Mr.' and the name that follows has been blotted out by me, and the remainder of the letter reads as follows:

'has this day delivered to me your sealed communication, containing enclosures. I assure you I will give the whole matter the most careful consideration. I will advise with the gentlemen you refer to and will then let you hear from me. I am now engaged in trial of important cases in court and will be so engaged during the next week.

With my best wishes and sincere regards,

Sincerely your friend,

MICAJAH WOODS.'

This is the reply to the letter just offered in evidence, which was sent by me to Captain Woods by a special messenger to Charlottesville on or about the 13th of October.

By Counsel for Plaintiff: We file this letter and envelope in evidence, and ask that the same be marked for identification and made a part of the evidence in this case.

Said letter and envelopes are marked 'Plaintiff's Exhibits 39 and 39-a.'" * * *

We respectfully submit that we have not overdrawn the situation in describing the treacherous words of said H. V. N. Philip as having had a "fatal effect" upon said Captain Micajah Woods' pledged word—as set forth in said letter, dated October 14th, 1897, to plaintiff-in-error. For not a line came to plaintiff-in-error until in the early part of the year 1900, plaintiff-in-error wrote said Captain Woods.

We now insert letters from and to said Captain Woods to plaintiff-in-error under the latter's then alias aforesaid of James Chilworth from Kensico, Westchester County, New York—some six miles from White Plains.

LETTERS PASSING BETWEEN CAPTAIN MICAJAH WOODS AND PLAINTIFF-IN-ERROR IN 1900.

From "Bloomingdale," 473-476, Appendix.

By the Witness: The next letter is numbered "(I)." This contains two letters from the late Captain Micajah Woods, Commonwealth's Attorney for Albemarle County, Va., one dated "Charlottesville, Va., 20 March, 1900," addressed to "Jas. Chilworth, Esq., Kensico, N. Y.," which I now read:

"My Dear Sir:—

Yours received, I scarcely know what to do or advise in your case. I am so constantly engaged here both day and night in my business, that I have been unable to go to N. Y. to consult with certain friends of yours as to what course to pursue. It is certain that some prominent friend of yours in N. Y. could serve you more efficiently than I could, as I am a stranger to the people there and not familiar with the N. Y. procedure in such cases. I would suggest that you communicate with James Lindsay Gordan, Asst. Dist. Attorney, New York City; he is an old friend of yours—on the ground, and familiar with the influences that will have to be exercised to restore you to liberty and the exercise of your rights.

"I certainly sympathize with you in your situation, and sincerely wish I could do something for your relief.

"My people are all well. With kindest regards, I am

Sincerely yours,

(Signed) MICAJAH WOODS."

Then my reply in blue pencil to the same, to Captain Micajah Woods, dated March 26, from White Plains,

"The Society of the New York Hospital," White Plains, N. Y., March 26th, 1900," which I now read:

"Hon. Micajah Woods.

"My Dear Captain:—

"Yours of March 29th to hand. I am very much obliged to you for replying to my previous note so promptly. I fully comprehend the difficulties surrounding your position. The gentleman you suggest I should employ in my case is unavailable. I have, however, other lawyers in view. I have just written one of them in relation to my case and made an appointment for one meeting secretly. You will readily understand the importance to me and my case of my letter to you dated July 3rd, 1897, and its enclosures, to-wit: a certified copy of my commitment papers and a page from "The Quick or the Dead." I have a rough penciled copy of the said letter, but it is not in shape for ready reference or easy legible reading. As this letter contains a complete and exhaustive history of my case, written when the events were fresh in my mind, you will easily see its importance to me in giving a complete and succinct recital of the events which led to my arrest and what followed, to my lawyers. I, therefore, enclose a special delivery stamp, which is almost as sure as a register stamp, to insure the safe arrival of the aforesaid vitally important documents to myself. Please mail them to *James Chilworth, Kensico, Westchester Co., New York.* I hope before long to have the pleasure of calling on you in Charlottesville and laughing over the predicament in which I am at present. In the meantime, please let the strictest secrecy clothe everything I have written you.

"Hoping to hear from you by return mail, and with sincere regards.

Sincerely yours,
"JOHN ARMSTRONG CHANLER."
(The original signature is in ink.)

Then another letter from the said Captain Micajah Woods, dated "Charlottesville, Va., 30 March, 1900," which I now read:

"My Dear Friend:—

"Yours received. I have mailed to you this morning the documents you wish. The paper you wrote is clear, strong and logical, and will be of immense service to your friends and attorneys in N. Y.

I do earnestly hope your efforts to secure relief will be successful; you must let me know the progress you make in this line, and advise me of the name or names of your N. Y. Attorneys, and at the proper time, if I can possibly leave here, I will go on and confer and co-operate with them.

"With my best wishes and kindest regards, I am
Sincerely yours,
(Signed) MICAJAH WOODS."

"Jas. Chilworth,
(J. A. C.)
Kensico, P. O.,
Westchester Co., N. Y."

All of which shows that I was doing my best to get out of "Bloomingdale," by legal means; that I had no idea whatever of escaping; that I wanted to get out on *habeas corpus* proceedings. The first use I made of my liberty when I could go outside of bounds by permis-

sion of Dr. Lyon was to enter into correspondence with lawyers looking to my release from "Bloomingdale" by legal process, and I worked from March, or rather, earlier than that—I wrote a letter which in the hurry of the Proceedings now, owing to the fact that the case must be ready by the preliminary call of the January calendar, 1912, I have not time to find that first letter, to which this one of Capt. Micajah Woods' dated 20, March, 1900, is a reply—but it was on or about the latter part of January, 1900, that I first wrote to Captain Micajah Woods. This correspondence is fully described in "Four Years Behind the Bars," and this missing link is very fully described—this letter which I do not find now—this first letter that I wrote.

By Counsel for Defendant: The same objection.

By Counsel for Plaintiff: I now file the letters just referred to by Mr. Chaloner, and ask that the same be marked for identification and made a part of the evidence in this case. The said exhibits are marked 'Plaintiff's Exhibits No. 155, No. 155-a and No. 155-b.'

By Counsel for Defendant: The introduction of these exhibits excepted to for the reasons heretofore stated."

The fatal effects of said H. V. N. Philip's aforesaid treacherous words are apparent—we respectfully submit—in the two foregoing letters from said Captain Woods to plaintiff-in-error. *When it is borne in mind that said Captain Woods had ignored the telegram sent him by said H. V. N. Philip, prior to the* 1899 *Proceedings before the Commission-in-Lunacy and Sheriff's Jury aforesaid* (page 456, Brief, Vol. II), additional proof—of the deadly effect of said H. V. N. Philip, we respectfully submit—will be found.

We now come to the last phase of the amazingly peculiar attitude of said Capt. Micajah Woods towards plaintiff-in-error. This is indicated in said Captain Woods'

failure to state frankly on the stand in the 1908 Deposition of plaintiff-in-error in Charlottesville, Virginia, in reply to counsel *that he knew of his own knowledge* that the late John B. Moon, attorney and counsellor of Charlottesville, Virginia, represented the late Prescott Hall Butler, the falsely alleged Committee of plaintiff-in-error in the Virginia Proceedings, November 6th, 1901, in the then County now Circuit Court of Albemarle County, at Charlottesville, aforesaid. Since he—*said Captain Micajah Woods—knew of his own knowledge that said John B. Moon had for a long time—for some two years—represented said Prescott Hall Butler in Virginia.* That in the first place said John B. Moon had been appointed the Guardian *ad litem* for plaintiff-in-error in what are known as the *Louisa County Proceedings*—at the Court House at Louisa in the County of that name—in the State of Virginia, September 20th, 1901—and found on page 650 of Trial Brief by plaintiff-in-error, printed in 1905; fully gone into further on in this Brief. On the 20th day of September, 1901, counsel for plaintiff-in-error—Hon. Armistead C. Gordon, of Staunton, Virginia, Hon. Frederick Harper, partner of Senator Daniel—aforesaid—among whom was said Captain Micajah Woods—appeared in the Louisa Circuit Court, aforesaid, and obtained a stay in Proceedings then pending—and at bar—looking to the payment of some thirteen hundred dollars to said John B. Moon as the Guardian *ad litem* of plaintiff-in-error; the same being the proceeds of the sale of "Hawkwood," an estate in Louisa County—bought on a mortgage by plaintiff-in-error in 1894.

That plaintiff-in-error's said counsel—among whom was said Captain Micajah Woods—stated to the Court that plaintiff-in-error was *not* dead, as was supposed, but had appeared that day in Charlottesville, and been interviewed by representatives of leading New York

City papers there, thus breaking the mysterious silence which had shrouded plaintiff-in-error's footsteps from the day he escaped from "Bloomingdale," Thanksgiving Eve, 1900, to that day. That neither was plaintiff-in-error insane. That plaintiff-in-error had spent six months in voluntary confinement in a private Sanatorium in Philadelphia, under the observation of alienists of the highest professional standing in the country. That said alienists' opinions would be read in court. That a Petition by a neighbor of plaintiff-in-error's—by name, Cary Ruffin Randolph—asking for a judicial investigation of plaintiff-in-error's sanity as an escaped lunatic had been that day filed in the County Court of Albemarle County at Charlottesville, and that said case would be heard at the approaching term of said Court, to wit, the October term. That, therefore, the said counsel prayed the learned Court to suspend the present Proceedings until after the October Proceedings aforesaid, in the Albemarle County Court, could take place. Whereupon and providing that said Proceedings found the plaintiff-in-error sane and competent, that then, and in that event, the said thirteen hundred dollars should be paid over to plaintiff-in-error's counsel for plaintiff-in-error, and not to said Guardian *ad litem,* said John B. Moon.

Whereupon the said learned Court granted the prayer of counsel for plaintiff-in-error. Whereupon on January 25th, 1902, said learned Court turned over said thirteen hundred dollars to said Captain Micajah Woods, charging him to make certain payments therefrom before handing the residue to plaintiff-in-error. To wit. "That Micajah Woods, attorney for John Armstrong Chanler be, and hereby is, authorized to withdraw from the papers of this cause the certificate of deposit of the People's National Bank of Charlottesville, Va., dated

the 17th day of June, 1901, for the sum of $1,344.58 and collect the same less $148.21, which he shall deposit to the credit of the cause—being the net surplus balance remaining on hand unexpended, from the proceeds of the sale of the Hawkwood estate in this cause. Said Micajah Woods, attorney as aforesaid—*shall pay to John B. Moon the sum of* $250, *being fee due said Moon and his associates for services rendered in connection with the defense and protection of said Chanler's interests in this cause, in which said Moon acted as guardian ad litem*, and he shall account to the said Chanler for the residue of said certificate of deposit. J. E. Mason, Judge of the Circuit Court of Louisa County."

The appearance of counsel for plaintiff-in-error at Louisa as aforesaid, was the first intimation said John B. Moon had that plaintiff-in-error was alive, and not dead, as the New York City newspapers were in the habit of from time to time surmising. Thereupon said John B. Moon requested said Captain Woods to communicate with his fellow counsel and get their consent to a continuance from the October to the November term of the Albemarle County Court. Thereupon said counsel consulted with plaintiff-in-error and the said request of said John B. Moon was granted. Whereupon the aforesaid examination into the sanity of plaintiff-in-error by the Judge of the County Court of Albemarle County was continued until the November term of said Court. In the opening address of said Captain Woods—in the Virginia Proceedings on file in this case—to the Judge of said Court—November 6, 1901—the following language appears on the record as coming from said Captain Woods to said Court. To wit: "Your Honour is aware that this petition was prepared and it was expected that it would be filed

at the last term of the Court, but, owing to suggestions made, and especially the suggestion made by counsel for Committee of Mr. Chaloner (said John B. Moon), the petition was not filed at the last Court, but it was understood that it would be heard today, and we are here today to have the matter investigated."

As aforesaid the last phase of the amazingly peculiar attitude of said Captain Micajah Woods towards plaintiff-in-error is indicated in said Captain Woods' failure to state frankly on the stand in the 1908 Deposition of plaintiff-in-error that he knew of his own knowledge that (A) said John B. Moon represented the late Prescott Hall Butler—the falsely alleged Committee of plaintiff-in-error—in the Virginia Proceedings, November 6th, 1901. *That (B) said Captain Micajah Woods—old and wary counsel as he was—allowed himself to be inveigled into making such an absurd statement—coming as it did from a lawyer of the professional standing of said Captain Micajah Woods—upon cross-examination as the following: "2nd Q. by Counsel for defendant: 'And no representative of the Committee appeared upon the hearing of the case in November, 1901? A. No, sir.'"* Said John B. Moon did not take part in the hearing of the case aforesaid, *but he was present in Court until plaintiff-in-error left the stand.* Said John B. Moon refrained from cross-examining plaintiff-in-error and left the court room so soon as plaintiff-in-error left the stand.

