

The Deseccration and Profanation
of the
Pennsylvania Capitol

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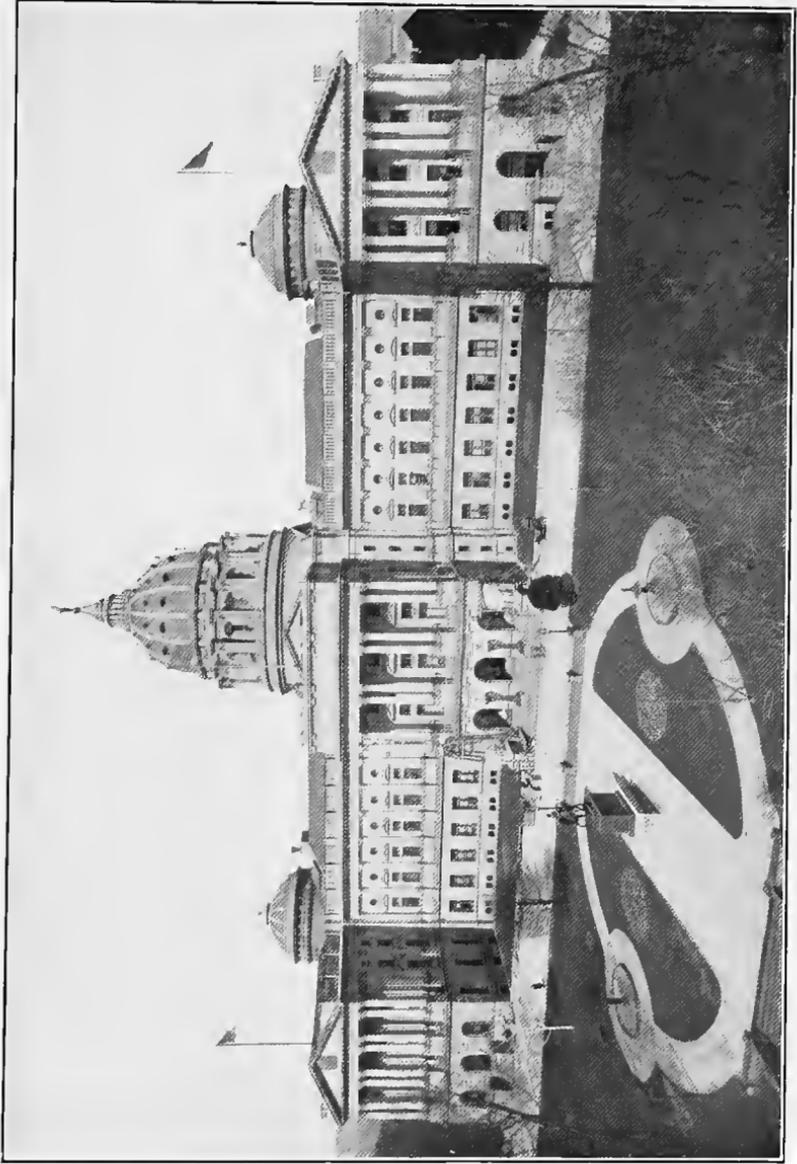


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THE WORK OF THE BUILDERS

THE
DESECRATION
AND
PROFANATION
OF THE
PENNSYLVANIA CAPITOL.

WILLIAM J. CAMPBELL
1623 Chestnut Street
PHILADELPHIA

A.258588

“Cursed be he that maketh the blind to wander out of the way.” —Deut. 27 : 18.

“Yea, the time cometh, that whosoever killeth you will think that he doeth God service.”
—John 16 : 2.

“If, when ye do well, and suffer for it, ye take it patiently, this is acceptable with God.”
—I Peter 2 : 20.

“And be not afraid of their terror, neither be troubled.” —I Peter 3 : 14.

PENNYPACKER'S MILLS,

Oct. 4, 1911.

To the People of Pennsylvania:

In the city of Antwerp, at one time the leading municipality of the world, within a few hundred yards of the banks of the Scheldt, stands one of the most beautiful and imposing of the cathedrals of Europe. From every civilized country men and women interested in the study of history, of theology and of art come to view its proportions, to admire its architecture and to indicate their veneration for its associations. A spire rising from the roof bears heavenward the symbol of suffering humanity. Within its portals hang Ruben's "Descent from the Cross," the masterpiece of this artist in color, and Leonardo da Vinci's painting of the "Head of Christ." Without, against the very walls, the nasty, dirty, vulgar Belgians of the present day have erected their urinals and cloaca in full view of every visitor to the sacred edifice.

We in Pennsylvania have recently been giving a like exhibition of ourselves. We have

treated our Capitol after the same fashion, with a similar lack of decency and good sense. For four years I have waited patiently until the Courts should finish their consideration of the cases brought before them. It was the only proper course to pursue. It would have been better for the material interests and the reputation of the Commonwealth if others had acted with the same sense of propriety. I now propose to speak. It is my duty. Nor do I intend to assume any affectation of modesty. Between you and me in this matter it shall be an effort only to reach the truth, and all other motives and impulses shall be disregarded. I do not ask the acceptance of any statement herein made as a fact unless it is verified or be capable of verification from the record, and I do not ask you to be influenced by any of my reasoning unless it appeals to your judgment, but I intend that those both now and hereafter who care to be informed, and to be correct in their conclusions, shall have the benefit of such information as I possess with regard to men and events and such intelligence as I am able to bring to the subject. I claim now the right to be heard.

Without any request or suggestion of mine you elected me to the Governorship of Pennsylvania by the largest vote ever given to one

presented for that office either before or since. I am entirely conscious of the fact, and you will remember, that my term was filled with constructive work accomplished for the benefit of the Commonwealth, and that the standards of political conduct were maintained at so high a plane that the President of the United States held forth Pennsylvania as an example for all of the States to follow. Governor Robert E. Pattison at the close of an attempt to have the State apportioned into senatorial and representative districts in compliance with the requirements of the Constitution, said in 1883 in a message: "I have exhausted all my powers to that end without avail, and confess the futility of my efforts." The State was so apportioned in 1906, the first time this mandate had been obeyed in thirty-two years. Mr. Roosevelt received much credit for the policy of conserving the forests and the waters. With respect to the waters, this policy had its origin when in response to a message from me the Legislature of Pennsylvania, April 13, 1905, took away from corporations the power to appropriate "the streams, rivers and waters," and during my term the forest lands of the State were doubled. Charles E. Hughes received great applause over the country and was appointed

to the Supreme Court of the United States because he endeavored to bring about in New York the passage of the legislation which had been secured here. Unlike Mr. Hughes, when I was tendered the nomination to the Supreme Court of the State I did not, looking to my own comfort, abandon the Governorship to which you had called me. My successor did me the honor to conduct the affairs of his administration with the officials he found in charge of the departments at Harrisburg. The gentleman appointed to the United States Senate became there the recognized authority upon questions of law, and now sits at the head of the Cabinet. Pittsburgh became a greater city. Valley Forge became a source of instruction to the people of the nation, and on the outer line of intrenchments was set the bronze statue of Anthony Wayne. The movement for good roads was begun and three hundred miles in stone were constructed. Corporations were not permitted to be organized unless they had a capital stock of at least \$5,000. By the act of May 8, 1905, the State began the policy of aiding, deepening and improving the channel of the Delaware river by appropriating \$375,000 to Philadelphia for this purpose. Every newspaper now prints on its editorial page the names of those responsible

for its management. The constabulary was created and organized upon such a basis that it has met approval everywhere, and moreover has maintained the peace as never before. The most efficient department of health in the United States was established, and the Capitol was both begun and completed. Therefore it is that I demand that you listen, giving such support to the utterance as you may find it to deserve.

When I went to Harrisburg in obedience to your call in 1903, I found the arrangements for the transaction of the business of the State, due to the fact that the old Capitol had been destroyed by fire some years before, in the most unsatisfactory condition. Residences and other buildings in different parts of the town as they could be found had been rented at considerable expense and adapted. Most of the departments were housed in what was called the old shoe building, a brick structure standing in a manufacturing neighborhood within a few yards of and running alongside of the main line of the Pennsylvania Railroad. Here among others were the records of the Interior Department, with its evidences of the titles to the lands throughout the State. They could not be cared for, and every day and every night they ran the risk of destruction by fire.

Every time the fire bell rang I expected to hear that the old shoe building with its contents had at last succumbed. If you expected me to be content that this condition should continue, shifting the responsibility for providing a remedy over to some successor, or if you expected me to participate in the erection of a cheap and unworthy public building out of keeping with the importance of the Commonwealth, you had made a mistake in the selection of your Governor. I would not have done either of those things then, and I would not do either of them now.