We shall presently insert *said Louisa County Proceedings; the testimony aforesaid of said Captain Micajah Woods at plaintiff-in-error's Deposition in* 1908; *and a portion of plaintiff-in-error's testimony thereat describing his purchase of the "Hawkwood" Estate aforesaid.* The said Louisa Proceedings and the aforesaid testimony of said Captain Micajah Woods are of

great importance in establishing the absolute and perfect regularity of the aforesaid Virginia Proceedings of November 6th, 1901, under the laws of that State. Since Captain Micajah Woods, aforesaid, is *admitted by* the learned counsel for defendant-in-error, *Joseph H. Choate, Jr.*—who took part in the said Deposition—*to be an expert on Virginia law and practice;* for a note in said Deposition of 1908—found page 124, Vol. II of this Brief says as follows: "*Note*—It is conceded that the witness (said Captain Micajah Woods) is qualified as an expert to testify and no objection is raised on that ground." Furthermore. The defendant-in-error attacks said Virginia Proceedings—claims that no notice was given the other side when the said Virginia Proceedings of November 6, 1901, were instituted and also that said Proceedings were collusive and void. See 162 *Fed. Rep.* aforesaid, to wit: "The Defendant —(the defendant-in-error)—*sets up that the Virginia decree was obtained by collusion and is void.*" Whereas notice of said Proceedings was *ipso facto* served on the other side September 20th, 1901, when plaintiff-in-error's counsel appeared at the Court House in Louisa and gave notice in the hearing of said John B. Moon, the then Guardian *ad litem* of plaintiff-in-error, that the Virginia Proceedings had that day been instituted by the aforesaid Petition of said Cary Ruffin Randolph, praying for an examination into the sanity of plaintiff-in-error by the Judge of the County Court of Albemarle County; and that said case would come on for hearing at the October term of the Court. Whereupon said Louisa County Proceedings of September 20th, 1901, were continued indefinitely, to await the decision in said Virginia Proceedings in the County Court of Albemarle County. Whereupon said *John B. Moon requested the continuance of said Virginia Proceedings*

from the October term of said Court till the November term thereof. Which request was granted by plaintiff-in-error and his counsel. *We, therefore, respectfully submit, that it does not lie in the mouth of defendant-in-error to assert in the teeth of the above recorded evidence that his side did not receive notice of a Proceeding which was postponed one calendar month at his predecessor's—said Prescott Hall Butler's—request!*

Particularly since said Captain Micajah Woods—then *President of the Virginia State Bar Association*—and *acknowledged*—as aforesaid by *said Joseph H. Choate, Jr.*, to be "*qualified as an expert to testify*" *upon the Virginia law and practice (supra)*—particularly since said Captain Micajah Woods testified in said 1908 Deposition of plaintiff-in-error at Charlottesville, Virginia —page 128, Vol. II of this Brief—as follows: "A. Under the Statute under which this Proceeding was instituted there is no provision, and was no provision, for giving notice to any person except the party suspected of being insane, and in investigations under the section of the Statute which I have recited, and under investigations before justices touching the sanity of a person, there is no law requiring notice to be given to the next of kin or the parties holding the estate of the party suspected or any part thereof.

47th Q. Under the law in Virginia, then, it is not necessary to give notice to anyone except the alleged incompetent person, is that the effect of your answer?

A. Yes, sir."

So much for the conduct of the only three lawyers plaintiff-in-error was able to communicate with during the nearly four years he was a prisoner in "Bloomingdale"—to wit—the late Governor David Bennett Hill; Delos McCurdy, and the late Captain Micajah Woods, Commonwealth's Attorney for Albemarle County, Vir-

ginia, from 1870 until the day of his death; besides being President of the Virginia State Bar Association for the year 1908-9. The fact that said Captain Micajah Woods died within a year—more or less—of the date of his said testimony sheds some light upon said testimony—his memory evidently was failing rapidly.

Furthermore corroborative proof that said postponement of the Virginia Proceedings was at the request of said John B. Moon representing the other side, is to be found in the two following letters from plaintiff-in-error's then counsel, Hon. Armistead C. Gordon and Frederick Harper, of Daniel and Harper, aforesaid, found on pages 447-449, Volume II of this Brief.

LETTERS *RE* NOTICE GIVEN OTHER SIDE OF 1901 PROCEEDINGS, pp. 447, 448, 449 Appendix.

By Counsel for Plaintiff: Mr. Chaloner, I hand you a couple of letters enclosed in an envelope—will you please describe them?

(By Counsel for Defendant: We make the same objection to comment on these letters and their introduction, or not being shown to be material to this issue.)

A. This letter is marked in blue pencil by me, "9-27-04" and has in blue pencil, "*Re* Hon. John B. Moon, representing the other side in the November 6, 1901, Proceedings." It is addressed to me in the handwriting of the Hon. Armistead C. Gordon, then of counsel for me in the 1901 Proceedings aforesaid, and is addressed, "John Armstrong Chanler, Esq.; Cobham, Albemarle County, Va.," and postmarked "Staunton, September 27, or 27, (September is hardly legible), 1904, and the letter is dated September 27, 1904, Staunton, Va., and reads as follows:

"John Armstrong Chanler, Esq.,
Cobham, Va.

"My Dear Mr. Chanler: I wrote you on the 23rd inst. I have just received the enclosed letter from Mr. Harper. With it I hand you copy of mine to him. Capt. Woods, to whom I wrote on same case as to Mr. Harper, has not yet replied.

"Please pardon my slowness. I have been unusually busy.

Sincerely, your friend,
"ARMISTEAD C. GORDON."

Here follows the enclosed copy referred to by the said Hon. Armistead C. Gordon, of his letter to Fred Harper, a partner of the late Jno. W. Daniel, United States Senator from Virginia.

"Fred Harper, Esq.,
Lynchburg, Va.

"Dear Mr. Harper:—

"In a recent letter from Mr. John Armstrong Chanler, whose case against Mr. T. T. Sherman as Committee is now pending in the Circuit Court for the Southern District of New York, he requests me to ascertain from you:

"1. From whom did the knowledge of the request of Mr. Chanler's New York Committee, or of his brothers that the hearing on his sanity before the Albemarle Court be postponed, come to you?

"2. From whom did the proposition that he should go North in person to meet 'the other side,' come to you and upon whose authority was this proposition made?

"In reply to these questions from Mr. Chanler I wrote him a short time ago that my recollection was that the request for an adjournment of the hearing in Charlottesville, came to me *through* Capt. Woods *from Mr. John B. Moon, as counsel for and on behalf of 'the other side'*—either the then committee, Mr. P. H. Butler, or Mr. Chanler's brother; and that it was Judge Van Wyck's proposition through you that Mr. Chanler should go North.

"Mr. Chanler wishes especially to know now from you if I am correct as to the last named statement, and if so, what was the date of Judge Van Wyck's letter, and how soon thereafter were Messrs. Evarts, Tracy & Sherman, informed that Judge Van Wyck's proposition was declined by Mr. Chanler's attorneys in Virginia. You can doubtless get all this from your file.

"I will forward your reply, when received, to Mr. Chanler.

"With kind regards for yourself and for Major Daniel, I am,

"Very truly yours,"

Attached is the original letter from Mr. Fred Harper, of Daniel and Harper, to Hon. A. C. Gordon, which has as its heading—

"DANIEL & HARPER,

"Jno. W. Daniel, Fred Harper.

"Attorneys at Law, Lynchburg, Va."

and is dated Sept. 24th, 1904, and reads as follows:

"Hon. A. C. Gordon,
Staunton, Va.

"My Dear Mr. Gordon:—

"Replying to your favor of the 23rd instant, I beg to

say that an examination of our files discloses the fact that *continuance* of the *Proceedings in Charlottesville* were *had at the suggestion of Mr. Moon, representing Mr. Butler.* The reason of Mr. Moon's request was that Mr. Chanler's family *desired* an *opportunity* to be *present at the hearing.*

"As to the second matter, a letter from *Judge Van Wyck* to us, under date of *November 2d*, 1901, contained the suggestion that Mr. Chanler go to Philadelphia to submit to an examination *for the satisfaction of his family.* This proposition was made to Judge Van Wyck by *Mr. Evarts, representing the family.* In a letter which we wrote to Judge Van Wyck, under date of November 4th, 1901, we advised him that we thought the suggestion 'unreasonable.' So far as our files show, that was the last said in correspondence about Mr. Chanler's proceeding North for an examination by physicians *chosen by his family.* Trusting that this information will be satisfactory to you.

"Major Daniel is in the office and joins me in best wishes to you. I am,

"Very truly yours,

"(Signed) FRED HARPER."

* * * * * * *

We now insert said Louisa County Proceedings.

Geo. W. Morris, Trustee v. *John Armstrong Chanler,* (copies of Decrees.)

VIRGINIA:

At a Special Term of the Circuit Court for the County of Louisa, continued and held at the Court House thereof on Tuesday, the 22nd day of May, 1900.

Present, the Hon. John E. Mason, Judge of this Court.

Geo. W. Morris, Trustee, Plaintiff.

v.

John Armstrong Chanler, a person of unsound mind, George Perkins, Trustee, and Julia M. Morris, in her own right and as Executrix of Richard O. Morris, dec'd., Defendants.

F. W. Sims, who had been at Rules, held in the Clerk's Office assigned as *guardian ad litem for said insane defendant John Armstrong Chanler*, having declined to act, *John B. Moon, a discreet and competent attorney at law is assigned as such guardian ad litem for said insane defendant*, with leave to file his answer to the plaintiff's bill, which is filed accordingly and the plaintiff replies generally thereto; and it further appearing that said Chanler has been also duly proceeded against in the mode prescribed by law as to non-resident defendants by order of publication published and posted as the law directs and which has been completed for more than fifteen days, and the unrecorded deed between Richard O. Morris and wife and the said Chanler, dated November 3rd, 1894, a copy of which is exhibited with the bill, together with the contract between the parties on which said deed was based dated September 17th, 1894, being this day produced and filed by said Perkins, trustee, by leave of Court.

IN VACATION

Geo. W. Morris, Trustee,

vs.

J. A. Chanler, and Others.

This cause came on this day to be heard in vacation, pursuant to the decree of March 22nd, 1901, upon the

papers formerly read and the affidavit of *John B. Moon, Guardian ad litem of the insane defendant, John Armstrong Chanler*, this day filed, and upon the copy of the Record and judicial Proceedings of the New York Supreme Court of the County and State of New York in the matter of the said John Armstrong Chanler, an alleged incompetent person, also this day filed, which Record and Proceedings are duly attested and exemplified in the mode prescribed by law for their admission as evidence in the Courts of this State and show that the said Chanler was by the said Supreme Court of the State of New York on the 23rd day of June, 1899, duly adjudged a lunatic and person of unsound mind; and the report of George Perkins, trustee, dated May 4th, 1901, and was argued by counsel; on consideration whereof it appearing to the Court that the decree of sale entered in this cause at the Special May Term, 1900, of this Court was entered by the consent of the said *Moon, as guardian ad litem of the said Chanler*, in so far as the said decree prescribed the terms upon which the Hawkwood lands, in the Proceedings mentioned, should be sold by the trustees, Geo. W. Morris and Geo. Perkins, who were directed to sell said lands, but by inadvertence there was an omission to expressly recite therein that the same was entered with the consent of the said guardian *ad litem*, in so far as it varied the terms upon which the deed of trust upon the said lands prescribed a sale, thereupon on motion of said guardian *ad litem*, and by his consent, now given, as shown by his endorsement on this decree, it is now ordered by the Court that said decree entered at the May Special Term, 1900, be, and the same is hereby, corrected, with respect to the said omission, so as to expressly declare and show, with like effect as if expressly recited in said decree

when entered, that the said decree was entered by consent of the guardian *ad litem* as aforesaid.

And it further appearing to the Court that the said modification of the terms of sale prescribed in said deed of trust was to the interest and advantage of all parties interested in the said land, and that the said J. A. Chanler was shown to have been duly adjudged a person of unsound mind by a court of competent jurisdiction, the Court doth adjudge, order and decree that the sale set forth in the report of the trustee, George Perkins, filed March 22nd, 1901, be, and the same is hereby, now finally ratified, approved and confirmed in all respects; and the said George Perkins, trustee, is directed to proceed to carry into effect the provisions of the decree entered in this cause on March 22nd, 1901.

And the Court doth further adjudge, order and decree that unless within ten days from this date, possession of the Hawkwood lands in the Proceedings mentioned, be delivered to the purchaser, Geo. H. Browne, then the clerk of this Court shall, upon the application of said Browne or his counsel issue a writ of possession requiring the Sheriff of Louisa County to forthwith deliver possession of said lands to said Browne, it appearing that notice of the application to the Court for the awarding of said writ has been given to Julian Morris.

And the said Trustee, George Perkins, is directed, after paying costs as heretofore ordered to pay over all monies now or hereafter coming into his hands from the sale of Hawkwood to the Executors of Mrs. Julia M. Morris, in the deed between him and John Armstrong Chanler, dated November 3rd, 1894, in the Proceedings referred to, until said debt, as set forth in the plaintiff's bill shall be fully paid, and the remainder of the purchase money he shall hold subject to the order of the Court.

J. E. MASON.

May 11, 1901.

The foregoing decree is this 11th day of May, 1901, hereby certified to the Clerk of the Circuit Court of Louisa to be by him entered of record as the law directs.

J. E. MASON.

VIRGINIA: In Louisa Circuit Court Clerk's Office, May 13th, 1901.

The foregoing Vacation Decree was this day received in said office and entered of record as the law directs.

Teste:

W. R. GOODWIN, *Clerk.*

(Endorsed on decree.)

"We consent to this decree and agree that the Court shall enter the same in vacation without further notice to us.

JOHN B. MOON, *G'd'n Ad litem,*
For J. A. Chanler.
GEO. PERKINS, *Trustee.*
R. L. GORDON,
W. E. BIBB, } *For G. H. Browne.*
G. W. MORRIS."

At a Circuit Court for the County of Louisa, begun and held at the Court House thereof on Friday, the 20th day of September, 1901.

Present, the Hon. John E. Mason, Judge of this Court.

Geo. W. Morris, Trustee,
vs.
J. A. Chanler & Als.

This day the Petition of Prescott Hall Butler, as Committee of the estate of John Armstrong Chanler was,

by leave, filed in pursuance of notice published in the Daily Progress, a newspaper published in Charlottesville, Virginia, once a week for four successive weeks, prior to this date, as prescribed by law, which Petition prays that the said Committee may be authorized to collect the fund involved in this cause belonging to the estate of J. A. Chanler, as well as to sue for, recover and receive all money and personal property belonging to said John Armstrong Chanler in Virginia; also by leave of the Court the answer to said Petition which is asked to be read as a cross-bill in this case, signed by John Armstrong Chanler by counsel, in which it is alleged that said Chanler is, and has been a sane man, and as such is entitled to control and manage his own estate, is filed; which answer, Petition and cross-bill is accompanied by sundry exhibits also filed therewith.

On consideration whereof and of the papers formerly read, and the final report of George Perkins, Trustee, dated August 16, 1901, this cause was this day heard upon the said report, and was argued by Counsel. And the Court, approving said report, which is sustained by proper vouchers, and to which there is no exception, doth confirm the same in all respects:

And the Court, without passing on any question in said Petition and pleadings, doth by consent of Counsel make this a vacation case to be heard in vacation by consent of counsel on any new pleadings or evidence that may be filed within the ensuing ninety (90) days. And any decree that may be, by consent of counsel to a hearing in vacation, entered by the Court in vacation shall be as valid and effective as though entered in term time, it being understood that such hearing in vacation shall only be at such time and place as counsel shall agree upon; and leave being reserved to any party in interest to file any proper exception, demurrer, answer

or plea to either of said Petitions within the next ninety (90) days.

J. E. MASON.

IN VACATION.

George W. Morris, Trustee,
against
J. A. Chanler and Others.

This cause came on this day to be heard in vacation, by consent of Counsel, in pursuance of the provisions of the decree entered herein on the 20th day of September, 1901; upon the papers formerly read and also upon the supplemental Petition and application of P. H. Butler, former Committee of J. A. Chanler, under order of the Supreme Court of the State and County of New York, filed at December, 1901, together with the exhibit therewith, of the Record of the Proceedings had in the Supreme Court of the State of New York on the 19th day of November, 1901, filed December 13th, 1901, from which it appears that the said P. H. Butler has been relieved and removed as Committee of J. A. Chanler, by the order of the said Supreme Court of New York for the County of New York, and that his powers as such Committee have ceased, which petition further prays that the application and petition filed by him at the September term, 1901, of this Court be discontinued and dismissed; *also upon the Transcript of the Record of the Proceedings had in the County Court of Albemarle County, Virginia, at its November term*, 1901, *in the matter of the Petition of C. Ruffin Randolph, filed in said Court under the provisions of Section* 1698 *of the Code of Virginia, alleging that said J. A. Chanler, a resident of Albemarle County, had been adjudged and*

confined as a lunatic in an Asylum in New York and that he was suspected of being insane, and praying said County Court to examine into his state of mind and determine whether a Committee of his estate and person should be appointed and it appearing from said certified Proceedings that said County Court of Albemarle, a Court of Record having jurisdiction in the premises, did by its order, entered on the 6th day of November, 1901, *adjudge and decree as follows:*

"The said Court having heard and considered the evidence of the witnesses produced, both medical men and other citizens; and having considered the several medical opinions filed touching said Chanler's mentality, and having examined the said J. A. Chanler, is of the opinion that said John Armstrong Chanler is a sane man, capable of taking care of his person and managing his estate, therefore the Court doth adjudge that there is no occasion for appointment of a Committee of his person and estate:"

Which said Record of said County Court of Albemarle, filed in this cause on 13th December, 1901, is duly certified and attested by the Clerk of said Court; and this Court having read and considered the Transcript of the Proceedings of said County Court of Albemarle County, to which are attached copies of the evidence and exhibits adduced before said Court, which evidence and exhibits were duly filed in this cause on the 13th of December, 1901, *and* this cause was argued by counsel, *upon consideration thereof the Court doth order that the Petition and Application of said P. H. Butler, Committee as aforesaid, filed in this cause at September term,* 1901, *of this Court stand discontinued and dismissed* for the reasons stated in his supplemental Petition filed at December Rules, 1901, *and the Court doth further adjudge, order and decree, inasmuch as*

John Armstrong Chanler has been adjudged and declared to be a sane man, capable of taking care of his person and estate, by the County Court of Albemarle County (of which County said J. A. Chanler is a resident) that Micajah Woods, Attorney for John Armstrong Chanler be, and is hereby, authorized to withdraw from the papers of this cause the certificate of deposit of the People's National Bank of Charlottesville, Va., dated the 17th day of June, 1901, for the sum of $1,344.58, and collect the same, less $148.21, which he shall re-deposit to the credit of the cause, said deposits having been made by George Perkins, Trustee in this cause, and being the net surplus balance remaining on hand unexpended, from the proceeds of the sale of the Hawkwood estate in this cause. Said Micajah Woods, Attorney as aforesaid, out of the proceeds of said certificate of deposit, less the $148.21 aforesaid, shall settle any unpaid costs in the cause, *and shall pay to John B. Moon the sum of* $250, *being fee due said Moon and his associates for services rendered in connection with the defence and protection of said Chanler's interests in this cause in which said Moon acted as guardian ad litem*, and he shall account to the said Chanler for the residue of said certificate of deposit.

J. E. MASON.

January 25, 1902.

The foregoing decree is this 25th day of January, 1902, hereby certified to the Clerk of the Circuit Court of Louisa County to be by him recorded as the law directs.

J. E. MASON,

Judge of the Circuit Court of Louisa Co.

VIRGINIA: In Louisa Circuit Court Clerk's Office, January 28th, 1902.

The foregoing Vacation decree was this day received in said office and entered of record according to law.

Teste:

W. R. GOODWIN, *Clerk.*

I hereby certify that the foregoing are true copies of the five decrees, entered on their respective dates, in the suit of *Geo. W. Morris, Trustee* v. *John Armstrong Chanler, et als.*

P. B. PORTER,
Clerk of Louisa Circuit Court, Va.

STATE OF VIRGINIA,
County of Louisa, to-wit:

I, John Rutherfoord, Judge of the Circuit Court of the County of Louisa, hereby certify that P. B. Porter, whose name is signed to the foregoing certificate, is, and was at the time of signing the same, clerk of the said Court, duly qualified; that his attestation is in due form of law; that his signature is genuine, and all his official acts entitled to full faith and credit.

Given under my hand this 5th day of June, 1916.

JOHN RUTHERFOORD.

STATE OF VIRGINIA,
County of Louisa, to-wit:

I, P. B. Porter, Clerk of the Circuit Court of the County of Louisa, do hereby certify that John Rutherfoord, whose name is signed to the foregoing certificate, is, and was at the time of signing same, Judge of the said Court, duly qualified.

Given under my hand and seal of said Court this 5th day of June, 1916.

P. B. PORTER,
Clerk.

(Seal.)

* * * * * *

As well as the testimony aforesaid of said Captain Micajah Woods at plaintiff-in-error's Deposition in 1908.

TESTIMONY OF CAPTAIN MICAJAH WOODS, AT THE 1908 DEPOSITION, (Appendix pp. 120-133.)

Proceedings of 1901 *Bona Fide*, Correct and in Full Force.

Testimony of Capt. Micajah Woods, 201-218.

MICAJAH WOODS,

being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Will you please give your name and age?

A. Micajah Woods, 64 years old.

2nd Q. Where do you reside?

A. In Charlottesville, Va.

3rd Q. What is your profession?

A. Lawyer by profession.

4th Q. How many years have you been practicing law?

A. I came to the bar in the Fall of 1868, forty years.

5th Q. Have you been continually in the active practice of law since that time?

A. I have, sir.

6th Q. As a lawyer have you any official capacity in the State of Virginia?

A. I have been Commonwealth's Attorney for the County of Albermarle.

7th Q. How long have you been Commonwealth's Attorney for the County of Albemarle?

A. I have been Commonwealth's Attorney of Albemarle County ever since December, 1870.

8th Q. Are you still?

A. Yes; my present term does not expire for three years.

9th Q. Are you an officer of the Virginia Bar also?

A. I am the President of the Virginia State Bar Association for this current year, 1908-9.

10th Q. In what courts have you practiced and do you now practice?

A. I practice in the Circuit Courts of Virginia, a good many of them; I practice also in the Supreme Court of the State, and also practice in the Federal Court of the State.

11th Q. How long have you known the plaintiff in this case?

A. I think I have known Mr. Chanler for 12 or 15 years.

12th Q. Did you know him prior to February 13. 1897?

A. I did.

PLAINTIFF'S LETTER OF JULY 3RD, 1897, RECEIVED IN FALL OF 1897.

Testimony Capt. Micajah Woods, 202.

13th Q. Did you receive a letter from plaintiff in October, 1897?

A. I think that was about the time I received a letter. I don't remember the exact month.

14th Q. How did you get this letter, Capt. Woods?

A. The letter was brought to me by a New York lawyer by the name of Philip—Mr. Philip.

15th Q. Did you know the handwriting of the plaintiff in this case, Mr. John Armstrong Chaloner?

A. Yes, I did.

16th Q. Did you recognize the letter that you received at that time as the handwriting of Mr. John Armstrong Chaloner?

A. My recollection is that the letter was in his handwriting.

17th Q. Do you recognize this as the letter which you received?

(Counsel hands letter to witness.)

A. (Witness examines letter and states): Yes, that is the letter that I received.

(Counsel for Plaintiff: I now file a letter, dated July 3rd, 1897, and offer the same in evidence in this case, the letter being addressed to the Hon. Micajah Woods, Commonwealth's Attorney, Charlottesville, Albemarle Co., Va., and written from the Society of the New York Hospital, White Plains, New York, and signed "John Armstrong Chaloner, with a short postscript, signed "J. A. C." and mark the same "Exhibit K.")

(Note—It is stipulated that a copy of the above letter may be attached in place of the original and the original withdrawn: the original, however, to be produced by counsel for the plaintiff upon the trial of this action.)

(The same stipulation is also made as to the other letters offered in evidence.)

18th Q. Capt. Woods, you state that you identify this letter as the letter received in October, 1897?

A. I do.

19th Q. Brought you by Mr. Philip from Mr. Chaloner?

A. Yes, sir.

20th Q. After receiving this letter from the plaintiff, when and where did you next see him?

A. My recollection is that I next saw Mr. Chaloner in the fall of 1901, probably about the month of September.

21st Q. Where did you see him?

A. In this county and in my office in this city.

22nd Q. Did you represent the plaintiff as attorney in the Proceedings inquiring into the sanity of John Armstrong Chaloner, instituted in Albemarle County, Virginia, by C. Ruffin Randolph, on September 20, 1901, which case was decided on November 6, 1901?

A. Yes, and associated with me were the following gentlemen: Senator John W. Daniel and his partner, Mr. Fred Harper, and Mr. Armistead C. Gordon, of Staunton, Va., as attorneys for Mr. John Armstrong Chaloner.

23rd Q. Under what procedure and what law did C. Ruffin Randolph file his application against the plaintiff in the Albemarle County, Virginia, Proceedings in 1901?

A. The proceeding was instituted in the County Court of Albemarle County, Va., under the provision of Section 1698 of the Code of Virginia of 1887, which reads as follows:

"Sec. 1698. When Committee of Residents appointed in other cases.—If a person residing in this State is so found, be suspected to be insane, the Court of the County or corporation of which such person is an inhabitant, shall, on the application of any party interested, proceed to examine into his state of mind, and

being satisfied that he is insane, shall appoint a Committee of him."

24th Q. Has there been any change in this section since said Proceedings were had?

A. No, sir; there has been no amendment of that section.

25th Q. Any change at all?

A. No, sir; no change whatever.

26th Q. Was the County Court of Albemarle County a Court of record?

A. It was.

27th Q. Was it the Court of the County of which John Armstrong Chaloner was then an inhabitant?

A. Yes, sir.

28th Q. Under the Law and practice of Virginia was this application sufficient and regular in form?

(By Mr. Choate: Objected to as too general.)

(Note—It is conceded that the witness is qualified as an expert to testify and no objection is raised on that ground.)

A. We gentlemen who represented Mr. Chaloner in that Proceeding as attorneys, considered it a regular and proper Proceeding under that Statute.

29th Q. And do you now consider that it was regular and sufficient?

A. I do.

30th Q. Did the plaintiff, John Armstrong Chaloner, appear in the Albemarle County, Va., Proceedings in 1901 in person.

A. He appeared in person and was examined by the Court.

31st Q. In the answer filed by the defendant in this

case it is said that these Albemarle County, Virginia, Proceedings of 1901 should be vacated and set aside for the reason that the petition was not sworn to, or otherwise verified, what have you to say about this?

A. There is nothing in the statute under which the Proceeding was instituted that required the Petition to be sworn to.

32nd Q. Is there any provision or any Law in Virginia which would require that this should be sworn to?

A. Not that I know of in a Proceeding of that character.

33rd Q. In the same answer, it is said that these Albemarle County, Virginia, Proceedings should be vacated and set aside because the said petition or application of Cary Ruffin Randolph was not presented to the County Court of Albemarle County, but it was presented to the Hon. John M. White, Judge of said Court; what have you to say about this?

A. The Petition in the case referred to was addressed to the Judge of the Court, as is the practice and custom in Virginia, in a Proceeding of an Equitable character. In my long experience as a practicing attorney in the Courts of this State, I do not recall that any bill in Chancery or any Petition in an Equitable Proceeding was addressed otherwise than to the Judge of the Court. There is a distinction in Virginia, which still holds between the Equitable and the Legal jurisdiction of our Courts, and in an Equitable Proceeding —that is, suits in Chancery, Petitions of an Equitable character—the practice is uniform and unbroken so far as I know, for all the Proceedings to be addressed to the Judge of the Court.

34th Q. Are Minor's Institutes, Barton's Chancery Practice and Sands' Suits in Equity considered legal authorities in Virginia?

A. They are considered legal authorities and the forms that are given in all of said works show that the custom and practice in Virginia is to address the pleadings to the Judge of the Court.

35th Q. What was the object of the Proceedings instituted by Cary Ruffin Randolph, in Albemarle County, Va., on September 20, 1901?

(By Mr. Choate: I object to that as opening for the contents of a writing.)

A. The Petition, according to my recollection, shows upon its face the object of the Petition, namely, to ascertain by an investigation whether a Committee should be appointed to take charge of Mr. Chaloner's estate.

36th Q. Did C. Ruffin Randolph, in person, sign the Petition or application filed in Albemarle County, Virginia, on September 20, 1901, asking the Court to examine into the state of mind of John Armstrong Chaloner and determine whether a Committee of his person and estate should be appointed?

A. My recollection is that he did.

37th Q. Did C. Ruffin Randolph, who filed the application or Petition in this Proceeding, have such an interest in the matter as is required by Section 1698 of the Code of Virginia?

A. Mr. Randolph was a resident of this State, owned property in the neighborhood of Mr. Chaloner, resided near and was a neighbor of Mr. Chaloner's, and, of course, was interested as such in the question as to whether he was sane or insane.

38th Q. In your opinion, did he have an interest in the matter such as to meet the requirements of Section 1698 of the Code of Virginia?

A. It was the opinion of the attorneys associated

with me and my opinion that Mr. Randolph was so interested as to justify him in filing the application which was made to the Court.

39th Q. And also is it now your opinion that he had such an interest in the matter?

A. Yes, sir.

40th Q. At the hearing of this case, on November 6, 1901, in the County Court of Albemarle County, Va., was C. Ruffin Randolph present in said Court in person as petitioner in said Proceedings?

A. Yes, sir.

41st Q. Was this Proceeding instituted and conducted and prosecuted in good faith, with a *bona fide* intent and purpose to have the Court examine into the state of mind of John Armstrong Chaloner and determine whether a Committee of his person and estate should be appointed?