A Commission had been appointed for the erection of a new Capitol, an architect had been selected, and a contract had been made covering the expenditure of \$4,000,000.00. A commonly expressed opinion upon the street was that before the building should be completed twenty-five years in time and twenty-five millions of dollars would be required. This opinion received support from the experience of other States in erecting capitols, and of Philadelphia in erecting her City Hall. Although the Commission had been appointed by my predecessor, I assumed responsibility for them—that is to say, it was within my power as Governor to have removed them all, at least with one exception, and to have appointed

others in their stead. Like every other Commission and appointive body, it was subject to the control of the Governor. What they did, therefore, was done under my authority and with my assent. There was much futile discussion at one time as to why the Commission permitted the Board of Public Grounds and Buildings to do anything in the way of alteration. How could the Commission have helped it, if the Governor chose to exert his authority? There were also many idle editorials written to tell you that it had been expected that the structure as it has been completed would cost but \$4,000,000. Whoever made that statement to you told an untruth. The contract and the specifications were both printed in full, and anybody concerned to know could have seen exactly what the \$4,000,000 were to secure. That contract made provision for the bare building alone and none for lighting, for the heat regulation, the panelings on the walls, the fire-places and mantel-pieces, the decorations in the rooms of the Senate and House, the decorations of the dome, the decorations in the other rooms, the paintings in the corridors, the twenty-eight subjects to be painted by Abbey, and none for the furniture. If nothing more had been done, the Governor, members of the Legislature and officials would

have had to trudge through the mud to the building, since no provision had been made for approaches or pavement. When they reached it they could have done no work—they could not even have sat down.

The Board of Public Grounds and Buildings consisted of the Governor, the State Treasurer and the Auditor General. It is a vicious arrangement, since the Governor, who is vested by the Constitution with supreme executive power, is required to sit upon terms of equality of action with two other officials who may at any time outvote him. The Governor ought to be a member of no board performing duties of the State. However, the system had been devised by the wisdom of legislators, had been accepted by my predecessors and had long continued. The act of March 26, 1895, directs that this Board "shall have entire control and supervision of the public grounds and buildings . . . and all the repairs, alterations and improvements made and all work done or expenses incurred in and about such grounds and buildings, including the furnishing and refurnishing the same," and they "are authorized to enter into contracts for . . . furniture, . . . repairs, alterations or improvements." The power thus given to the Board is broad and absolute in its scope and

far beyond that of the Building Commission, which was limited and restricted to a specific purpose. Its power was not confined to small buildings or large buildings, but extended to all, together with the public grounds, and included the authority to alter and improve. To carry into effect its powers, appropriations were made to it at each session of the Legislature in the following terms: "The State Treasurer is hereby authorized and directed to pay out of any moneys not otherwise appropriated . . . such sums as may be required by contracts made in pursuance of law . . . which shall be done only on the written orders of the Board of Commissioners of Public Grounds and Buildings."

This system is likewise open to criticism. In response to a message from me the open end of the sack was closed, with respect to expenditure for bridges, by the act of February 15, 1906. But the system had been devised by Governor Pattison, the government had been conducted in accordance with it for nearly twenty years, numerous structures had been erected and no one had arisen anywhere to object. The general appropriation bill, approved July 18, 1901, contained, however, this provision: "Provided that expenditures allowed under this section shall not be so con-

strued as to authorize the Commissioners of Public Grounds and Buildings to complete the present Capitol building," and the proviso was retained in the appropriation bills of 1903 and 1905. The effect of this proviso is difficult to determine. No attempt is made to repeal the power of the Board, and in fact such a result could not be accomplished by an appropriation bill. The power to improve, alter, repair and furnish is left as it was under the previous legislation, and an appropriation for these purposes is made in the same section, but an appropriation to "complete" the Capitol is withheld. My interpretation of the language was and is that the Legislature, knowing of the contract for the erection of the building and having made provision for the sums required by it, intended to prevent the Board of Public Grounds and Buildings from spending moneys for the completion of that contract and in relief of the Building Commission. Such a provision would be wise, and this is an interpretation entirely consistent with a retention of the general power of the Board. As in much of our legislation, it is necessary to grope the way amid conflicting statutes to ascertain the legislative intent, but the testimony given for the defence in the various trials that I was of the opinion, and

gave expression to it, that the Board had the power to alter, improve, repair, furnish and equip the Capitol building was correct. I accept that responsibility.

The members of the Board were aware of the fact that the next session of the Legislature would occur in January of 1905, and that it was expected of them that the Capitol should be in readiness. If they had failed to meet the responsibility and had sought to excuse themselves upon the ground of want of authority, those who have been so ready to berate them for achievement would have been equally earnest in charging incompetence. But what is of far more consequence, they would have neglected a duty imposed upon them by the law. Like men, they accepted the responsibility. Even if they had been disposed to lie down and shirk, the necessity of providing accommodations for five new departments created after the making of the contract by the Building Commission, to wit, Fisheries, Mines, Health, Highways and Constabulary, would have compelled them to modify and magnify the plans for the building. That the Legislature made no other provision for these departments and depended upon the Board to arrange for them, is convincing proof that my interpretation of the legislation is correct.

Thus Section 5 of the act of April 3, 1903, creating the Department of Fisheries, directed: "The Fisheries Commission shall have an office *in the State Capitol*, and it shall be the duty of the Board of Commissioners of Public Grounds and Buildings to provide from time to time the necessary *rooms, furniture, apparatus and supplies.*" Section 2 of the act of April 15, 1903, creating the Department of Highways, directed: "The State Highway Department shall be provided with suitable rooms *in the State buildings at Harrisburg*, and its offices shall be open at all reasonable times for the transaction of public business." Section 2 of the act of May 5, 1905, creating the Department of State Police directed: "The Superintendent of State Police shall be provided by the Board of Public Grounds and Buildings with suitable offices *at the Capitol in Harrisburg*"; and the other two departments were simply left to the care of the Board by the Legislature without specific directions. How the Board was to obey this legislation without doing constructive work in the Capitol the critics have been too careless even to consider.

The erection, ornamentation and equipment of the Capitol was by no means a simple and easy task. It was the most elaborate and

complicated constructive work ever undertaken by the State. In the nature of things the men in charge of it were unprepared by special training, and the resources provided for ordinary and routine occasions were inadequate. Even the most skilled engineers when called upon to erect a bridge over the St. Lawrence at Quebec or to dig a canal across the Isthmus of Panama cannot rely upon formulas, but have to feel their way. Reasonable persons would expect many mistakes and imperfections both of method and material, and if they be honest, will admit that expectation. Most of the efforts to erect capitols in this country have resulted in failures both in design and construction.

The equipment involved much more than that which has been ignorantly designated as furniture. For over half a century the records of the government at Harrisburg had been gradually stolen by literary thieves. To-day not an autograph sale occurs in New York which does not contain more or less of original papers which were once a part of the archives of Pennsylvania. Every collector of experience is familiar with the fact. The Board with proper foresight determined to take due care for the future, and in every room in the vast building they placed metallic cases in which

could be preserved safe from abstraction, mutilation and fire, the records of the departments. These metallic cases are not furniture. They are the tools of the workmen, the engines of the power house, the looms of the mill, the wagons of the farmer, the gold foil of the dentist. The task confronting the builders was not that of keeping a set of books such as could meet the scrutiny and approval of the Audit Company of New York, or that of making contracts which would baffle the technical skill of a Quarter Sessions lawyer. It was nothing so small, limited and incidental. What they were called upon to do was to erect and adorn a building ample for the needs of the work of a Commonwealth of eight millions of people, in so substantial a manner as to meet the requirements of architectural strength and with such grace as to satisfy the cultivated tastes of instructed artists.

The financial relation of the Board of Public Grounds and Buildings toward the Capitol was entirely different from that of the Building Commission. The latter could only use \$4,000,000, the former were only limited by the balance in the Treasury of the State. While the members of the Board well knew that the State was strong enough and had sufficient resources to justify the erection of

a building in every way worthy and creditable, and it may be said that I for one would have assented to nothing less, they likewise felt and appreciated the importance of using all feasible means to keep the expenses within reasonable limits. You have never been permitted to be informed as to the pains which were taken by the Board in this respect. All that the existing legislation required was that the bills should be certified by the Superintendent and should be approved by the Board. At the outset they determined that the work should be done under the supervision of a competent architect, and instead of selecting some favorite of their own, they, in order that there might be unity of purpose and design, placed it in charge of the architect who had been chosen by the Building Commission and had planned the building. They compelled him to reduce his commissions from five per cent., the usual compensation allowed to architects, to four per cent., much to his dissatisfaction. They required him to prepare plans for the entire work, and adopted the resolution offered by me April 12, 1904, that after full advertising the contract should be awarded as an entirety to the lowest responsible bidder. It was pointed out to me later that this plan was not in accord with the pro-

visions of the act of 1895, which required schedule advertising and purchases, which fact I had to concede, and the resolution was reconsidered. It is only another illustration of the fact, so often made manifest, that restrictions born of lack of confidence, and imposed upon officials charged with responsibility, produce in practice results exactly the opposite of those intended. Could this contract have been awarded entire for a lump sum we should have known in the beginning the exact amount to be expended and all of the subsequent trouble would have been obviated. The Board maintained the spirit of this resolution as far as it was practicable. Since the law required that the contract should be awarded by schedule and item, they determined to prepare a special schedule to contain only those items required for the new Capitol. The object was to attract the attention of bidders as much as possible by separating it from the bulky general schedule of supplies. The law required advertisement in twelve newspapers. They inserted the advertisement in fourteen newspapers and called particular attention to the fact that it was for the equipment of the Capitol. When the bids were opened it was found that upon all of the forty-one items, except upon four, John H. Sanderson was the lowest bidder. Af-

ter a full discussion of the subject the Board awarded the contract to him upon all of the items.