(By Mr. Choate: I object to that as leading and calling for the conclusion of the witness as to the state of mind of the said petitioner who brought the Proceedings, and also as incompetent.)

A. It was.

42nd Q. Were the said Albemarle County, Va., Proceeding *ex parte?*

A. Well, sir, the Petition was filed by Mr. C. Ruffin Randolph, a citizen of the State and a resident of the County of Albemarle, Va., and Mr. Chaloner was notified of it, and appeared with the witness before the Court, so far as the requirements of the Statute were concerned, Mr. Randolph represented the people of the State and of the County, and Mr. Chaloner his own interests, and they were regarded as necessary parties.

43rd Q. Was there evidence introduced in said Albemarle County, Virginia, Proceedings competent and

sufficient under the Virginia Law to justify the decree that was entered on November 6th, 1901?

A. The case was heard by Judge John M. White, who was then Judge of Albemarle County Court, and now is Judge of the Circuit Court of Albemarle County. He is regarded as one of the soundest and best judges in the State, and after hearing the testimony his decision was that there was no occasion for the appointment of a Committee of the person or estate of Mr. Chaloner, and the Petition was dismissed.

44th Q. In your opinion was the evidence competent and sufficient under the Virginia Laws to justify the decree that was entered?

A. It was.

45th Q. In your opinion the County Court of Albemarle County has jurisdiction both of the subject-matter and the parties?

(By Mr. Choate: Objected to as calling for conclusion.)

A. In my opinion it had jurisdiction.

46th Q. It is also alleged in said answer filed in this present case that no process or notice of said Albemarle County, Virginia, Proceedings, at any stage thereof was ever issued or served, and no such process or notice was ever served upon the said plaintiff, John Armstrong Chaloner, or upon Prescott Hall Butler, who it alleges was then a citizen of New York, and of the City and County of New York, either individually, or as Committee of the person and property of the plaintiff, John Armstrong Chaloner, or upon this defendant, meaning Thomas T. Sherman, either individually or as Committee of the person and property of the said plaintiff, meaning John Armstrong Chaloner, or upon any of the

heirs-at-law or next of kin of the said John Armstrong Chaloner, and that no heirs-at-law or next of kin of the said John Armstrong Chaloner, and neither the said Prescott Hall Butler, nor the defendant, Thomas T. Sherman, ever appeared in said Proceeding, either individually or as Committee as aforesaid, in person, or by attorney or counsel; what have you to say about this?

A. Under the Statute under which this Proceeding was instituted there *is no provision*, and *was no provision* for giving notice to any person, except the party suspected of being insane, and in investigations under the section of the Statute which I have recited, and under investigations before Justices touching the sanity of a person, there is no law requiring notice to be given to the next of kin or the parties holding the estate of the party suspected, or any part thereof.

47th Q. Under the Law in Virginia, then, it is not necessary to give notice to any one except the alleged incompetent person, is that the effect of your answer?

A. Yes, sir.

48th Q. In this case, in your opinion, is it material whether notice was given to the plaintiff, John Armstrong Chaloner, or not, since he appeared in Court at the hearing in the Albemarle County Proceedings, in person and by attorney on the date of the hearing of the matters at issue?

A. It is not material. *I will add that his appearance in Court was evidence of the fact that he had notice.*

49th Q. And was or not that sufficient?

A. That was sufficient.

50th Q. Was the order or decree entered in the Albemarle County, Virginia, Proceedings on November 6, 1901, inquiring into the sanity of John Armstrong Chal-

oner, a final order or decree on the merits of the issue then and there in controversy?

A. I now so regard it.

51st Q. Do you now so regard it?

A. I now so regard it.

52nd Q. Has said order or decree since been appealed from, annulled, set aside, vacated, reversed or in any particular modified or changed?

A. Not that I have ever heard of, and I would have known of any such appeal, modification or change.

53rd Q. Is said order or decree still in full force and effect as rendered?

A. It is.

PROCEEDINGS OF 1901 POSTPONED AT REQUEST OF REPRESENTATIVE OF OTHER SIDE.

Testimony Capt. Micajah Woods, 213-218.

54th Q. As I understand, the said Albemarle County, Virginia, Proceedings were instituted on the 20th day of September, 1901, was there any continuance at the request of any one representing John Armstrong Chaloner's relatives, or his then alleged Committee?

(By Mr. Choate: I object to that as leading, as calling for a conclusion of the witness on a matter of fact.)

A. My recollection is that a *member of this bar, Mr. John B. Moon*, who was *then thought to represent the New York Committee of Mr. Chaloner, requested that the matter of the investigation might be laid over and not gone into at the October Court.*

55th Q. What did Mr. Moon say to you when he called on you at the time you have just referred to?

(By Mr. Choate: I object to that as calling for hearsay and as immaterial.)

A. I do not remember exactly what Mr. Moon said. My *recollection is that he told me in general terms that he had been approached in some way by the New York Committee to look after these Proceedings in Virginia*, an dthat he *wished time to confer with the Committee*. I don't remember that he told me directly that he had been engaged as counsel, *but as a matter of courtesy to Mr. Moon, the investigation was laid over for a month.*

56th Q. When Mr. Moon called to see you with reference to this continuance, whom did he purport to represent, if any one?

(By Mr. Choate: I object to that as calling for a conclusion and as leading.)

A. My recollection is not distinct as to the parties or party that Mr. Moon represented, according to his statement. *I got the impression from what he said that he had been requested by the New York Committee to watch the Proceeding in Virginia in behalf of the Committee and in behalf of Mr. Chaloner's family.*

57th Q. Who is Mr. John B. Moon?

A. He is an attorney-at-law in this city.

58th Q. Was he an attorney-at-law and practicing attorney at that time?

A. He was.

59th Q. In what capacity was he representing the Committee or the members of Mr. Chaloner's family, if at all?

(By Mr. Choate: I object to that as calling for a conclusion, also as incompetent, the witness having said that he did not remember anything clearly more than he stated.)

A. I don't remember to what extent he said he represented these parties; I could not state *after this lapse of time* whether Mr. Moon stated to me *specifically* how or to what extent he represented the parties above referred to. His statements to me led me to believe that in a general way *he was requested to look after the Virginia Proceedings in behalf of the New York Committee and Mr. Chaloner's family*, but to what extent or how employed I do not know, and did not know then.

60th Q. Do you recognize this as your handwriting and the envelope in which you returned the letter you identified in the first part of your testimony as the letter you received from Mr. Chaloner in October, 1897?

(Counsel hands envelope to the witness, who examines it.)

A. The address on this envelope is certainly in my handwriting, but I cannot say with absolute certainty what I may have sent in this envelope.

(Counsel for Plaintiff: I now file this envelope and offer the same in evidence in this case, marked "Plaintiff's Exhibit M.")

(By Counsel for Plaintiff: We offer in evidence what purports to be a certified and exemplified copy of the Petition of Cary Ruffin Randolph, Petitioner, against John Armstrong Chaloner, Respondent, submitted to the County Court of Albemarle County, Virginia, to the

Hon. John M. White, Judge of said Court, and the Proceedings annexed thereto and testimony of witnesses sworn and examined under the examination conducted under said Petition and purporting to be a complete record of the examination taken on that occasion.)

61st Q. Captain Woods, is that a true copy of the Petition of Mr. C. Ruffin Randolph, and of which you have been speaking here in your testimony?

(By Mr. Choate: I concede that it is a true copy of the Petition.)

62nd Q. Is this Proceeding here shown, and marked "Plaintiff's Exhibit L," the Proceeding in Albemarle County, Virginia, in 1901, in the month of November, concerning which you have just testified?

(Note—It is conceded on the record that it is.)

63rd Q. I read you, Mr. Woods, a statement which appears on the record to have been made by you as follows:

> "Hon. Micajah Woods made the following statement to the Court: I desire to present to the Court, with a view of their qualification, my two friends, the Hon. Armistead C. Gordon and Frederick Harper. He then further stated: We desire to present to the Court the following Petition, Exhibit (A). Your Honour is aware that this Petition was prepared and it was expected that it would be filed at the last term of the Court, but owing to suggestions made, *and especially the suggestion made by Counsel for Committee of Mr. Chaloner*, the Petition was not

filed at the last Court but it was understood that it would be heard today, and we are here today to have the matter investigated. * * *"

To whom did you refer when you used the expression "Counsel for Committee of Mr. Chaloner?"

(By Mr. Choate: I object to this on the ground that this is cross-examination of the plaintiff's own witness, and as leading.)

A. *I refer to Mr. John B. Moon.*

64th Q. After refreshing your recollection by reading this extract, are you now prepared to say whether at that time you considered Mr. John B. Moon counsel for the Committee of Mr. Chaloner, in New York?

(By Mr. Choate: I object to that as calling for the conclusion of the witness on a matter of fact; also as leading.)

A. My recollection is that in deference to the request made by Mr. Moon, no Proceedings were had at the October Court, 1901. *I do not know whether Mr. Moon was counsel for the New York Committee, or for Mr. Chaloner's family when the case was called in November*, 1901, *for investigation.*

65th Q. *You treated him as such, did you not, in granting the adjournment?*

(By Mr. Choate: I object to that as immaterial and as leading.)

A. It is proper to state that Mr. Moon did not take part as counsel for anyone in the investigation before

the County Court in November, 1901, *and I do not know whether he was then employed as counsel or not.*

Cross-Examination.

1st Q. By Counsel for Defendant: No notice was in fact given the then plaintiff of the pendency of the Albemarle County Proceedings in 1901, was there?

A. So far as I know, none was.

2nd Q. And no representative of the Committee appeared upon the hearing of the case in November, 1901?

A. No, sir. And further this deponent saith not.

* * * * * * *

We have heretofore taken up allegations upon the part of the alienists in the employ of the Chanler family. The next in order, after those of said Dr. Samuel B. Lyon, Medical Superintendent of "Bloomingdale," are those of Dr. Austin Flint, Sr.,—since deceased—and Dr. Carlos F. Macdonald.

We respectfully submit that the most celebrated case in which said two Medical gentlemen were employed—and then as now for the prosecution—was that of the *People of New York against H. K. Thaw.*

To the bitter end said Medical gentlemen maintained under oath and—highly paid testimony at that—that said H. K. Thaw was a dangerous paranoiac and hopelessly insane. The first time said Thaw got a chance to appear before a Lunacy Commission outside the State of New York—namely, in New Hampshire—said Thaw was found by a commission fully as learned—fully as eminent professionally as any said Thaw faced in any of his various trials in the State of New York—sane and safe.

Later on said Thaw was also found so, in his trial before the learned Mr. Justice Hendricks of the New

York Supreme Court and an advisory Jury. Since said finding nothing has occurred to indicate that the said finding—together with said New Hampshire finding aforesaid—was not and were not correct; though had in the teeth of the bitterest opposition upon the part of said Doctors Flint and Macdonald.

Mr. Justice Hendricks' charge to the jury in the Thaw case specifically stated that the jury was *to disregard the claim of Dr. Austin Flint, Sr., "that the question of Thaw's sanity could only be decided by alienists."*

This, we respectfully submit, *supports our contention in our said law book*, "The Lunacy Law of the World;" which was in turn supported by the *Lancaster Law Review*, aforesaid, as follows: "In setting forth the importance of allowing the alleged lunatic an opportunity to appear, the author says: "*The test of sanity is a mental test, wholly within the power of the accused to accomplish, and without any witnesses, professional or lay, to back him up.* Suppose two paid experts in insanity, in the pay of the other side, swear that the defendant cannot tell what his past history has been—that said defendant's mind is a total blank upon the subject. Would that professional and paid and interested oath stand against the defendant's refutation thereof by taking the stand and promptly and lucidly giving his past history, provided he were afforded his legal privilege of taking the stand in place of being kept away from Court and having to allow his liberty and property to be perjured away from him in his enforced absence?' (p. 217)."

After the jury had brought in a verdict of sanity, the learned Justice went on to say, that he based his decisions that Thaw was sane on his own judgment: "fortified by the advice of a very intelligent jury." Mr. Justice Hendricks then observed, "We have had men here from New Hampshire, *not Alienists but men of*

large experience, who know the difference between a sane and insane man. We have had women here of undoubted high repute, who also testified that this man is sane. The testimony of these people impressed me very much.

"We have been told by one Alienist (Dr. Austin Flint, Sr.) that it was impossible for a layman to determine whether or not a man has paranoia; that only an Alienist could determine that.

"*I want to say here a word about Alienists in our Courts—that it is fast becoming a scandal. If this Court and jury are to depend upon the opinion of Alienists who have made it their business for years for pay to render what they term expert testimony, I want to say that opinion to me has no value.*

"The idea that a Doctor of repute should interview witnesses and publish his opinion in the public prints and help in the preparation of a case and then go on the witness stand is a state of affairs that must be remedied.

"*If the Medical Profession does not cure this evil, I hope the Legislature soon will.*

"I have adopted the verdict of the jury, and it is the opinion of this Court that Harry K. Thaw is sane."

We respectfully submit that the remarks from the bench upon the part of the learned Judge Hendricks, *supra*—are as pertinent to the action of said Doctors Flint and Macdonald in taking pay from the hostile Chanler family in order to swear plaintiff-in-error into a living death for life, as said apposite and profound remarks of the aforesaid trial Judge have—tested by time—and said Thaw's perfectly normal, proper and law-abiding conduct since said trial before Judge Hendricks—been proved to be in the aforesaid instance.

Said allegations—upon the part of said Doctors Flint and Macdonald—are indexed in Appendix, "Index of Exhibits," p. 855, as follows, to wit: "Exhibit G, Examination of Testimony of Doctors Flint and Macdonald," pp. 728-769.

In view of the criticisms of said five leading Law Reviews upon said law book by plaintiff-in-error; supported by the serried array of leading newspaper criticisms on both sides of the Atlantic upon plaintiff-in-error's literary work since publishing said law book; and also supported, we respectfully submit, by the following criticisms of plaintiff-in-error's literary work before—the year before—publishing said law book; namely, those of the New York *World*, the Raleigh, N. C., *News and Observer*, and the Richmond, Va., *Evening Journal;* upon plaintiff-in-error's satirical History of the seamy—but highly gilded side of the New York "Four Hundred" and their Legal, Medical, and Financial led-captains, toad eaters and parasites; entitled "*Four Years Behind the Bars of 'Bloomingdale' Or the Bankruptcy of Law in New York*" indexed p. 851 in Appendix as follows: Criticisms of *Four Years Behind the Bars of "Bloomingdale,"* 190-199: we respectfully submit that it is difficult to peruse the following climax and grand *finale* of the allegations of said Messrs. Flint and Macdonald, without a smile. Said excerpts, found on pages 747-748 of said "Exhibit G."—to wit: Dr. Carlos F. Macdonald on the stand. A. "Yes, sir; and it presents all the ear marks of typical paranoia. In the physical and mental condition there is no symptom lacking to make it a perfectly typical case of paranoia. If one wanted a case for teaching or describing a case in a text-book, you could not describe it more graphically than simply taking this case as it presents itself. *It is the most striking case of paranoia that I have ever seen in my life. I should say that Mr. Chanler is the*

most typical classical case of paranoia that I have ever seen. I have seen *thousands* of them." Affidavit, May 5, 1899, of Dr. Carlos F. Macdonald, "Deponent further says—*that the said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.*"

And the late Dr. Austin Flint, Sr., is good enough to say—p. 748, *ibid.*—said Dr. Flint on the stand—Q. "And from what form of insanity is he now suffering? A. He is a *typical case* of what is known as *paranoia,* or chronic delusional insanity. Q. In your opinion, Doctor, is that progressive and incurable? A. *It is incurable and progressive and will finally terminate in dementia.* If I may be allowed to say those cases frequently live for a very much longer time, quite different from paresis. Q. In your judgment, is Mr. Chanler now capable of taking care of his estate and person? A. No, sir; he is not. Q. Is his physical condition all outlined with that form (paranoia)? A. *Nothing could be more typical of that form of the disease.* It is an *absolutely typical case* (of paranoia) from *every* point of view."

Owing to the fact that plaintiff-in-error received peremptory orders from the learned Judge Hand of the Federal District Court for the Southern District of New York that his Deposition then in progress at Charlottesville must be immediately terminated or the case of *Chaloner against Sherman* would be sent to the foot of the calendar—said orders being received in January, 1912—plaintiff-in-error was not quite able to take up *all* of the allegations of said Dr. Carlos F. Macdonald, in the above excerpt. We respectfully submit that the evidence above given shows that this was owing entirely to lack of time to reach each and every allegation of said Dr. Macdonald and emphatically *not* to disinclination so to do.

Which assertion, we respectfully submit, is fully substantiated by the fact that many of the allegations against plaintiff-in-error's sanity—touched upon from another angle—so to speak—are indexed in Appendix, as follows: To wit: "Testimony of Drs. Flint and Macdonald disproved by plaintiff-in-error," pp. 532-547. We respectfully submit that we have unmasked the chicanery, deceit, malice and ignorance displayed by Doctors Carlos F. Macdonald and Austin Flint, Sr., in their aspersions upon the competency and sanity of plaintiff-in-error—in the above.

Continuing the learned counsel for defendant-in-error says, p. 16 of said brief:

"The above reasoning appears to cover all the special assignments of error which require any notice. A number of other questions were, however, discussed at the trial, and to meet the possibility that discussion in regard to them may lurk undetected by us, somewhere concealed in the vast bulk of the plaintiff-in-error's brief, we feel that we should add a brief discussion of each. Most of these which we haven't specifically discussed attack only remarks and expressions of opinion by the Court (Trial Court) which were not in any true sense rulings. On such utterances error cannot be assigned (*Gibson* v. *Luther,* 196 Fed. 203.)" We venture to say that in said twenty-odd "The Parallels;" covering twenty-odd assignments, *no attack* that we have made upon a ruling—direct or indirect—of the Trial Judge *has been unsupported by a ruling directly in point, and in our favor, by* 162 Fed. Rep. 19, the learned United States Court of Appeals for the Second Circuit—Justices Lacombe, Coxe and Noyes sitting.

Continuing, the learned counsel for defendant-in-error says under Point VI, p. 16 of said brief before the Circuit Court of Appeals:

POINT

VI.

"THE LAW UNDER WHICH THE 1899 PROCEEDINGS WERE CONDUCTED IS NOT UNCONSTITUTIONAL FOR LACK OF ANY REQUIREMENT THAT NOTICE BE GIVEN TO THE ALLEGED LUNATIC."

This is an attempt to make Constitutional a Statute which is defective and unconstitutional if considered by itself. The attempt is made to bolster up this Statute by saying that general principles of Law require notice.

Our position is, we respectfully submit, that the question of the Constitutionality of the Statute must be determined by a consideration of its *own contents*, and *not* by reading into the Statute something which is not there. Supported by Earl, J., in *Stuart* v. *Palmer*, 74 N. Y., *infra*. "The Constitutional validity of Law is to be tested, *not* by what *has* been done under it, but by what *may*, by its authority, be done."

As the Statute under consideration is one which relates to a particular Proceeding, and defines the procedure, we must assume that the Legislature of the State of New York, in enacting the Statute, intended to require nothing more in the way of procedure than is specified in the Statute, and intended that the Lunacy Proceedings provided for in the Statute should be valid and binding if conducted in strict accordance with the Statute; and without any formalities not therein specified.

Considering the Statute in this light, *and finding that it omits any provision for notice* to the alleged lunatic, it is unconstitutional.

In the case of *People, ex rel, Maurice J. Sullivan, Re-*

lator v. *John G. Wendel and Mary E. A. Wendel, Respondents*, 33 Misc., 496 (Supreme Court, Kings, Special Term, December, 1900).

Marean, J., said:

> "She had no notice of the application, either personal or by substituted service on some person in her behalf, and there was no hearing at which she was either present or represented by any other person. She had been finally adjudged insane and committed to perpetual restraint, without notice or hearing. She is deprived of her liberty, therefore, without due process of law (*People ex rel Ordway* v. *St. Saviour's Sanitarium*, 34 App. Div. 363). The *Insanity Law*, so far as it permits this *is in violation of the Constitution.*
>
> "She is discharged."

In the case of *The People ex rel. Elizabeth Ordway* v. *St. Saviour Asylum*, 34 App. Div. (N. Y.), 363, this very question was squarely presented and passed upon.

Elizabeth Ordway, by agreement with her family, and friends, permitted herself to be committed to St. Saviour's Asylum for one year for the purpose of treatment. Pursuant to that agreement Proceedings were had under the Statute of New York and she was committed to that institution by the Court for the period of one year, unless sooner discharged by the Trustees of the Asylum. *There was no notice of the Proceedings served on her.* She, *however*, was fully *cognizant of the Proceedings*, which were *had with her consent and permission*, and, pursuant to the Commitment order, she was received in the Asylum. Sometime thereafter, she desired her freedom, and, the Trustees refusing to discharge her,

she sued out a writ of *habeas corpus*. The return of the Trustees showed the records of the Proceedings under which she was committed and placed in their custody. Counsel for Miss Ordway demurred to the return, and argued that the *Proceedings were void as being in contravention of the Constitutional provision requiring due process of Law*, and the Court sustained the demurrer, holding the Proceedings void.

Among other things, the Court said:

> "Acts of the Legislature which go beyond the allowance of temporary confinement or restraint, until trial or hearing may be had, and the accused have his day in Court in some way customary or adequate to enable him to present his case, are invalid exercise of legislative power. * * * *It surely cannot be said that the procedure authorized by the acts under which this relator was committed and which created the wrong, is due process of law simply because the Legislature chose to authorize that procedure.*"

In the case of *Sidney H. Stuart, Jr., Appellant* v. *George W. Palmer, as Collector, etc., et al, Respondents,* 74 N. Y., 183 (May, 1878).

Earle, J., held:

> "I am of the opinion that the Constitution sanctions no law imposing such an assessment, without a notice to and a hearing or an opportunity of a hearing by the owners of the property to be assessed. It is *not enough* that the owners may *by chance* have notice or that they may *as a matter of favor*, have a hearing. The law *must require*

notice to them, and give them the *right* to a *hearing* and an *opportunity to be heard.* * * *

"The Constitutional validity of law is to be tested, *not* by what *has* been done under it, but by what *may,* by its authority be done. The Legislature may prescribe the kind of notice and the mode in which it shall be given, but it *cannot* dispense with *all notice.* * * *

"The Legislature can no more arbitrarily impose an assessment for which property may be taken and sold *than it can* render a *judgment against a person without a hearing.* It is a rule founded on the *first principles of natural justice older than written Constitutions,* that a citizen shall not be deprived of his life, liberty or property *without an opportunity to be heard in defense of his right,* and the Constitutional provision that no person shall be deprived of these 'without due process of law' has its *foundation* in this rule. This provision is the *most important guaranty of personal rights to be found in the Federal or State Constitutions.* It is a *limitation* upon *arbitrary power,* and is a *guaranty* against *arbitrary legislation. No citizen shall arbitrarily be deprived of his life, liberty or property. This the Legislature cannot do, nor authorize to be done.* * * *"

In the case of *Re* W. H. Lambert (Cal.), 55 L. R. A., 856.

Harrison, J., said:

"An examination of the foregoing provisions of the Statute shows that there is no provision for the giving to the alleged insane person any notice of the Proceedings against him, and that under

its provisions the first intimation that he may have thereof may be when the Sheriff takes him into his custody under the Order of Commitment. The person making the application for the Commitment is not required to give any notice thereof, nor is there any requirement that he shall be informed of the object for which the physicians are examining him." * * *

"The Statute thus clearly provides that the Proceedings before the Judge in a case like the present may be entirely *ex parte*, and that he may be satisfied that the alleged insane person is insane by *merely examining the certificate and petition.* He may issue the Order of Commitment upon the opinion of the two Examiners, without any examination by himself of the person sought to be committed, *or of the Examiners who have made the certificate*, and without *any knowledge* of the *facts* or *testimony upon which they have made their certificates.* In thus acting upon these documents, he takes as the basis of his action the *opinion* of the examiners ascertained as before shown, that the individual is insane. *The opinions of practitioners of medicine, however, upon the question of insanity, are not always uniform or infallible, especially if such opinion is formed ex parte, or without an opportunity for a full investigation of the charge.* The *mere certificate* of an *opinion* thus obtained *ought not* to be a sufficient warrant for an order for the Commitment of a person in an *Insane Asylum.* There should at least be the *semblance* of a *judicial investigation,* of which a *public record can be preserved, before* a person can be *deprived of his liberty.* * * *

* * * * * * * *

"What constitutes due process of law may not be readily formulated in a definition of universal application, but it includes in all cases the *right* of the person to such *notice* of the claim as is appropriate to the proceedings and adapted to the nature of the cause, and the *right to be heard before* an order for judgment in the Proceedings *can be made* by which he will be *deprived of his life, liberty or property.* The *Constitutional guaranty* that he shall not be deprived of his liberty without *due process of law,* is *violated whenever* such judgment is had *without giving him an opportunity to be heard in defense of the charge,* and upon such hearing to offer evidence in support of his defense. If his right to a hearing depends upon the *will* or *caprice* of *others* or upon the *discretion* or the *will* of the Judge who is to make a decision upon the issue, he is *not protected in his Constitutional rights.* (*Underwood* v. *People*, 32 Mich., 1, 20 Am. Rep., 633). * * *

"* * * The question to be determined is not whether the action of the Judge in investigating the insanity of the petitioner was conducted under the forms of law, and with proper regard for his rights, but *whether the Judge had the right to enter upon the investigation, or take any action whatever in reference to his sanity.* * * *

"Under the foregoing consideration, it *must be held* that the Insanity Law of 1896, to the extent that it authorizes the confinement of a person to an insane asylum *without giving him notice,* and *an opportunity to be heard* upon the charge against him, *is unconstitutional,* and that the Proceedings by which the petitioner is held by the respondent are invalid.

"It is ordered that the petitioner be released from the asylum."

It thus appears from the foregoing authorities that, in order that a State Statute prescribing procedure in lunacy cases may be Constitutional, under the due process of law provisions of the State and Federal Constitutions, it is *absolutely necessary* that the Statute shall have embodied within it a *positive requirement* that *notice* of the Proceedings be given to the alleged lunatic, and that he be given an *opportunity* to be heard. It is not enough to save a Statute from condemnation on the ground of unconstitutionality, to say that the general unwritten law of procedure in the Courts of a State requires that notice be given, or to say that the *Judge*, in the order appointing the Commission, and authorizing the empaneling of a Jury to try the issue before the Commission, has, in that order *required* that notice be given. Supported by Earl, J., *supra*. *It is not a question of the Constitutionality of the Judge's order which is under consideration here, but the question of the Constitutionality of the Statute.* Supported by Harrison, J., in *Re* W. H. Lambert (Cal.) 55 L. R. A., *supra:* "If his right to a hearing depends upon the *will* or *caprice* of *others* or upon the *discretion* or the *will* of the *Judge* who is to make a decision upon the issue, he is *not protected in his Constitutional rights.*" That Statute contains *no provision requiring notice*, and can *only be read* as *having been intended* by the Legislature of the State of New York as *authorizing the institution and prosecution* to *final judgment of the Lunacy Proceedings* which would deprive the alleged lunatic of his liberty, without notice.

In interpreting an ambiguous Statute the rule is—we respectfully submit—to compare same with some Statute, which is less ambiguous on or near the same subject.

Applying the above rule in the present instance we have a clear cut declaration upon the part of the Legislature of New York that it does not approve of notice in Lunacy Proceedings, does not want the alleged lunatic to have notice of the Proceedings against him, and in its laws of 1896 *in re* Lunacy Procedure has emphatically stated —tho' with great finesse—as tho' it knew it were doing an unconstitutional thing and wished to so cloak, hide and gloss over its said act that no one but a lawyer and a penetrating one at that, could pierce the said cloak— said Legislature has emphatically stated that it disapproved of notice to the alleged lunatic in the following form signed by the learned Judge Henry A. Gildersleeve in the Commitment Papers (Transcript of Record, p. 110, fol. 215), "I do hereby certify that I have dispensed with personal service or that I have directed substituted service *as provided by law.*"

One would naturally presume from reading the above that if personal service was dispensed with substituted service *must* be directed *"as provided by law." But nothing of the sort is the case.* The unfortunate plaintiff-in-error was duly *deprived* of personal service *and*—not the false and misleading *"or"* of this crafty and sinister Statute—*"as provided by law."*

There can, therefore, be no possible shadow of a doubt about the views and attitude of the Legislature of the State of New York—on the strength of the aforesaid exhibition of Legislative craft and guile in the interests of the Amalgamated Private Mad-houses honeycombing the "Empire State" of the largest and most ancient and most pretentious of which the head of the firm of Evarts, Choate and Sherman is or until recently at all events was a distinguished pillar and support as a member of the "Board of Governors."