In the case of *Clark vs. Pittsburg*, 217 Pa. 51, the Supreme Court said: "If each item of extra work should be awarded to a separate bidder the confusion to follow in the general work may be well imagined, even if the imagination of the distinguished counsel for appellee is stretched in likening it in his brief to the confusion of tongues that occurred in the construction of the tower of Babel." The members of the Board were impressed with the correctness of this thought. Individually I was well pleased that Sanderson had secured the contract. I had never met him in my life until introduced to him by Mr. Carson on the day the bids were opened, and never had had any relations with him of any kind, business, social or personal, but I knew that he had successfully furnished the County Court House in Camden, and that he had the reputation in Philadelphia of making the best of furniture. I believed his selection meant unusually good work, and the result justified this belief. Tiffany, of New York, and Wanamaker, of Philadelphia, through their agents, had for a week or ten days been going over the work and the plans, and the belief of the Board expressed at the

time was that Sanderson had been forced into making a proposition advantageous to the Commonwealth. Since the actual bidders were few, it was debated whether it would be well to re-advertise, and the conclusion was that by such a course we would be more likely to lose than to gain, a conclusion in which I concurred.

Before the award was made the Board sent for the architect and insisted upon his giving in a general way his estimate of the probable cost of the work undertaken. He named a sum of from \$500,000 to \$800,000, and the estimate was entered on the minutes. The Board required the architect to make a set of Quantities Plans and a Quantities Book, which gave a description of each piece of work and article of furniture and its location in the building. They also required the architect to certify the correctness of the bills before they were paid, and the contractors to make affidavits to the same effect. The only one of these precautions demanded by the law was the certificate of the Superintendent. I have pondered over the matter at times since in an effort to see whether there was anything else which could have been done better to safeguard the interests of the Commonwealth, and in vain. I put the query to the Investigation Commission of the Legislature when I appear-



THE WORK OF THE DECORATORS

ed before them, and received no response. I now ask each of you whether you, with all the assistance of the light since given, looking at the problem from the point of view of experience and not of forecast, can suggest any other precautions that could have been taken.

The Capitol was erected, furnished and equipped. It was all done within the comparatively brief period of four years, an unparalleled example of expedition and zeal in the public behalf. When the Legislature met in their next session the halls of the Senate and House were ready for their use and there was nothing wanting for their comfort. When the new Governor whom you had elected came to Harrisburg he found his decorated office and beautiful reception room, lined with the paintings of Violet Oakley, ready for his occupancy. The Attorney General sat in his stately apartments and put away with a sense of absolute security his indictments into the steel cases which had been prepared for him. The Investigation Commission, upon carved chairs and around spacious tables, rested at ease as they wrote their condemnation of the men who had seen to it that these appliances were provided.

The Capitol contains four hundred and seventy-five rooms. Unlike the Capitol at Wash-

ington, it provides for all of the departments of the government. It is five hundred and twenty feet long, two hundred and fifty-four feet in width, two hundred and seventy-two feet in height, covers two acres of ground and is half a mile in circumference. It is larger than St. Paul's Cathedral, for building which Sir Christopher Wren was knighted by a grateful sovereign, and it is longer than Westminster Abbey. The weight of the dome is fifty-two millions of pounds. While every continent contributed to its construction, it everywhere gives expression to the life, the thought and the achievement of this Commonwealth. The most skilled artists in the world devoted their talent to its adornment. It contains the finest bronze work in America. Around the dome are these citations from the writings of Penn:

"That we may do the thing that is truly wise and just."

"That an example may be set up to the nations."

"There may be room there for such a holy experiment."

"For the nations want a precedent."

"And my God will make it the seed of a nation."

Said Theodore Roosevelt: "Those are the most magnificent bronze doors I have ever

seen." The Hon. George W. McCall, of Massachusetts, recently said to me: "It is the most beautiful public building I have ever seen." Many men and women of taste and experience have described it as the finest not only in America, but in the world. A traveller from Europe put in print: "The Capitol which in its mass of granite reigns over the city seems to throw a shadow of power and richness over everything. The outlines equal in beauty any of the beautiful monuments passing into posterity. . . . But the Capitol as it is will remain a jewel of which a nation may be proud. . . . The man who has achieved and executed this monument is a genius."

Most of such works heretofore undertaken have resulted in architectural and artistic failure, but all who have seen the Capitol of Pennsylvania are impressed with its beauty and acknowledge its success. Moreover, both building and equipment have stood the test of time. It has now been in the use of the unfriendly for four years, another year is rolling along, and no man arises anywhere to say that there is aught wanting or imperfect.

The financial part of the problem shows such marvelous results that nothing can explain the lack of public attention to it except an intention that you, the people of the State, should

not be informed. When Massachusetts erected her Capitol she borrowed the money to pay for it. When New York erected her Capitol she likewise borrowed the money to cover the expenditure. Pennsylvania borrowed no money. She imposed no tax. At the close of the fiscal year December 1, 1902, before the work was commenced, the balance in the Treasury was\$12,868,806.34

At the close of the fiscal year December 1, 1906, after the work had been completed and paid for the balance was.....\$11,440,042.00

In the meantime the five departments before referred to were erected, organized and equipped, the county bridges which had been washed away across the Susquehanna rebuilt, the forestry reserves doubled, a number of armories built for the National Guard, and the debt reduced to the extent of \$1,160,482.00. The outcome is emphasized by the events of later history. It might well have been expected that with the cessation of this extraordinary expenditure, with an increase of revenue, and with nothing new in the way of department or constructive work, the balance in the treasury would much increase. That balance December 1, 1909, had fallen to \$8,620,014.79.

I ask of you, who may be interested and

who care for the reputation of your State, to scrutinize the annals of American finance and see whether you can find anywhere in State or nation a parallel for this achievement. So far as I know, it has never been equalled. There has never before been so much time given to, and so much money expended upon, the investigation of the details of a public work as in the case of this Capitol, and it has seemed to me that if fairness toward men were not a sufficient motive, curiosity alone ought to have led some investigator, somewhere, to an inquiry as to how it was possible to achieve such a financial result. The time has now come when you shall be informed.

Dr. William P. Snyder, whom you elected Auditor General, was an exceptionally capable and efficient public official. Appointed by Governor Stone a member of the Building Commission, and being also a member of the Board of Public Grounds and Buildings, the success of the Capitol was largely due to his efforts. During his term of office he collected from delinquent corporations taxes part of which had been neglected or regarded as worthless by his predecessors, Democratic and Republican, some of them as remote as the year 1844, amounting to the sum of \$5,818,159.87. He is no political friend of mine. I have

reason to believe that he did what he could in Chester county to prevent my nomination for the Governorship. But I do not hesitate to tell you this fact concerning his public service, and it is for you to estimate its value. In addition, during my term and under my direction there were collected from the Government of the United States upon claims arising out of the War of 1812, nearly a century ago, and out of the War of the Rebellion, nearly a half century ago, \$1,238,136.91. All of the moneys, therefore, which the Board of Public Grounds and Buildings expended in beautifying and equipping your Capitol were dipped up as it were out of the seas. Do you really think they did very wrong in feeling that they ought so to invest them? Remember that the same energy which led them to aid in building a Capitol led them to gather what under other circumstances would probably have been lost.

Not only was the Capitol erected and equipped without delay, without taxing you for the purpose, without borrowing money or materially lessening the balance in the treasury, but it may be safely affirmed that it was done at a reasonable cost. The architect publicly declared that it was the cheapest building of its character in the country, and he gave figures

to prove the fact. Since no one undertook to refute the statement it is probably correct. This does not mean that no mistakes were made or that there were not instances in which articles, if they had stood alone, could have been bought for a less sum. In a matter of such complication and difficulty it would be remarkable if such instances did not occur. It ought to be remembered, too, that for a rival contractor to say on the street or on the stand that if he had secured the contract certain articles would have cost the Commonwealth less is a very different proposition from making a bid to that effect on which he could be held responsible. Talk and opinion are always in abundance and have little market value. The only sensible way of forming a conclusion as to whether the expenditure is reasonable or otherwise is to make a comparison with other similar work. The questions so elaborately presented by the Legislative Investigation Commission and in the Courts, of the difference between the cost and charges for a specific article of furniture or piece of work are wide of the mark, for the reason that they leave out of view the general expenses connected with the whole undertaking.

For the purpose of this comparison I take the figures given by the Investigation Commis-

sion, who had the aid of the Audit Company of New York at an expense of \$28,001.40. They gave the total cost of the construction of the building as \$6,985,968.52. Of this sum the Building Commission expended \$3,970,000.00, and the Board of Public Grounds and Buildings \$3,015,968.52. In an effort to have the sum as large as possible the Investigation Commission made the mistake of including \$303,693.14 expended for the Highway Department under direction of the act of April 5, 1903, after the contract for construction had been awarded; but as they stand these figures differ widely from those to which you have grown accustomed. The larger sum of which you have heard so much—\$13,159,601.01—is only reached by including the cost of a building commenced by Governor Hastings, in 1897, the furniture, the metallic cases, the temporary arrangements for the session of 1905 and other items, and is about as accurate as though you were to include the books in your library and your wife's fur cloak in the cost of your house. I estimate the entire cost of building, furniture, metal cases and equipment at \$11,033,400.89. I am not an expert and do not assume to guarantee these figures as absolute, but I believe them to be more nearly correct than any others which have been

published, even those for which you have paid. The result is reached by omitting \$550,000 expended upon the Hastings building and by allowing one-eighth of the cost for the five departments created after the contract.