Lastly, all possible doubt upon this topic is forever

swept away by the forceful and eloquent words of the learned counsel for defendant-in-error, p. 17, Point VII of his said brief. To-wit. "The Proceeding (1897 Commitment) was in full and exact accordance with the Insanity Law of New York which permits a commitment without notice." We respectfully submit that we lay especial stress upon the fact that the Commitment Proceedings of plaintiff-in-error were *final* Proceedings—contained a *final Indictment* against plaintiff-in-error's sanity. The proof of the above lying in the fact that plaintiff-in-error lay in "Bloomingdale" for over *two* calendar years before Proceedings before a Sheriff's Jury and Commission-in-Lunacy were instituted. And it should be borne in mind, we respectfully submit, that the only earthly reason said Proceedings were then at said time over two calendar years after Commitment Proceedings were had was the convenience and interest of the Chanler family and their friends and allies. This is exhaustively gone into in this Brief, *supra*, and in support of our said contention said Winthrop Astor Chanler states under cross-examination in his Deposition *de bene esse* (p. —, fol. —), *supra*, that said 1899 Sheriff's Jury Proceedings were brought as a convenience to said Stanford White who had apparently grown tired of his self-sought post of Power of Attorney for plaintiff-in-error—now that his object was accomplished and plaintiff-in-error immured apparently for life in the cells of "Bloomingdale"—and asked to be awarded for his honorable services by being relieved. Whereupon said P. H. Butler, said White's brother-in-law, was appointed at the said 1899 Proceedings.

The Legislature of New York having defied the Common Law which calls in stentorian tones for notice and opportunity to be heard—as well as *any other* known and recognized law or practice—in its above said sinister and

wicked Statute will not be construed—by a Court of Justice as blowing hot and cold—as setting *all* law and *all* legal practice of whatever shade or colour at defiance in its Statute relative to Commitment Proceedings aforesaid, and then *relying* upon any law or any practice aforesaid to cure the defects in its Statute relative to Proceedings before a Commission-in-Lunacy and Sheriff's Jury. It has made its bed—has said Legislature, we respectfully submit, and therefore *must* lie in it.

Such Statutes have been condemned in the cases before quoted, and those decisions are clearly right.

Such a Statute was condemned, and in strong terms, by that great New York Judge—the late Chief Judge Rapallo—of the New York Court of Appeals in *Ferguson* v. *Crawford*, 70 N. Y., *infra*—In which the learned Chief Judge said: "He is sought to be held bound by a judgment when he was never personally summoned or had notice of the Proceedings, *which result has been frequently declared to be contrary to the first principles of justice.*"

Section 2323-a of the Code of Civil Procedure is the only Section in the entire title dealing with this subject which requires notice to the alleged lunatic, and that Section is expressly limited to cases

> "where an incompetent person has been committed to a State Institution in any manner provided by law and is an inmate thereof."

That Section was added to the title in question by the Act of the Legislature of 1895, and the limitation was emphasized by the title of the Act of the Legislature of 1904, amending that Section, which title is—

"An Act to amend section twenty-three hundred and

> twenty-three-a of the Code of Civil Procedure relating to the appointment of Committees for incompetent persons who are inmates of State Institutions." Laws of New York, 127th Session, 1904, Vol. 2, p. 1278.

The 1899 Proceedings, in which Prescott Hall Butler was appointed, was not instituted and conducted under Section 2323-a, and could not have been so instituted and conducted because it was not a case

> "where an incompetent person has been committed to a State Institution in any manner provided by law and is an inmate thereof."

It was instituted and conducted under the provisions of Section 2325, in which there is no mention of notice to the alleged incompetent.

When the Legislature in 1895 amended the title of the Code of Civil Procedure covering the appointment of committees for incompetent persons, it added Section 2323-a in its entirety, and provided that notice must be given to an incompetent person who was an inmate of a State Institution of a petition for the appointment of a Committee. Section 2325 was already in that title and did not provide for such notice. We respectfully insist, therefore, that the Legislature *clearly intended to authorize the institution and prosecution of petitions for Committees for alleged lunatics without notice in all cases not covered by the new Section*, 2323-*a*, then added to the law. This being so, there is no foundation for the contention made in behalf of the defendant-in-error that the deficiency of the Statute in the matter of notice may be supplied by the Chancery practice existing before the Code was enacted.

Supported by what we have set forth in support of our contention, *supra*, p. 5: "That Statute contains no provision *requiring notice*." In closing our discussion of this Point VI of the learned counsel for defendant-in-error, we might observe that the highest Court in the State of New York has passed upon the question of opportunity to appear and be heard in any legal Proceedings—which of course includes *ipso facto* notice of said Proceedings. For the learned Counsel for defendant-in-error so assures us in Point V of his said brief. Namely that the New York Court of Appeals has decided in *Happy* versus *Mosher*, 48 New York, 313, that opportunity to be heard must not be "impracticable."

Said learned counsel says, p. 14 of his brief: "The Court of Appeals of New York has held in *Happy* v. *Mosher*, 48 *N. Y.*, 313, that a sufficient opportunity to be heard was afforded by Proceedings under a Statute which made the giving of an expensive bond a prerequisite to the right to defend. In deciding this case the Court said that opportunity to defend is not denied though made difficult *so long as* it is not *impracticable*."

The Legislature must be held, we respectfully submit, *to have intended to supplant the Chancery* practice referred to, and to have intended that the title containing Sections 2323-a and 2325 should be *complete* and that *no* formalities should be required in Proceedings for the appointment of Committees *not* contained therein. When so considered, the Statute is plainly unconstitutional, and the Proceedings had thereunder are void.

In the Court below it was said by the learned counsel for defendant-in-error that

> "The law under which the 1899 Proceedings were conducted is not unconstitutional for lack

of any requirement that notice be given to the alleged lunatic."

Counsel further stated that

"The contention at the trial was that, although the plaintiff-in-error had notice of every stage of the 1899 Proceedings, such notice was insufficient as not required by Statute. The notice was, however, required by law, and that is sufficient,"

and cited *Matter of Blewitt*, 131 N. Y., 541.

He further stated—

A.

"The requirement was (not) included in the particular Code Section (Sec. 2323) dealing with the subject, but the power of the Court over lunatics is mainly inherent and not derived from the Code. The Code regulates it in certain particulars. In all particulars not so regulated, Proceedings in Lunacy are governed by the Chancery practice existing before the Code was enacted. That practice required notice of the execution of the Commission,"

citing *Gridley* v. *College of St. Francis Xavier*, 137 N. Y., 327, and *Matter of Andrews*, 192 N. Y., 514.

Counsel further stated—

"Moreover, the Code Section under which the Proceeding is taken, provides that the Commission 'may contain such other directions with respect to the matter of executing the Commission as the Court directs to be inserted therein.' The

order for the Commission directed that previous notice of time and place of execution of the Commission be given to the plaintiff-in-error. It follows that the notice served upon the plaintiff-in-error was not a mere voluntary notification, but was a Proceeding required by law."

Sections 2323, 2325 and 2328 under which the Proceeding of 1899 was instituted and prosecuted, contain *no* provision that notice be given to the alleged lunatic. The only Section requiring such notice is Section 2323-a which is limited to cases "where an incompetent person has been committed to a State Institution in any manner provided by law and is an inmate thereof."

The "Bloomingdale" Asylum, which is a department of the New York Hospital, owned and maintained by the corporation, The Society of the New York Hospital, is not a State Institution within the meaning of Section 2323-a.

The cases cited by defendant-in-error do not sustain the propositions asserted by him upon their authority.

In *Matter of Blewitt*, 131 N. Y., 541, the Court, after discussing at some length the necessity for notice—pointing out that Section 2325 of the Code does not touch the question of the right of the alleged lunatic to have notice—discussed the distinction between cases in which notice to the lunatic should be given, and cases in which it need not be given; and, *after expressing the opinion* that the Proceeding then under consideration by the Court was *invalid*, for *want of notice* to the alleged lunatic, the *Court abandoned* the *question of notice entirely* and *upon other grounds affirmed the order appealed from, though* the appeal was *grounded* upon lack of notice, therefore *Matter of Blewitt* is not authority for the proposition that notice to the alleged lunatic is absolutely required by law.

Gridley v. College of St. Francis Xavier, 127 N. Y., 327, is *not* an authority for the proposition asserted by counsel for the defendant-in-error that

> "The power of the Court over lunatics is mainly inherent and not derived from the Code. The Code regulates it in certain particulars. In all particulars not so regulated, Proceedings in Lunacy are governed by the Chancery practice existing before the Code was enacted. That practice required notice of the execution of the Commission."

In the Court's opinion there is no reference to such matter.

Matter of Andrews, 192 N. Y., 514, involved the power of the Supreme Court of the State of New York to remove a Committee of the estate of a person adjudged insane and to appoint a new Committee, without notice; and it was sought to sustain the authority of the Court in this regard upon the broad ground that, in the exercise of its jurisdiction over lunatics, idiots, habitual drunkards, and persons of unsound mind generally, authority is in the Court, of its own motion, in the absence of Statute, to remove the Committee of the estate of a person who has been committed. *The Court, however, determined the question by reference to the several Sections of the Code of Civil Procedure relating to Committees of estates of lunatics, and not upon the ground asserted*, of general and inherent jurisdiction.

In considering counsel's statement that

> "Moreover, the Code Section under which the Proceeding is taken, provides that the Commis-

> sion may contain such other directions with respect to the matter of executing the Commission as the Court directs to be inserted therein."

the *whole* Section should be considered. It is as follows:

> "Section 2328. CONTENTS OF COMMISSION.—The Commission must direct the Commissioners to cause the Sheriff of the county specified therein to procure a Jury; and that they inquire by the Jury into the matters set forth in the Petition; and also into the value of the real and personal property of the person alleged to be incompetent, and the amount of his income. It may contain such other directions with respect to the subjects of the inquiry or the manner of executing the Commission, as the Court directs to be inserted therein."

This section *has no reference whatever* to the matter of process or notice. That matter is covered by the provisions of Section 2325. The function of the present Section (2328) is to give directions to the Commissioners as to what they shall do under the Commission *in the matter of procuring a Jury* and inquiring into the matters set forth in the Petition, and other related matters.

Furthermore. Our aforesaid contention is absolutely confirmed by the ruling of the learned Judge Woodward in *Matter of Osborn*, 74 A. D., cited by the learned counsel for defendant-in-error in his said brief. The learned Judge said, (Under Point VIII, in said learned counsel's brief): "This contemplates a continuance of the original Proceeding in which *all of the parties*

shall be permitted to be heard, and *not* an independent Proceeding where *all of the parties* may be *shut* out from participation."

Continuing, the learned counsel for defendant-in-error says, under Point VIII, p. 17, of said brief:

POINT

VIII.

"NO NOTICE OF THE APPLICATION FOR THE DEFENDANT-IN-ERROR'S APPOINTMENT IN 1901 IN PLACE OF PRESCOTT HALL BUTLER, DECEASED, WAS GIVEN, BUT NONE WAS REQUIRED."

> "No notice of the application for the defendant-in-error's appointment in 1901 in place of Prescott Hall Butler, deceased, was given, but none was required."

The foregoing proposition was advanced by the learned counsel for the defendant-in-error in the Court below. In support of this he states—

> "There is no Statutory requirement of notice in such a Proceeding, which is, of course, a mere substitution by the Court of one person for another as its officer. This it may always do at its discretion,"

citing *Matter of Griffin*, 5 Abb. Prac., (N. S.) 96; *Matter of Osborn*, 74 A. D., 113.

In *Matter of Griffin*, the question of *notice* was *neither involved* nor *mentioned*, in the *one-page report* of the case. It appears that the Petition was filed and a hearing had, but there is *not a word on the subject of notice,* and *why counsel cited this case, when notice is the subject of discussion, is more than we can comprehend.*

In *Matter of Osborn*, 74 A. D., 113.

Woodward, J., said:

> "It is true, by the provisions of Section 2339 of the Code of Civil Procedure, a Committee over the person of the property is subject to the direction and control of the Court by which he was appointed with respect to the execution of his duties; and that he may be suspended, removed, or allowed to resign, in the discretion of the Court, but this is a *judicial* discretion to be exercised in conformity with the rules and practice of the Courts, and *not capriciously and without a patient hearing* of all matters which legitimately bear upon the question. * * * The Code provides that in all subsequent Proceedings after the determination of the incompetency of the person, the lunatic, idiot, habitual drunkard, shall be designated 'an incompetent person.' *This contemplates* a continuance of the original Proceeding *in which all of the parties shall be permitted to be heard,* and *not* an independent Proceeding where *all of the parties may be shut out from participation.*"

This is not a ruling that no notice of an application to substitute one Committee for another need be given, but the precise and exact *opposite* thereof. To-wit: "This contemplates a *continuance* of the *original* Proceeding,

in which *all* of the parties shall be permitted to be heard, and *not* an *independent* Proceeding where *all* the parties may be *shut out* from participation."

Counsel for defendant-in-error further stated—

> "The change does not affect the substantial rights of the incompetent. If anyone is entitled to notice of such a change, it is not the incompetent who, as an adjudged incompetent, must be deemed incapable of receiving or acting upon such notice. In any event, failure to give notice of such change in no manner impairs or vitiates the jurisdiction of the Court,"

and cited *Matter of Andrews*, 192 N. Y., 514.

In *Matter of Andrews*, Willard Bradley, J., said:

> "The *parties* entitled to notice of the Proceeding for the appointment of a Committee *should have* notice of the Proceeding for his removal. * * *"

Notice to the plaintiff-in-error of the Proceeding for the appointment of Prescott Hall Butler was, we respectfully submit, absolutely *necessary*. Counsel of record in the original Proceeding, in which Butler was appointed, *recognized this* and *attempted* to give a legal notice, *although*, as we have heretofore pointed out, *the notice was illegal because the Statute under which the Proceeding was conducted did not provide for such a notice*. Therefore, the necessity of notice of the original Proceeding being conceded, *notice of the Petition to substitute defendant-in-error* in the place of Prescott Hall Butler *was necessary* under the rule *announced in Matter of Andrews, above quoted*.