The Capitol at Washington contains four hundred and twenty rooms, fifty-five less than the Capitol at Harrisburg. From the official reports published in 1901 it had cost the National Government for construction alone \$18,227,424.81.

The Capitol of Massachusetts, about one-half the size, cost for construction alone \$3,477,226.00.

The Library of Congress, the only building in the country which can be compared with the Capitol in artistic merit, with 2,039,582 cubic feet of contents less, cost for construction alone \$6,344,585.34.

The Capitol of New York cost for construction, and is still unfinished, \$24,265,382.01.

The City Hall in Philadelphia cost for construction alone \$18,243,339.86.

The depot of the Pennsylvania Railroad in New York, with tunnel and approaches, cost for construction, \$112,965,415.12.

A single hotel in New York built for a private corporation about the same time actually

required a greater outlay than the Capitol of Pennsylvania.

Comparisons with some buildings nearer home may also be helpful to your judgment. Alongside of the Capitol stands the hall of the Executive Department, built by Governor Pattison at a cost of \$500,000.00. A squat, two-story stone building, covered with plaster, ornamented with imitation marble columns, in the same proportion the massive granite Capitol would be modest at \$25,000,000.00. For the Eastern Pennsylvania State Institution for the Feeble Minded and Epileptic at Spring City, there have been expended for construction \$1,100,000.00, and for the Homœopathic State Hospital for the Insane at Rittersville \$1,903,750.00. Each of these is but a hospital and neither has been completed. The Girard Trust Building at the corner of Broad and Chestnut Streets, in Philadelphia, the dimensions of which are only 137 feet by 134 feet 11 inches, cost, without the ground, for construction and furniture, \$1,541,236.26.

Compared with any one or all of these structures erected in different parts of the country and at home, is it not fair to claim that the expenditure upon the Capitol was reasonable?

I have described to you what was accomplished for your welfare by the members of

the Building Commission and the Board of Public Grounds and Buildings, and I now propose to say a few words about them as individuals. It has been the fortune of my life to have been brought into contact with men in all classes of society, from Presidents of the United States and Judges of the Courts, down to those confined in the dock charged with crime, and to have been required to study their characters and judge of the probabilities of what the latter had to tell. You threw me among the men who builded the Capitol. I saw them at their work and I shall give you my judgment. One and all I believe them to have been impelled by an earnest desire so to perform their task that it would be creditable alike to themselves and to the Commonwealth. It is said that Governor Stone described Huston, the architect, as a dreamer. I think that characterization is in part correct. What was needed in his position was not a bookkeeper or the cashier of a bank, but an artist and poet, with imagination enough to design, with enthusiasm enough to carry his inspirations into execution, and with none too keen an appreciation of the importance of mere money. If the building had been erected by the Audit Company of New York, it would have been exact no doubt, but little else. The builders,

each of them, expected that if they should succeed in erecting a Capitol adequate for the needs of the government, substantial in its material, tasteful in its art, and should complete the work with promptness, it would meet with your appreciation and to them would be accorded the meed of your praise. They were entitled to entertain that expectation. No man can with truth deny that the Capitol meets all of those requirements. Instead, however, of receiving the commendation they properly anticipated, they were confronted and some of them overwhelmed by a display of propensities at once both mean and ignoble. Another set of men came into the exercise of the powers of the government, and during the next four years the Capitol, thanklessly accepted with all of its conveniences and facilities, was utterly lost sight of amid outcries over the moneys which had been expended. There was no admiration of strength, there was no recognition of beauty, there was no appreciation of art, there was no sense that the soul of Pennsylvania had found expression in a wonderful production, and no utterance of any sentiment or feeling in connection with it except that of the sordid love of money. And every man of them, who joined in these cries, was well aware all of the time that he had not contributed and

had not been called upon to contribute anything of his substance towards its erection. In the words of Schiller: "Mit der Dummheit k mpffen G tter selbst vergebens."

Buildings as well as men have their fortunes and misfortunes. The Capitol was in several respects adventitiously unfortunate. In the first place Senator Quay had recently died. In a way it was the final expression of the power he had so long wielded in the affairs of the Commonwealth. In every county were men whom he had defeated in political combats who, not daring to confront him longer while he was alive, were ready nevertheless, now that he was dead, to indicate their unhappiness over the merits of any work which might perhaps be associated with his career. In the second place, the Capitol was completed at a time when there was a spirit prevalent over the entire land which made an attack upon it, as upon every other important work, inevitable. Men in high places had secured a temporary but pronounced popularity by assailing business interests and private property, and their lesser imitators arose in every community seeking this kind of factitious reputation. In the general boiling and overrunning of the pot, Pennsylvania could hardly hope to escape some scars.

In the third place, just as the work was finished, by one of those freaks of ill fortune which come to spoil the campaigns of the ablest of generals, a Democrat from Illinois was elected to the position of State Treasurer and became a member of the Board of Public Grounds and Buildings. The time has now come when it is necessary for me to include in this narration the characterization of an individual, and I shall endeavor to be as fair to him as the truth will permit. No man can understand the French Revolution unless he has some measure of the mental and moral qualities of the Jacobins. The attack upon the Capitol was the work of William H. Berry, and whatever of credit or discredit may come of it belongs to him, and ought to be accorded to him. The crop which was later gathered by legislators, lawyers, newspapers and politicians came from the seed of his sowing. No such shallow devices as his exclusion from the counsels of the Investigation Commission, and from the witness stand in the Courts, can deprive him of the honors which are justly and almost exclusively his own. He was no ordinary Democrat, such as grow to maturity upon the farms around Reading and Allentown. Without intelligent comprehension of affairs, without broad reading or culti-

vation, without thorough information upon any subject, he was nevertheless fluent and ready to instruct the world. Without financial capacity to manage his own business in such a way as to attain success, he had been called to take charge of revenues amounting to \$25,000,000.00 annually. He contended that the country can be enriched by the unlimited issue of paper money. He was sufficient of a reformer to turn out the trained clerks in his department and put his friends in their places. He was sufficient of a moralist to put the State funds in a trust company from which he could get a loan upon his brickyard. He was nevertheless genial and affable, and sought the aid and experience of Dr. Snyder, in keeping his records, with all the warmth of good fellowship. I believe that he did not really intend to do any great harm, and that his main purpose was to help the Lord in an effort to place a suitable incumbent in the Governorship or the Vice-Presidency.

In the fourth place, and most important of all, the Legislature which was to follow would elect a United States Senator to succeed Senator Penrose, and if Stuart, who had been nominated for the Governorship, could be defeated, Penrose as the leader of the Republican party in the State would be overthrown.

Penrose had just come into control of the organization of the party, and his hold upon it was by no means assured. The blow at the Capitol was in reality directed at him. In the campaign which followed Berry became the apostle, the newspapers constituted the cohorts, and the object sought to be secured was the control of a great Commonwealth. The beauties and expenses of the Capitol, the candidacy of Stuart, and the fate of Snyder were only incidents which marked the course of the contest.

The attack opened up over a very trivial matter. The great bronze doors, the most impressive in America, were ornamented with a number of human heads, each of them rather larger than a walnut and smaller than a baseball. Ingenuity can discover among them the faces of Dickens, Grant, Shakespeare and the death mask of Napoleon. A like ingenuity did discover a resemblance to certain officials and men active in affairs, and for weeks these little heads were the only material available and were made to do full duty. With the advent of Berry they were abandoned, the scope was widened, and the winds were let loose. Everything that irresponsible and disciplined guile could originate in an effort to belittle the achievement and to increase the expense

was published broadcast. The figures were perverted. Double-led editorials were put forth day after day condemning the secrecy with which the work had been undertaken, in newspapers whose own affidavits to the correctness of their receipted bills for advertising it, lay in the Treasury, and although during its progress the representatives of the entire press had come to the Board of Public Grounds and Buildings and prevailed on them to change the arrangements for correspondents in the Senate and House. Berry, instead of attending to the duties of his office, went around the State brandishing the leg of a chair which he had secured somehow, somewhere, and talked violently about imposture, although when the cases came later to be tried counsel conceded of record that the material and labor were in every way in accord with the specifications of the contract. On one occasion while Berry was out on the stump assailing his colleagues who were in Harrisburg attending to the business of the State, a bill was presented to the Board charging \$850 for the erection of a flag-pole. This pole was erected because James M. Lamberton, Esq., had called our attention to a statute requiring it. The erection of this pole made it necessary to cut through the stone roof of the Capitol, an interference with the con-

tract of guarantee of permanence and imperiousness. The pole had to be both substantial and safe. Nevertheless I thought the bill too large, in which I had the support of Snyder, and we stopped its payment. A couple of weeks later Berry returned on a vacation from his political toil and I asked him what he thought ought to be paid for the pole. He said he could get one for \$150.00, a statement which was not correct. The next morning far and wide the newspapers proclaimed how Berry had prevented the payment for the pole, and it furnished many a headline for the campaign. After the election we all three united in ordering \$600 to be paid for it. Its only importance now is that it furnishes you an illustration of what was going on at the time.

The real accusation, however, dinned into your ears in every possible form of assertion and innuendo was that of graft; that is, that the officials having control of the work made money for themselves by a combination with the contractors. We met this storm right squarely in the face. With its earliest murmurings Snyder and I published a statement showing every cent which had been expended by ourselves and others in each and every way in connection with the building and equipment of the Capitol. That put you in possession of

the actual facts. The result was that all possible changes were rung over the figures, and the manliness and integrity of the act were ignored. Then we invited Charles Emory Smith, the editor of *The Press*; George W. Ochs, the proprietor of *The Ledger*, and Charles H. Heustis, the editor of *The Inquirer*, three leading Philadelphia newspapers, to come up and examine the building and books of account. They were willing enough to deal in adjectives, adverbs and generalities, but had a reluctance to confront facts, and they declined. Then I made arrangements with the railroads for cheap excursion rates of fare and invited you to come and see for yourselves. Sixty thousand of you came. I shook hands with ten thousand upon one Saturday, and they went home like missionaries, telling their neighbors of the wonders of the building they had inspected. The result of this bold and straightforward course was that Stuart was saved from defeat, Penrose was saved from destruction, and I had the intense personal satisfaction of knowing that the main object sought to be accomplished by the cultivation of scandal had been thwarted.

It is hard to kick against the pricks, it is difficult to tell a story in conflict with the truth which is mighty and in the end prevails, for

the stars in their courses fight for its disclosure.

Some quite recent developments give us a glimpse of the machinery which directed this scandal. At that time James M. Guffey, who had made an immense fortune in oil, was the leader or boss of the Democratic party in the State. In 1910 through some unlucky turn of affairs he went into bankruptcy. Among his assets his assignee found a note to his order for \$15,000, given in 1906 by William H. Berry, long overdue and unpaid. It was probably understood between them that it was not intended to be a real financial obligation. At all events, Berry made no effort to pay it and Guffey made no effort to collect it. Berry acted as though he felt under no obligation, because in a convention of his party he aided in an effort to oust Guffey from party leadership, and the only possible inference from their conduct is that both felt that Guffey had received consideration for his money. In the stress of the political campaign of 1910 Berry in a published statement gave this explanation: "During my incumbency as Treasurer I was subject to extraordinary expense in exposing the Capitol steal. . . . I accepted the financial help of several Democrats, each without the knowledge of the others, and among them Mr. Guffey." Probably each of them

would have been disappointed to learn that what he had believed to be his own monopolistic venture was in reality a joint operation, and therefore, in the goodness of his heart, Berry did not inform any of them of what the others had done.

Since charges had been made and circulated in sensational fashion all over the United States, to the great delight of your enemies and rivals and those of the Commonwealth, it was generally felt that they ought to be seriously examined, and in my final message I recommended an official investigation. The Attorney General, the Hon. Hampton L. Carson, undertook such an inquiry. Of all men in public life he was probably the best fitted by personal qualifications and previous training for the performance of such a duty. Keen in intellect and one of the purest hearted men ever born, a scholar of wide attainments, his fame as a lawyer had extended over the whole country, and the mere fact that he was willing to accept the office of Attorney General was an honor and assurance to you. Moreover he had written the leading book upon the subject of conspiracies, accepted by lawyers as an authority, and was therefore an especially disciplined expert. He examined the contracts, papers and parties, having the advantage of

the statements of Berry and Sanderson which the Investigation Commission failed to secure, and he made a complete and voluminous report, consisting of three hundred and seventy-nine printed pages, in which he reached the conclusion from the evidence submitted: "I do not hesitate to say that in my judgment there is no trace of crime. No conspiracy is disclosed between State officers to share in the profits of the contracts; nor between the architect and the contractors; nor to secure the contracts for the contractors; nor to shape the schedules in such a way as to mislead bidders; nor to deter bidders in order to stifle competition."

The effect of the conscientious and laborious attempt to work out a correct result by a competent person was to cause the Attorney General to be included in the abuse. An accurate ascertainment of facts and a just conclusion from them were not at all what the occasion demanded. A new administration came into power which had felt the weight of a storm before it grasped the reins. A new Legislature occupied the beautiful rooms of the Senate and House, and the situation was surrounded with temptations for those whose aspirations looked to the future.

Upon the meeting of the Legislature a com-

mission, consisting of three members of the Senate and four Members of the House, was appointed "to make a full investigation of all the circumstances and transactions connected with the erection, construction and furnishing of the State Capitol."

The Commission as appointed consisted of Senators John S. Fisher, A. E. Sisson and Arthur G. Dewalt, and Representatives R. W. Fair, Moses Shields, R. Scott Ammerman and Robert Dearden. I give their names because in this matter each individual ought to bear his own share of responsibility and receive the commendation or opprobrium which belongs to him. Certainly it may be conceded that seldom in human affairs have men been charged with greater responsibility. An important work had been accomplished and upon the wisdom of their conclusions temporarily depended the question whether it should meet with credit or discredit. The good fame of the Commonwealth was for the time entrusted to them. The fate of officials whose daily lives they had seen for years, of Snyder whom time and again they had called upon to preside over the Senate, rested in their hands. Oh! the pity of it that in the performance of their task they could not have been inspired with some of that earnestness of purpose and

zeal for your welfare displayed by the builders and decorators, that they could not have arisen above the mephitic airs that surrounded them! Their report will be found upon page 4170 of the *Legislative Record*, Vol. III, for 1909. From this report it is plain that they started out with an entirely incorrect conception of their duty. They state it as follows: "The questions for the determination of the Commission were fraud and dishonesty in the making of the contracts, and the performance of them." No such questions were submitted to them. They were nowhere instructed to determine fraud and dishonesty. The resolution of January 28, 1907, directs them "to make a full investigation of the circumstances and transactions," and the Act of April 23, 1907, appropriates to them the large sum of \$100,000 for the purpose "of inquiry." If this inquiry disclosed innocence, zeal and success, then it was their duty so to report instead of determining fraud and dishonesty. It may be said that their statement was made inadvertently, which is probably true, but this inadvertence is important since it unwittingly discloses the attitude of mind with which they approached the inquiry. Berry and the newspapers had told them there was fraud, and their understanding of the resolution was that they

were so to find. This is further shown when at the very outset they hasten to say: "The Commission is also indebted to the press of the State for timely assistance and information." Could anything be more improper and undignified or show a sadder lack of appreciation of the exalted position they occupied as the representatives of the Commonwealth in a serious examination of a complicated situation? If of course a gentleman connected with some journal had testified concerning a fact known to him alone he might well be thanked. It was not that case. The thanks are given to the press at large throughout the State. The editors of three leading journals had declined to examine the Capitol when invited, and it is not likely that they had any facts to impart. It would be interesting to know how this information was conveyed. No one of these gentlemen appeared on the witness-stand. Information imparted in secret and without responsibility is not to be trusted, and to the extent that this report is based upon such information it is unreliable. The assistance given, which we are assured was timely, had been in the way of intimidating possible witnesses and jurymen, arousing among the people animosity toward the contractors, preventing an unprejudiced investigation and in-

dicating support to any adverse report. These thanks are an evidence that the members of the Investigation Commission had abdicated, forgotten their functions, and taken their places as partisans and assailants. It is very much as though a grand jury had thanked a mob of lynchers for aiding them in disposing of the case. As might well be anticipated from this auspicious beginning, the report in every aspect of it exhibits a lack of coherent thinking and announces inaccurate conclusions with respect to almost every topic considered. Let me illustrate by citations from it so that you may understand the ground upon which this uncomplimentary averment is made. One of the subjects for their condemnation and one of the frauds they discovered was in connection with the attic contract. Of this contract they say: "What is referred to as the attic contract embraced a series of changes of room arrangements on the fourth (fifth?) floor, and provided rooms and equipment on the attic floor for new departments of the government." After discussing the matter they find that the expenditures for this purpose "were illegal and unauthorized," and further "that the parties to this fraud are amenable to law and should be held." In their general findings they return to the subject and after condemning the Board

of Public Grounds and Buildings for doing this work blame the Building Commission for permitting the Board "to interfere with its contract and duties and to add to the construction work of the new Capitol building." When they made that finding they had entirely overlooked and forgotten the Acts of April 2, 1903, April 15, 1903, and May 5, 1905, which specifically authorized and required the Board to do that very thing, although as to some of them they themselves had individually voted for these acts.

No doubt this is nothing worse than a blunder due to imperfect investigation, but what confidence can be placed in the other conclusions of men who recommend a prosecution based upon no better foundation than their failure to observe a fact so obvious as the existence of statutes they themselves helped to frame? Suppose some Berry, anxious for preferment, supported financially by political forces, and incited by newspapers eager to sell sensations, had charged that they conspired so to report and they had been brought before a jury and confronted with the statutes, what could they have answered?