YETTA SIMON, Plaintiff,

v.

JOHN N. CRAFT.

(*In extenso*, Appendix, p. 329.)

182 U. S. Supreme Court Reports, 427. Argued March 12th, 1901. Decided May 2nd, 1901.

Statement by Justice White. Writ of error to review judgment of Supreme Court of Alabama in favor of John N. Craft, which was entered by a lower State Tribunal upon a verdict rendered on the second trial of an action in ejectment wherein Yetta Simon was Plaintiff. Facts are as follows: In 1889 Plaintiff, a widow, resided in Mobile, Ala. She lived in and owned a house there, which is the real estate affected by the action of ejectment herein. January 30th, 1889, R. G. Richard, as a friend, filed in the Probate Court of Mobile County, a Petition for an inquisition of Lunacy as to Mrs. Simon, stating that she was 49, a resident of Mobile, of unsound mind and incapable of governing herself or of conducting and managing her affairs. Upon the Petition an order was entered for a hearing on February 6, 1889, and "that a Jury be drawn, as the Law directs, for the trial of this issue, and a writ was issued to the sheriff, requiring him to take the said Yetta Simon, so that he have her in Court to be presented at said trial, if consistent with the health and safety of said Simon." The writ was duly returned, with the following endorsement: "*Received January* 31*st*, 1889, *and on the same day I executed the within writ of arrest by taking into my custody the within named Yetta Simon and handing her a copy of said writ*, and as it is inconsistent with the health or safety of said Yetta Simon to have her

present at the place of trial, and on the advice of Dr. H. P. Herstfield, a physician whose certificate is hereto attached, she is not brought before the Honorable Court.

HOLCOMB, Sheriff."

Certificate of Dr. Herstfield.

To the Sheriff of Mobile County:

"I, H. P. Herstfield, a regular physician, practicing in Mobile County, Ala., hereby certify that I am acquainted with Mrs. Yetta Simon, and have examined her condition on yesterday and find that she is a person of unsound mind, and it would not be consistent with her health or safety to have her present in court in any matter now pending."

One Vaughan was appointed Guardian *ad litem* "in the matter of the Petition to inquire into her lunacy, and he filed an answer to the Petition of general denial and demanding strict proof according to law. Thereupon a hearing was had before a Jury, who returned a verdict that Mrs. Simon was of unsound mind and a decree to that effect was duly entered. Subsequently Richard was appointed guardian of the estate of Mrs. Simon, and by order of the Court a sale of real estate in question was ordered to pay debts of Mrs. Simon and for the support of her family. Sale made May, 1889, purchaser Henry J. Simon, who sold to John N. Craft, the defendant herein. In September, 1895, the within action in ejectment was instituted. Upon second trial Defendant Craft introduced Record of Proceedings of Probate Court upon the inquisition of lunacy, and the Record of Proceedings resulting in sale. Objections to introduction of such Records was made upon specified grounds (set forth hereafter). Objections were overruled and the Record al-

lowed to be read in evidence, to which action of the Court exception was duly taken. The approval of the Supreme Court of Alabama of this ruling is what is here complained of.

1st. In that there was no process issued notifying Yetta Simon to be present at the trial of the inquest of lunacy that was held.

2d. No provision made in or by said Proceedings whereby said Simon might be present at the inquest.

3d. In that writ of arrest for body of Yetta Simon was conditional in form and conferred upon the sheriff the power to determine whether it should be executed or not.

4th. In that said writ left it to judgment of sheriff (page 3) whether said Simon should be allowed to appear at inquest.

5th. In that said writ authorized the sheriff to restrain Yetta Simon of her liberty and deprive her of the opportunity to be heard at the inquest.

6th. In that the sheriff's return shows that under the writ of arrest he restrained Yetta Simon of her liberty and did not permit her to be present at the inquest.

7th. Because the Statute under which Yetta Simon was restrained of her liberty and deprived of her property is in conflict with Article 5 of the Amendments to the Constitution of the United States, which provides "Nor be deprived of life, liberty, or property without due process of Law" and in conflict with Article 14 of the Amendments to said Constitution.

"1a. In that it authorizes a citizen to be deprived of his or her liberty "without due process of Law."

2a. In that it authorizes a citizen to be deprived of his or her property "without due process of Law."

"8th. Because Proceedings in Probate Court are irrelevant and immaterial to any issue in the cause.

Opinion: White, Justice:

"In the Proceedings to inquire into the sanity of Mrs. Simon the writ which issued to the sheriff was evidently based upon the following clause of Section 2393 of the Civil Code of 1886: Section 2393. The Judge of Probate * * * must also issue a writ directed to the sheriff to take the person alleged to be of unsound mind, and if consistent with his health or safety, have him present at the place of trial. The invalidity of the Proceedings in the inquisition of lunacy which formed the basis of the Proceedings for sale of property is in substance, predicated on the contention that the writ directed to the sheriff authorized that official to determine whether it was consistent with the health and safety of Mrs. Simon to be present (page 4) at the trial; that the sheriff decided this question against her, and she was detained in custody and not allowed to be present at the inquest. This latter claim is founded upon the return endorsed by the sheriff on the writ directed to him. *At the trial below there was no offer to prove by any form of evidence that Mrs. Simon was in fact of sound mind when the Proceedings in Lunacy were instituted or that she desired to attend and was prevented from attending the hearing, or was refused opportunity to consult with and employ counsel to represent her.* The entire case is thus solely based on the inferences which are deduced, as stated, from the face of the return of the sheriff. And upon the assumptions thus made it is contended that the Statute, as well as the Proceedings thereunder, were violative of the clause of the 14th Amendment to the Constitution of the United States, which forbids depriving anyone of life, liberty, or property without due process of Law. It is not seriously questioned that the Alabama Statute pro-

vided that notice should be given to one proceeded against as being of unsound mind of the contemplated trial of the question of his or her sanity. *As a matter of fact, a copy of the writ containing notice of the date of the Hearing of the Proceedings in Lunacy is shown by the Record to have been served on Mrs. Simon.* As early as 1870, Superior Court Alabama, *Fore* v. *Fore*, 44 Ala. 478, 483, held that the service of the writ upon a supposed lunatic was the notice required by Statute and brought the Defendant into Court, and that if he failed to avail of such matters of defense as he might have, he must suffer the effect of his failure to do so.

The contention now urged is that notice imports an opportunity to defend, and that the return of the sheriff conclusively established that Mrs. Simon was taken into custody (page 5), and was hence prevented by the sheriff from attending the inquest or defending through counsel, if she wished to do so in consequence of the notice which she received. It seems, however, manifest, as it is fairly to be inferred the State Court interpreted the Statute, that the *purpose* in the command of the writ, "to take the person alleged to be of unsound mind, and if consistent with her health or safety, have her present at the place of trial," was to enforce the attendance of the alleged *non compos*, rather than to authorize a restraint upon the attendance of such person at the Hearing. In other words, that the detention authorized was simply such as would be necessary to enable the sheriff to perform the absolute duty imposed upon him by the Law of bringing the person before the Court, if, in the judgment of that officer, such person was in a fit condition to attend, and hence it can not be presumed, *in the absence of all proof or allegation to that effect*, that the sheriff in the discharge of his duty, after serving the writ upon the alleged lunatic, exerted his power

of detention for the purpose of preventing her attendance at the hearing, or of restraining her from availing herself of any and every opportunity to defend which she might desire to resort to, or which she was capable of exerting. *The essential elements of due process of Law are notice and opportunity to defend.* In determining whether such rights were denied, we are governed by the substance of things and not by mere form. *Louisville & N. R. Co.* v. *Schmidt*, 177 U. S. 230; 44 L. ed., 747, 20 Sup. Ct. Rep. 230. We can not, then, even on the assumption that Mrs. Simon was of sound mind and fit to attend the Hearing, hold that she was denied due process of Law by being refused an opportunity to defend, when, in fact, actual notice was served upon her of the Proceedings, and when, *as we* construe the Statute, if she had chosen to do so, she was at liberty to make such defense as she deemed advisable. (Page 6.) The view we take of the Statute was evidently the one adopted by the Judge of the Probate Court, where the Proceedings in Lunacy were heard, since that Court, upon the return of the sheriff, and the failure of the alleged lunatic to appear, either in person or by counsel, in order to protect her interests, entered an order appointing a guardian *ad litem* "in the matter of the Petition to inquire into her lunacy;" and an answer was filed by such guardian, denying all the matters and things stated and contained in the petition and requiring strict proof to be made thereof according to Law.

It is also urged as establishing the nullity of the appointment of a Guardian of the estate of Mrs. Simon, that the Proceedings failed to constitute due process of Law, because (1) they were special and Statutory, and the Petition failed to state sufficient jurisdictional facts; (2) a Jury was not impaneled as provided by

Law; and (3) there was no finding in the verdict of the Jury or the order entered thereon, ascertaining and determining all the facts claimed to be essential to confer jurisdiction to appoint a Guardian. But the due process clause of the 14th Amendment does not necessitate that the Proceedings in a State Court should be by a particular mode, but only that there shall be a regular course of Proceedings in which *notice is given* of the claim asserted, and *opportunity afforded to defend against it. Louisville & N. R. Co. v. Schmidt*, 177 U. S. 230, 236; 44 L. ed. 747, 750; 20 Sup. Ct. Rep. 230, and cases cited. *If the* essential requisites of *full notice* and an *opportunity to defend were present*, this Court will accept the interpretation given by the State Court as to the regularity, under the State Statute, of the practice pursued in the *particular case*. Tested by these principles we accept as conclusive the ruling of the Supreme Court of Alabama, that the Jury which passed on the issues in the Lunacy Proceedings was a lawful Jury; (page 7) that the Petition was in compliance with the Statute, and that the asserted omissions in the recitals in the verdict and order thereon were at best but mere irregularities which did not render void the order of the State Court appointing a Guardian of Mrs. Simon's estate.

Discussion of Simon *v.* Craft.

The case of *Yetta Simon, Plaintiff, v. John N. Craft,* 182 U. S. Supreme Court Reports 427, argued March 12, 1901, decided May 2, 1901, at first sight appears to bear a slight similarity to Plaintiff's case, but upon investigation it will be seen to be essentially different.

First. There is no hint of fraud alleged by the Plaintiff, Mrs. Simon, concerning the only Proceedings which

occurred in the matter of her lunacy. *Per contra*, Plaintiff not only hints at, but proves on the evidence—fraud, conspiracy, and perjury. *Fraud destroys everything, is a maxim of Law. Fraud changes the color of an apparently regular Proceedings into that of a highly irregular and illegal Proceedings.* The above is drawn attention to in the words of the learned Justice White as follows (page 333): "And hence it can not be presumed, in the absence of all proof or allegation to that effect, that the sheriff, in the discharge of this duty" (the arrest and detention of Mrs. Simon, "necessary to enable the sheriff to perform the absolute duty imposed upon him by Law of bringing the person before the Court"), "after serving the writ upon the alleged lunatic, exerted his power of detention for the purpose of preventing her attendance at the Hearing, or of restraining her from availing herself of any and every opportunity to defend which she might desire to resort to, or which she was capable of exerting." *Per contra*, as Mr. Rosenblatt says in his complaint in Plaintiff's case (Record, 6), "and during the pendency of the said Proceedings (before the Sheriff's Jury in 1899) in said Supreme Court of New York, this Plaintiff was at all times under duress of imprisonment and absolutely subject to the orders and control of said corporation (popularly known as 'Bloomingdale') or of its Superintendent, and at no time during the pendency of said Proceedings was the Plaintiff free to appear, either personally or by counsel before the said Supreme Court, or any officer or officers thereof, or any Commissioner, Commissioners, or Jury thereof without the consent and direction of the said Superintendent of said Asylum, except upon the order of said Supreme Court, and no such direction was given by said Superintendent, nor was any such order of said Supreme Court made or given by said

Supreme Court, and in and during the entire Proceedings this Plaintiff, with the knowledge, consent and cooperation of said Supreme Court, and its Judges, Commissioners or Agents, was forcibly, wrongfully, unlawfully and in violation and defiance of his Constitutional rights and privileges, deprived of the power and opportunity to act, write or speak freely, and to freely communicate or consult with counsel or to appear or attend before the said Supreme Court or before its Commissioners or Jury, or to confront the parties who had instituted and prosecuted the said Proceedings in said Supreme Court, and had therein charged the Plaintiff with lunacy and incompetency, or to ascertain the nature of the charges made against him, or to hear the testimony offered in support thereof or to cross-examine the witnesses hired and produced by the Petitioners therein to give such testimony."

Second. There was but one Proceeding in Mrs. Simon's case.

Per contra, there were two in plaintiff's. In Mrs. Simon's case the sole and only Proceeding was legal, in that it did not confine the Defendant for an indefinite period before a Jury Trial was had to examine into the question of Defendants' sanity. Mrs. Simon was taken into custody January 31st, 1889, in consonance with the Petition on which an order was entered for a Hearing on February 6th, 1889, before a Jury. Thereupon a Hearing was had before a jury. *Per contra*, in Plaintiff's case, Plaintiff was taken into custody upon a final Proceedings, which Proceedings upon their face recount, as Mr. Rosenblatt says in his Complaint (Rec. 7), "that said order of March 10, 1897, was made without notice to this Plaintiff, and without any opportunity given to him to oppose or contest the making thereof, and without permission to Plaintiff to appear before said Court

in person or by counsel, but on the contrary, said Supreme Court in and by said order of March 10, 1897, expressly directed that no notice be given to the plaintiff thereof or of the application therefor." Upon said illegal Proceedings Plaintiff was confined in duress of imprisonment at "Bloomingdale"—popularly so-called—from March 13th, 1897, the day of Plaintiff's arrest and incarceration therein until, more than two years later, the Proceedings before the Sheriff's Jury in 1899 were had. That said 1897 Proceedings were utterly illegal, unconstitutional, null and void we need go no further than said case of *Simon* v. *Craft* to prove; for therein the learned Justice says (page——): "The essential elements of due process of Law are notice and opportunity to defend." Both said "essential elements of due process of Law" are glaringly, are grievously lacking, upon the face of the said Court Record in said Proceedings of March 10, 1897.