In their report they go so far as to assume the role of prophets and visit their condemnation upon action which was not taken, but

which in their opinion would have been taken had events been otherwise than they were. Thus they say: "But there can be little doubt that if the other bids had been considered the bid of Sanderson would have been changed of record to meet requirements." What do you citizens think of that utterance as a manifestation of dignity, fairness and justice? If I may be permitted a like privilege, then I declare my conviction that the method pursued by the Board of Public Grounds and Buildings not only prevented the Capitol from being ruined by the diverse fancies of successive legislative committees, but also saved the expenditure of \$12,000,000.00.

Another matter of the same kind is a granite wall around the park, to which they give prolonged attention. There is no such wall. None was ever built, and no money was ever expended on it. Their finding upon this subject is: "This contract was actually awarded, reconsidered and postponed, reawarded and finally suffered to die owing to a vigorous protest by citizens of Harrisburg which could not be silenced." What difference does it make what was the reason of the Board for not doing this work if as a matter of fact it was not done? However, they are utterly mistaken. No contract was ever made. No con-

tract could be made without my signature. Believing that this contract could not be made under the head of "Repairs" under the Schedule, and there being no other item to cover it, I refused to enter into the contract. The original papers on file will show this situation of affairs with the absence of my signature, and I presume the Audit Company of New York was not aware of the provision of the law requiring all of the members of the Board to unite in making contracts and the Investigation Commission accepted the statement without examining the record.

The report further finds that there was fraud in connection with the supply of glass for the reason that the glass was made not in Baccarat in France, but in Beaver county, Pennsylvania, the schedule calling for "the best quality cut crystal glass of Baccarat manufacture." There is no finding that it was not glass, that it was not crystal, that it was not cut, or that it was not best quality, but only that it was not made in Baccarat. I suppose there was some dispute in the testimony as to whether the word Baccarat as used in the contract was a trade name or the name of a little village in a foreign country. I warn you that I am only able to suppose because the testimony and the report of the Audit Com-

pany of New York, which are the foundation stones of the investigation, have through the whole of this inquiry been kept out of sight. The finding upon this subject furnishes another instance of a lack of familiarity with legislation upon the part of these legislators. The Act of March 26, 1895, Sec. 5, P. L., p. 24, directs the Superintendent of Public Grounds and Buildings that "In preparing the list or schedule he shall in all cases give preference to goods of American production or manufacture." If the glass was of greater or equal merit it may at least be said for the Board that they pursued the policy of the law, but this fact escaped the attention of and had no weight with the investigators.

The report in its "General Findings and Conclusions" gives the first and most conspicuous place to this proposition: "As the provisions of the law contemplate the refurnishing and repair of an old Capitol Building rather than the furnishing of a new Capitol Building or the making of alterations or additions thereto while the same is in process of construction in the hands of the contractors," therefore the construction of the law as interpreted by the Board of Public Grounds and Buildings is "a clear evasion," and the certificates upon which warrants were issued "were

made intentionally and fraudulently," and the contracts "were illegal and unauthorized by law." I hope you will bear with me patiently while I point out the utter fallacy of this proposition. The report miscites the statute. If the word used in the statute were only "re-furnishing" it might be argued that it applied to an old building which had been furnished before, but the words are "furnishing and re-furnishing," and therefore contemplate buildings which had not been furnished before as well as those which had been so furnished. The words "old" and "new" do not occur in the statute and are interpolated in order to justify the finding. The statute gives the Board "entire control and supervision of the public grounds and buildings, . . . and all the repairs, alterations and improvements." Where does the Investigation Commission find in this language anything which limits the alterations and improvements to old buildings? How old ought they to be? An act directed the Board to provide rooms for the Highway Department in the Capitol. Where would have been the sense in letting the construction be finished only to be torn out and done over again with the additional expense?

The Investigation Commission take the position that since it was a new building in process

of construction, the Board had no authority to make contracts for furniture. If the Board had taken this view the building when completed would have been of no use. If they had insisted upon an interpretation of the law in my judgment so preposterous, I do not hesitate to say that I should not have permitted the situation to continue, and as Governor I would have ordered the proper equipment of the building. In this connection I shall now make a proposition of constitutional and fundamental law which never occurred to the investigators and will probably startle them. It is said that the lenses in the eye of a house-fly are adapted to things so minute that to him the smoothness of a painting of Raphael is a landscape of hill and dale. While the investigators were examining as with a microscope for some flaw in the leg of a chair or some misplaced entry in the books of account, they lost sight of the Capitol, the Governor and the Commonwealth. The Governor of Pennsylvania is one of the most potent rulers on earth. In this respect he is far above the President of the United States, upon whom is conferred only limited power. In defining the power of the Governor of Pennsylvania the Constitution of the State uses the strongest word in the English language and makes him "supreme." It is the

adjective usually applied to the Deity. It means that his authority as executive can be questioned by nobody, and that he is only answerable to his conscience. Like the King of England, he can do no wrong. Like the Pope of Rome, his conclusions are infallible. "The supreme executive power shall be vested in the Governor who shall take care that the laws be faithfully executed." He is the guardian of the laws and to him is given supremacy. It is through this authority that he has time and again called forth the National Guard, involving life and death to men and the expenditure of millions of dollars. In *Hartranft's Appeal*, 85 Penna. 433, where the questions arose over the killing of a number of persons under his orders, the Supreme Court decided that the Governor was "the sole judge not only of what his official duties are but of the time when they should be attended to," and that "he must be the judge of the necessity requiring the exercise of the powers with which he is clothed." It would have made no difference if the Court had not so decided.

While it would not be discreet or wise for the Governor to exercise such a power, he may, like Richelieu invoking the authority of Rome, in case of real necessity, order not only

the furnishing but the building of a Capitol irrespective of the Act of 1895 or any other acts and it would be the duty of the Legislature answering to their oaths to appropriate the money to pay for them. It is idle to contend that a State must perish for want of an Act of Assembly and the fact that this thought does not seem to have occurred to investigators, lawyers or courts, illustrates how narrow and imperfect a view has been taken of this whole subject. When the Legislature unwisely put the Governor on the Board of Public Grounds and Buildings it put him there as Governor with all of his power, and the acts of the Board in which he participates are his acts. The efforts of the Investigation Commission, Attorney General and other minor officials to hold the members of the Board responsible on the ground of want of authority, were therefore not only a violation of law but in a sense revolution and treason.

The work of the Investigation Commission was as defective in what it failed to do as in its affirmative conclusions. It entirely failed to discover, with its expensive expert, that the building and equipment had been paid for without withdrawing the balance in the treasury, a fact of overwhelming importance in an

inquiry involving the skill, faithfulness and integrity of those in charge. It failed to find the fact that the Board had succeeded in getting the architect in the contract with him to lessen his commissions twenty per cent. below the usual rate which he demanded, although this fact appeared in the letters before them and the evidence. It failed to find that with respect to the contract with Edwin A. Abbey for art work involving \$207,877.50, Sanderson to whom it had been awarded made no profit whatever, although this appeared in the written agreements on file. It failed to find that when the Attorney General and John G. Johnson, Esq., came to draw the agreement with Abbey for paintings they felt bound to put the compensation upon the basis of the "per foot" rule, though this rule figures extensively in its report. It failed to secure the testimony of either Berry, Sanderson or Huston. If the question of the profit of Sanderson was material, then it failed to find what was that profit. If it was of consequence to know what was the profit upon the erection and equipment of the building, then it failed to find what was that profit. Information upon this subject would have been intensely interesting, but after all the investigations, and all the trials we are as

much in the dark about it as we were before. It failed to find what the building and equipment ought to have cost, what they were worth, or whether or not the sum for which they were placed there was reasonable. There is much about detail, and the methods of keeping books, and about sofas and chairs, but these broad and only essential matters are entirely ignored.

I now approach a subject more specific and even more important. Bear in mind, you citizens of Pennsylvania, that the accusation was one of graft, in other words, that the officials obtained some of that money. The Investigation Commission was given \$100,000.00 with which to investigate. It had the whole power of the Commonwealth behind it. Every banker could be compelled to show his books. Every clerk could be compelled to tell what he knew. Every one of you, including the editors, could be dragged from his home to disclose such information as he possessed. The State Treasurer did not pay in cash but by a written paper called a warrant which had to be endorsed. The contractor deposited it in bank and the books showed what became of the money. It goes without saying that the Commission traced these drafts and overhauled the books of the

banks. It is so reported definitely. What was the result? Listen to what the report says:

“At no point did it show or appear to show that any of the moneys paid by the State to its contractors in this connection had been directly converted to the credit or use of any of the State officials in the accounts examined.”

In other words, the ascertainment of facts by the Investigation Commission absolutely supported the conclusion reached months before without outlay by Mr. Carson. The pursuit in all decency ought then and there to have ended. After the members of this Commission had thrown out their dragnet for graft and given it the wide sweep which \$100,000.00 enabled them to do, and hauled it in and found nothing, they ought to have been strong and manly enough to have resisted the clamor and to have reported accordingly. Instead, while thus admitting their inability to discover any evidences of graft and disclosing the facts which pay tribute to the integrity of the officials, they recommended with absolute want of logic that suits and prosecutions be brought.

The incoming Attorney General, the Hon. M. Hampton Todd, felt that his duty required him to comply with these recommendations. It is necessary in order clearly to comprehend

the situation at this stage that you should have at least a glimpse of his character. He possesses all the rigidity and severity which come with generations of narrow training, and nothing so delights him as the noise of combat. He believes that if Michael Servetus really did accept the doctrine of the Arians and deny the Trinity it is entirely proper that he should have been burned as a heretic. When enlisted in the contest he became determined to win, even though the Hittites and the Amalekites were despoiled of the land. If Moses and the Israelites could feast upon milk and honey, what difference did it make that Snyder should go to prison, or Irvine to an insane asylum, or Payne to his grave? In his ardor as an advocate, and to him a fact had value not as a revelation of the truth but as an aid to one side of a controversy, he at times forgot the plainest rules of professional propriety. In an address before the Pennsylvania Bar Association on the 29th of June, 1909, after he had argued one of these cases before the Court, and pending a decision, in the presence of Judges who took part in its determination, he reiterated his view of the law with respect to it, and added:

“It was but a slight departure from the right path, yet in the end it caused one

of the greatest scandals of the day, ruined the reputations of men who had been honored by high office, and some of whom have gone down in sorrow to their graves. It caused a loss of many millions of dollars to this State and blemished its fair fame so that in the presence of strangers we hung our heads in very shame for the disgrace that had been brought upon us."

If some obscure attorney-at-law had endeavored in a petty case to influence the Judges outside of the Court he would have incurred the risk of disbarment. Whatever may have been the effect with these surroundings, Mr. Todd must be acquitted of entertaining such a purpose, for he is an honorable though mistaken gentleman; but how sad it is that a man who fails to keep his own path straight in a plain and simple matter of professional ethics should show so little lenity toward the supposed lapses of others in a problem as complicated as the building of the Capitol.

Thirty indictments were prepared charging the defendants with conspiracy, and seven others charging them with the crime of false pretence. It is not my purpose to discuss with you the technical accuracy of the judg-

ments which were rendered. There are many questions which arise in life of much more importance than the correctness of pleadings or the admissibility of testimony. I shall ask you to rise with me into the higher atmosphere of justice and humanity, and I shall present to you considerations which appear to me to be unanswerable. A conspiracy is necessarily based upon some motive entertained in common by all of those who take part in it. No man becomes a conspirator merely for the purpose of getting himself into trouble. In the present instance the motive alleged was a participation by the officials who were made defendants in the division of the moneys paid to the contractors. That there should have been a conspiracy between the contractors and the officials is rendered so improbable by the circumstances as to be practically unthinkable. It is alleged to have included fourteen persons and if it existed must have been known to scores of clerks and employees, not one of whom left the slightest trace of its presence that could be discovered. It included three different sets of contractors, those for the building, the metal cases and the furniture, who had no interests in common and several that were antagonistic. It must have been that never before heard of nondescript, an

automatically transferable conspiracy. It covered the terms of two Governors, two Auditors General and two State Treasurers, and is asserted to have included all of them save the Governors. They came from different parts of the State, strangers to each other and to the contractors, as you elected them. In every conspiracy heretofore known to the law the conspirators, like those who murdered Caesar, selected their own companions upon whose wicked assistance they could depend. It was not so in this conspiracy which was *sui generis*. When one conspirator disappeared from Harrisburg and went back to his home you elected another conspirator to take his place. They were the highest officials in the State and you were responsible for them. In its essence the charge is one made against your intelligence, and your honesty, and it means that you are unfit for self government. The State Treasurer and the Auditor General who supervised the preparation of the schedule knew at the time they did it that they would not be the State Treasurer and the Auditor General when the moneys were expended, and who would be their successors they could not tell and you alone would determine. What kind of assurance then do you suppose they gave to the contractors, their fel-

low conspirators? The conspirators who expended the moneys had nothing whatever to do with awarding the contract for the metal cases, or in preparing the schedule for the furniture, and therefore had been utterly powerless to pave the way for what is alleged to have been their own connivance and profit. These officials did not even seek their places on the Board of Public Grounds and Buildings but were put there by legislation passed long before, over which they had no control.

This *a priori* reasoning is rendered conclusive when we stop to examine a series of ascertained and undisputed facts. It is axiomatic in ratiocination that when an accepted theory is found to be in conflict with any certainly ascertained fact the theory must be abandoned. Thus in astronomy if there be twelve points found which indicate a circle, and then one be found outside of the circumference, the figure may be an ellipse but it cannot be a circle. In law, if the defendant charged with murder is proved to have expressed an intent to kill and his shoes fit the tracks in the field, and he has thrown his bloody knife into a quarry, and his hands are red, still he must be acquitted if at the time of the crime he was a hundred miles away.

There are a number of facts in this case

which show conclusively to any one accustomed to the exercise of the rational faculty that no such conspiracy existed. Upon the supposition that it did exist Huston, the architect, was necessarily the central figure in it for the reason that he had general charge of the work, ordered every item of material or work supplied by the contractors and could have prevented any and every bill from being paid by withholding his certificate of its correctness. The Board of Public Grounds and Buildings compelled Huston to accept four per cent. instead of five per cent. for his commissions in the way of compensation for his services, and it meant a saving of \$82,487.89. This fact makes it certain they were not in a conspiracy with him to divide receipts. They could have paid him the five per cent. without criticism for the reason that that was the usual compensation and the percentage he received from the Building Commission. Had they been dividing receipts with him there would have been this very comfortable increase in the amount to be divided. The only possible explanation of this fact is that the Board were acting adversely to the interests of Huston, and any possible combination, and were safeguarding the interests of the Commonwealth. When the Board employed Huston they wrote

to him in these words: "It is important, nevertheless, that the work should be done as economically as possible. No doubt because of the fact that you already possess such information and of the magnitude of the contract including Capitol and furniture, you would be willing to make special terms advantageous to the State."

Before the contract was made with Sander-son, the Board required Huston to make a general estimate of the probable cost and he fixed it at from \$500,000 to \$800,000. This estimate the Board entered upon their minutes. This fact is likewise absolutely inconsistent with the theory of the existence of a conspiracy. Lawrence Sterne once wrote: "A dwarf who carries along a standard to measure himself with is a dwarf believe me in more articles than one." It is simply inconceivable that men intending to spend millions in order that they might share in the distribution should write down unnecessarily a record with which to convict themselves. The fact cannot be explained upon any other theory than that it was intended by the Board as a means of holding Huston within reasonable limits of expenditure.

The Board at the suggestion of Snyder required each contractor to make affidavit to the

correctness of every bill presented by him before its payment. This fact alone, if there were no others, proves with entire certainty that there could have been no conspiracy between him and the contractors to divide the moneys paid under the contracts. The law did not demand such an affidavit. Imagine one of two men, engaged in a crime in common, saying in effect to the other: "You make yourself liable to a prosecution for perjury in order that I may appear to be innocent," and what would be the answer? Why should he want to throw more difficulty about drawing the moneys they were to share out of the treasury? Why should he want to increase the dangers? Why did every one of these contractors and fellow conspirators submit with such docility to this dishonor among thieves? The theory is untenable and will not bear the light. The contractors made the affidavits only because they knew they would not get the money otherwise. The man who devised that scheme was dealing with them at arm's length as the custodian of the interests of the State, and no other interpretation is possible.

That Snyder insisted upon the preparation by Huston of the Quantities Plans and the Quantities Book is a fact of the same con-

vincing significance. These plans and this book located every piece of furniture in the entire building and connected it with the bill in which it was included. Had there been a conspiracy, the more confusion and uncertainty that could be thrown around the articles to be identified, the more likelihood there would be of escape from detection. Why should Snyder, as a conspirator, have taken such pains to smooth and make easy the path of the possible Audit Company of New York? Why should he want to make so facile the otherwise difficult task of Mr. Todd? As a conspirator his course is unfathomable. If we adopt, however, the simple explanation that he demanded these plans and book in order that he should be able to hold the contractors to a strict liability, it is entirely comprehensible. Like the eagle of the poet, he has been pierced with a shaft feathered from his own wing, and it has occurred because of the unwillingness or inability of the prosecutors to understand the obvious meaning of assured facts.

There were three circumstances connected with the awarding and execution of these contracts which might properly awaken suspicion and lead to inquiry, and I shall now give you my thought in regard to them with entire frankness.

First. Several of the items in the special schedule required the bid to be made at so much "per foot." Undoubtedly the Board in using this term made a mistake, since a foot may be either lineal, square or cubic, and the terms of the contract ought not to have been open to any uncertainty of construction if it could be avoided. This language could and should have been made more specific. It may be said, however, that this term had been used by the Board in making its contracts for many years. At the time of the award the uncertainty of the term made no impression upon me for the reason that I knew of the fact that contracts for the erection of such complicated structures as iron bridges were effected upon that basis. One fact in this connection I have never understood. Of all the possible bidders, including Wanamaker and Tiffany and others interested, who spent much time in the examination of the specifications, not one of them before the contract was awarded said a word to me about any difficulty in understanding the meaning of the terms used. Had any bidder, or editor, seen uncertainty at that time it could and would have been easily rectified. There are many persons in a community who are much more eager to have an opportunity to find fault than

they are to have things done correctly.