Now let us examine the situation under which the Proceedings in 1899 before the Sheriff's Jury took place. We now reach a partial parallel with Mrs. Simon's case. Said second Proceedings in 1899 slightly correspond upon their face—*but upon their face only*—with those of Mrs. Simon before the Jury. In her case she was held by a public officer who had no motive in withholding from her the opportunity to appear and be heard in defense of her rights before the said Jury. She at no time alleges that said sheriff had any motive to so withhold her, *nor does she allege that he actually did.* It is, as the learned Justice says, mere inference, mere deduction devoid of proof or even allegation of foul play upon the part of said sheriff. Now let us examine Plaintiff's case. Plaintiff was held *not by a public officer who had no motive to withhold from him the opportunity to appear and be heard in defence of*

his rights, but, on the contrary, by the paid officers of a private corporation, popularly called "Bloomingdale," which said private corporation was, upon the above evidence, unlawfully mulcting Plaintiff of the sum of over five thousand dollars per annum for board and alleged Medical attendance, etc., and had so mulcted Plaintiff of the sum of over ten thousand dollars up to said time.* Moreover, Plaintiff had frequently warned said officers of said private corporation that he would, upon his case getting to Court, bring suit for heavy damages against said corporation for false imprisonment. The parallel between Plaintiff's case and Mrs. Simon's here, therefore, comes to an abrupt end. Moreover, *that the Petitioners*, who had placed Plaintiff in said Asylum in 1897, *had a motive* to keep him there and to continue through a third party—the falsely alleged Committee of Plaintiff's person and estate, to be appointed at said 1899 Proceedings—had a motive to continue the said mulct of Plaintiff's property by said Asylum *is proved* by the affidavit of said Egerton L. Winthrop, Jr., of said Petitioner's counsel, in said 1899 Proceedings in said Decretal Order filed June 23rd, 1899, in which he admits that the reason why his firm were compelled to conduct the said Proceedings "with great care and much attention" was *because Plaintiff had threatened to take legal steps to procure Plaintiff's release from imprisonment.* Why should Petitioners find it necessary to conduct said Proceedings with "*great care and much attention*," except for fear that Plaintiff should have an opportunity to actually have his day in Court and expose their conspiracy, fraud, and perjury, as Plaintiff is about to do now; that, in spite of said Petitioners, Plaintiff has achieved the possibility of a

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*Twenty thousand before his escape.

day in Court. Plaintiff was thus between two fires. Plaintiff was thus between the Petitioners, who had a motive to prevent his getting to Court for fear they would be shown up thereby, and Plaintiff was thus between the said officers of the said asylum, who, with their employers, had a two-fold motive to withold him from Court (a) lest the said more than five thousand dollars per annum mulct (page 5) should thereby cease and determine, (b) lest Plaintiff should bring and win a heavy damage suit against them for false imprisonment. A very different situation surely from that of Mrs. Simon between R. G. Richard, her Petitioner, against whom she at no time alleges foul play, and the said sheriff.

Third. In strong contrast to the action of the said New York Supreme Court and the said Commissioners and Jury, upon Plaintiff's non-appearance in person or by counsel at said Proceedings in 1899, the Court, in Mrs. Simon's case, "in order to protect her interests, entered an order appointing a guardian *ad litem*," in the matter of the Petition to inquire into her lunacy" (page 334), and moreover, the said learned Justice emphasizes the importance of the said citations by quoting them as above. No such Guardian was appointed by said New York Supreme Court nor by said Commissioners and Jury in Plaintiff's said partially parallel Proceedings in 1899. The parallel between Mrs. Simon's case and Plaintiff's here definitely comes to an end, for Mrs. Simon, by the said appointment of said Guardian *ad litem*, did appear by said Guardian *ad litem* before said Jury. Whereas Plaintiff having no such Guardian *ad litem appointed*, and not appearing personally, did *not* appear before said Commissioners and Jury. The opportunity which was afforded by the Court to Mrs. Simon to appear by counsel—by said Guardian *ad litem*—was em-

phatically not afforded Plaintiff. Plaintiff therefore did not, as Mrs. Simon did, have his Constitutional privilege of due process of Law to appear and be heard, or, in the learned Justice's words, "an opportunity to defend." That the said Guardian *ad litem*, the said Vaughn performed his duty honorably must be taken as proved since Mrs. Simon has at no time criticized his performance of said duty.

Lastly. The learned Justice says (page 332): "At the trial below" (and we may add at no subsequent period) "there was no offer to prove by any form of evidence that Mrs. Simon was, in fact, of sound mind when the Proceedings in Lunacy (page 6) were instituted, or that she desired to attend, and was prevented from attending the hearing, or was refused opportunity to consult with and employ counsel to represent her." How differently that sounds from the affidavit aforesaid of said Petitioners' counsel in said 1899 Proceedings, in which he admits that the reason why his firm were compelled to conduct the said Proceedings with "great care and much attention" was *because Plaintiff had threatened to take legal steps to procure his release from imprisonment.*

In conclusion. To quote the learned Justice (page 333): "As early as 1870 the Supreme Court of Alabama, *Fore* v. *Fore*, 44 Ala., 478, 483, held that the service of the writ upon a supposed lunatic was the notice required by Statute and brought the Defendant into Court, and that if he failed to avail himself of such matters of defense as he might have he must suffer the effect of his failure to do so." Such service was—*provided the Alabama Statute was the same in* 1870 *as in the Simon case*—while the party was under the custody of an impartial officer, presumably, to-wit, the sheriff, who, presumably, would have no motive to throw ob-

stacles in said party's way to prevent said party's appearance in person or by counsel in Court to defend himself. Upon the above hypothesis of fair play upon the part of the sheriff, said party would have as fair an opportunity to procure counsel or to be present in Court, or both, as an alleged criminal in the custody of the same sheriff had by law. Not so, however, in plaintiff's case, as shown above. The parallel between "the service of the writ" in Mrs. Simon's case and Plaintiff's falls to the ground, so soon as one examines the circumstances aforesaid. The Alabama Supreme Court knowing that, presumably, the sheriff would have no motive to prevent the party's access to counsel; no motive to open said party's letters; no motive to forbid said party's sending letters unopened and unread (page 7) by said sheriff, naturally presumed that, in the absence of charges of foul play, of course, said party was as good as brought into Court by "the service of the writ" if said party cared to go to Court. Not so, however, in Plaintiff's case where the writ was served when Plaintiff was in false imprisonment at the hands of parties whose rules were that no mail of any kind could leave the said Asylum without being previously read and *approved of* by the said officers of said private corporation, said "Bloomingdale," popularly so-called. In Alabama the service of the writ presumably *does* bring the Defendant into Court, as shown above. In New York, on the other hand, the service of the writ presumably does not, as shown above.

The only points made by Mrs. Simon's counsel which appear well made are points 2nd, 4th and 5th, but *said points* have no weight under the said circumstances, since, as has been said, the learned Justice pointed out that Mrs. Simon *never once hinted at foul play*, and foul play is what makes said points of interest.

Point 2d. "No provision made in or by said Proceed-

ings whereby said Simon might be present at the inquest."

Point 4th. "In that said writ left it to the judgment of sheriff whether said Simon should be allowed to appear at inquest."

Point 5th. "In that said writ authorized the sheriff to restrain Yetta Simon of her liberty and deprive her of the opportunity to be heard at the inquest."

Foul play is not only hinted, but proved in Plaintiff's case, and he hangs all his argument in his brief for notice, and opportunity to appear and be heard; and the intervention needed of a Jury before a person can be permanently deprived of liberty or property; and the illegality of trials *in absentia;* and that it is legally necessary to bring the person before the Jury, or that a Committee of the Jury view the person if the former is not possible, Plaintiff hangs all his arguments therefor (page 8) upon foul play in his special case, and plaintiff also brings authority to support his said contentions, and where necessary argument by analogy supporting Plaintiff's claim that the United States Constitution *implies* that the privileges of alleged lunatics are as carefully safeguarded as those of alleged criminals—and *are the same*—and must not be *abridged.*

If any further argument were needed to excuse the length of plaintiff's Brief, both in weight of authority and exhaustiveness of argument, it is furnished by the language of the learned Justice (page 333), which conclusively proves that said learned Justice has never had presented to him the possibilities of fraud and the temptation thereto, and the unconstitutionality of the permitting said possibilities of fraud and the temptation thereto to remain upon the Statute books of any State furnished by *abridging the privileges of alleged criminals where alleged lunatics are concerned*—possibilities

which transcend the powers of the imagination and require the hard light of fact to bring them before the mind of a tribunal. We quote. "The contention now urged is that notice imports an opportunity to defend." *This is undeniable.* But the lawyer for Mrs. Simon went astray in attempting to *infer*—in the absence of allegation of fraud by Mrs. Simon against anybody at any time—that because Mrs. Simon was taken by the sheriff into custody she "was hence prevented by the sheriff from attending the inquest or defending through counsel, if she wished to do so, in consequence of the notice which she received." It, of course, does not follow *ipso facto* that *because* the sheriff had her under arrest that he therefore prevented her from defending herself by counsel or from going to Court. Here is where the said lawyer went astray in his argument.

The learned Justice continues: "It seems, however manifest—as it is fairly to be inferred the State Court interpreted the Statute—that the purpose in the command of the (page 9) writ, 'to take the person alleged to be of unsound mind, and, if consistent with her health or safety, have her present at the place of trial,' was to enforce the attendance of the alleged *non compos*, rather than to authorize a restraint upon the attendance of such person at the Hearing." The above is undoubtedly "the purpose in the command of the writ," but, it may well be asked, *what is to prevent a dishonest sheriff from acting otherwise?** In a criminal case

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*It is not what *has* been done, or *ordinarily would* be done under a Statute, but what *might* be done under it that determines whether it infringes upon the Constitutional right of the citizen. The Constitution guards against the *chances* of infringement." *Bennett* v. *Davis*, 90 Me., 37 Atl. 865, cited in *Re* W. H. Lambert, Cal., L. R. A. 55 (1902) *supra*. And again, Earl, J., in *Stewart* v. *Palmer*, 74 New York, *supra:* "The Constitutional validity of Law is to be tested, not by what *has* been done under it, but by what *may*, by its authority, be done."

would it be heard that the sheriff decided that the alleged burglar was physically unable to attend Court and *thereupon* judgment was taken against the said alleged burglar, and he was tried *in absentia* and imprisoned for, say ten years, without an actual *bona fide* confrontation of Judge, Jury and witnesses upon his part? Why should the privileges of an alleged criminal throw more safeguards around his liberty, more formality than those of an innocent alleged lunatic?

We quote the learned Justice (page 332) to wit: "At the trial below there was no offer to prove by any form of evidence that Mrs. Simon was, in fact, of sound mind when the Proceedings in Lunacy were instituted, or that she desired to attend, and was prevented from attending the Hearing, or was refused opportunity to consult with and employ counsel to represent her. *The entire case is thus solely based on the inferences* which are *deduced*, as stated, from the face of the return of the sheriff, and upon the assumptions thus made it is contended that the Statute, as well as the Proceedings thereunder, were violative of the clause of the 14th Amendment to the Constitution of the United States, which forbids depriving anyone of life, liberty, or property without due process of law." *Per contra*, Plaintiff contends upon proved facts upon Court Records, not upon *"assumptions."*

At the trial below—the Proceedings had at Charlottesville, (page 10) in the County of Albemarle, in the State of Virginia, before the County Court of Albemarle, aforesaid, November 6th, 1901—there was every offer to prove by every form of evidence that Plaintiff was, in fact, of sound mind when the said Proceedings of November 6th, 1901, to inquire into Plaintiff's sanity and competency were had. At the present trial there has been every offer to prove that Plaintiff was, in fact, of sound mind when the Proceedings in New York City

were instituted March 10th, 1897, and when the Proceedings in New York City were instituted in 1899, and that Plaintiff desired to attend, and was prevented from attending the said Hearings, and was refused opportunity to consult with and employ counsel to represent him.

CONCLUSION

It must, therefore, be apparent that the plaintiff-in-error, a citizen and resident of Virginia, one of the sovereign States of this great Union, whose sanity has been decreed by one of the courts of that sovereign State, cannot be required to submit the question of his sanity to the courts of the State of New York, of which State he is not a resident, but which State, through its courts, is wrongfully withholding plaintiff-in-error's property from him.

We have here diverse citizenship, and the case is one which the Federal courts should take cognizance of, and in which they should grant full relief.

Here we have two judgments rendered by courts of equal rank, in two different States, but the later judgment, rendered by the court of Virginia, declares that plaintiff-in-error is sane; and his conduct during the fifteen years which have elapsed since that judgment was rendered duly demonstrates his sanity and his capacity to manage his property and affairs. He also respectfully submits that the contents of this brief, composed by him, do not represent the work of a madman or an incompetent. On the other hand, he submits the same as a demonstration of his mental capacity and qualifications.

He submits that, under the full-faith-and-credit clause of the Constitution, the later decree, rendered by the court of Virginia, is the controlling decree and entitles him not only to his property in the State of Virginia, but to his property in every other State of the Union.

If the Congress should enact a law on this subject, specifically declaring that the later of two judgments shall be the controlling one, and, from its date supersedes the prior judgment of the other State, would not the Federal courts, including this great and honorable

court, the Supreme Court of the United States, hold such a law constitutional and enforce the same? We respectfully submit that such a law might well provide as follows:

> "That lunacy is not necessarily permanent; that in the event of successive judgments being rendered by the courts of different States regarding the sanity of a citizen, the later judgment, from and after its date, shall be the controlling one and shall supersede the other; and that, if a person has been adjudged insane in one State, and thereafter is adjudged sane in another State of which he is a legal resident, any property owned by him which is withheld from him by the courts of the former State, or by the authority of a decree thereof, shall be surrendered to him upon due proof of the later decree of the courts of the State of his residence holding him to be sane."

However, we respectfully submit that no such enactment is necessary. The Constitution requires that the Virginia decree be recognized. Plaintiff-in-error, being a resident of Virginia, it is unreasonable to expect him to submit his rights to the courts of New York, in which he has already suffered so much; and the only tribunals in which he can seek full and complete justice, without going into the courts of the State of New York, are the great Federal courts, at the bar of the greatest of which he now stands seeking justice.

Respectfully submitted,

JOHN ARMSTRONG CHALONER,

Pro Se.