Second. On the tenth of January, 1905, the Board of Public Grounds and Buildings adopted this resolution:

“Resolved that the revised plans presented by Joseph M. Huston for the special furniture, fittings and decorations for the equipment of the new Capitol building as approved by the Board of Public Grounds and Buildings December 13, 1904, numbering from 393 A 213, 394 A 214, 395 A 215, 396 A 216, 397 A 217, 400 A 200 and 418 A 238 inclusive, and that the contractor John H. Sanderson was directed to furnish the same under the supervision of the said architect; and the Auditor General be hereby directed to make payment for the same in part or fully upon certification of architect according to the schedule of June, 1904, under which this contract was awarded, and that the prices on any work not provided for in the plans adopted December 13, 1904, shall be fully agreed upon between the said John H. Sanderson and the said Joseph M. Huston, architect, subject to the approval of the Board of Public Grounds and Buildings and Superintendent J. M. Shumaker before any cer-

tificate for payment shall be issued.”

This resolution was treated during all of the trials by counsel upon each side as meaning that the bills should be paid without submission to the Board as required by the Act of 1895. The reason that there was a mutual acceptance of this interpretation was probably because the prosecution hoped to gain an advantage by claiming that it violated the law, and the defence by claiming it as authority for what was done. The Courts accepted an interpretation to which no objection was made. Unfortunately in these cases there was more effort to win than to ascertain the truth. The resolution has no such meaning. By no possibility can it be so construed. While inartificially drawn its real significance is that no bill should be approved by the Board without the certificate of the architect and this gave an additional safeguard. There is not a word in it which says or implies that the bills should not be presented to the Board. No resolution could set aside an Act of Assembly, and yet it has been assumed that this resolution did so without saying anything about it or expressing any such intention. The language is directly to the contrary. The resolution closes with the words: “Subject to the approval of the Board of Public Grounds and Buildings

and Superintendent J. M. Shumaker before any certificate for payment shall be issued." These words qualify the whole resolution, are in exact compliance with the law, and cannot be confined to the extra work which only happens to be the last described.

The Auditor General and the State Treasurer took the erroneous view of this resolution which was later accepted by the lawyers, and did not bring the bills before the Board for approval until payments had run up to a large sum. I shall give you my explanation of the reason for such action with the understanding that I have no knowledge of their motives, and may be entirely mistaken, and do them wrong. The Governor and the other two members of the Board were not in entire accord either in experience, views of life or in judgment as to what ought to be done. The fault in the situation is fundamental and arises necessarily from lack of correct principle in the Constitution. These officials were elected by the people and therefore chafed under the thought of control by the Governor. Moreover, they were both ambitious and looked forward to further preferment in the event of the completion of a great work well accomplished. The mere handling of the moneys and control over and contact with contractors and employees is

an element of political strength. Seeing a possible interpretation of the resolution which avoided the Governor they took advantage of the opportunity. If this be correct it was a fault, and grievously have they answered it, but the gratification of political hopes and the effort to work out political plans are very different things from the "graft" with which they were accused.

Third. Before the contract was awarded the architect at the request of the Board made a rough general estimate of the probable cost and fixed it at from \$500,000 to \$800,000. This sum was much exceeded. It was not expected to be exact or to be anything more than a guide. I believe the architect had no sure grounds upon which to base his estimate and that to some extent the expenses ran away with him as he groped along. For the construction of such a building there was no precedent, and it is not at all remarkable that he could not approximate the cost. It may be said for him with truth that he was less astray in his estimates than were the trained engineers who gave estimates for the cost of the Quebec bridge, the tunnel under the Hudson, and the Panama Canal, and many other large ventures which have been undertaken and less successfully completed. These are all of the

criticisms I feel called upon to meet.

With regard to the proper prices of chairs, sofas, desks and bootblack stands, I am uninformed. In two instances juries have found that some of them cost too much, and it is only fair to assume that the juries examined the matter carefully and reached a correct conclusion, just as it ought to have been assumed that officials did their duty. The inquiry narrowed to this extent is utterly immaterial. If I buy a coat it is useless to prove to me that the tailor made a thousand per cent. upon one of the buttons when I know that I only paid market price for the coat. The only pertinent inquiry in this respect is whether or not the whole thing was secured at a reasonable price. Upon the mural art painting, amounting to \$207,877.50, the contractor made no profit whatever. Assuming a reasonable profit to have been twenty per cent., that sum would about offset all the profits shown to have been secured by the contractor in both of the cases tried.

When the prosecutions were determined upon, there was but one sensible course for the defendants to pursue and that was for each of them to go into Court, tell every fact within his knowledge concerning the matter, and insist upon the contractors showing exactly what

CAPITOL TRIMMINGS GOODAMMUNITION FOR FUSION CAMPAIGNERS

Emery and His Colleagues
Profit by Gang Board's
Extravagance.

CONFIDENCE GROWING

Big Meetings Last Week En-
courage Candidates'
Hopes.

Special Dispatch to The North American

LANCASTER, Pa., Oct. 7.—Using the story of the Capitol graft with telling effect as the greatest recent argument against gang rule in Pennsylvania, Emery, Black and Creasey, the Fusion candidates for State offices, went through the fourth week of their campaign with ever-increasing confidence of success at the November election. All the candidates went to their homes after the meeting, and they are busy and prepare for the coming week of the campaign tour.

The campaign news, familiar with the Capitol question, the candidate visited the building last Monday. This was packed and since Governor Pennypacker had been in the State House, the Board of Public Grounds and Buildings made their extensive alterations to the Capitol grounds and they collected enough material in the morning to last them through the campaign.

When referring to the purchase of desks by the cubic foot, cutting sarcasm in space, Mr. Emery uses cutting sarcasm to his audience. He carries his point with the other graft in the overhauling of the Capitol will prove the lever with which to control the control of the State from the Penrose Machine

profit they made, whether large or small, and what became of every cent of the moneys, whether in their coffers, or if paid to others, then to whom the payment was made. Had this course been followed the outcome of the prosecutions would have been ridiculous, and the effort to injure the reputation of the State and her officials been abortive. The prosecutors, however, had much to gain and nothing at stake, and the defendants had much to lose, station, money, reputation and even reason and life. It is no wonder that in the face of the clamor the defendants failed to think correctly and ran every which way for shelter. Unfortunately the trials became not an inquiry to ascertain the truth but a struggle to secure tactical advantage. In such a struggle the defendants were badly handicapped and almost helpless. The cards had been stacked against them. The newspapers had seen to it that the juries were packed, by telling them for months before they were sworn what conclusion they must reach. Nothing gives a greater sense of absurdity than to read in the testimony the repeated admonition of the Judge to the jury before him to be careful not to read a newspaper when both were well aware that this had been their daily mental pabulum since the

building had been erected. We make a great to-do when some artisan out of a job impersonates his busy friend on a jury, which does little or no harm, and we tolerate the wholesale packing of juries and perversion of justice in trials by the press without a murmur.

The immense power of the State was thrown into the scale against the defendants. Not only were \$95,981.16 expended upon the investigation, but the Act of February 11, 1909, appropriated \$40,000.00 to the Attorney General "to cover deficiencies" in his department, and \$107,961.41 were expended for counsel fees and costs. The Attorney General did not trust these cases to the District Attorney of the county, who is the officer elected by the people to conduct prosecutions, but appeared for the prosecution in person. No doubt he was within his legal authority in so doing but when he did it the act had much more than the ordinary significance. Generally it is the province of the Attorney General to protect officials who are attacked for something done in the performance of their duties. Huston is even now in the employment of the State and in charge of the erection of the Barnard statues and the Abbey paintings under his contract. When, then, the Attorney General appeared he took the responsibility of saying

that the Governor of the Commonwealth and you, the people, asked for conviction. There is still more behind. You will remember that the Commonwealth filed bills in equity suits claiming money from these defendants and answers were made denying the claim. Suppose one of you should have a dispute in Court over moneys and you should be confronted with a criminal charge, and you found your opponent conducting the prosecution, what hope would you have of getting justice? It makes no difference in principle that one of these parties was the Commonwealth and not an individual. The point is that the power to guide the trial was given to one of the interested parties. The Commonwealth was put in this unfortunate and indefensible position that having money to gain by the conviction of the defendants, she assumed and was permitted to assume control of their prosecution.

Even the virtues of the defendants counted against them, as when Snyder's insistence upon the Quantities plans, which definitely fixed the location of each piece of furniture, resulted in their being used to aid in his conviction. If the defendants had taken moneys and shared them with the politicians, they would perhaps have had friends whose selfish

interests alone would have led to support, but they were abandoned to their fate. Both political parties sought to make capital out of the situation—the Democrats through Berry, and the Republicans, intrenched in control, through investigations and prosecutions. The Senator from Dauphin county was retained as additional counsel for the prosecution. Since the record shows that he made no argument and asked no question of the witnesses, his proportion of the fees must have been earned by other service.

There were commenced thirty cases of conspiracy and seven of false pretence. The purpose of this subdivision was to overwhelm the defendants with a multiplicity of suits, the meeting of which would exhaust their resources. If one jury should perchance acquit, they could be brought up again upon another charge growing out of the same transaction until finally success should be attained. This plan had another and great advantage. It enabled the prosecution to pick out for trial anything they found to be faulty and eliminate all of the good work which might much more than compensate. Thus no jury was permitted to hear that Sanderson made nothing on the Abbey contract. It is as though you had sold a cart load of potatoes and the purchaser

hunting out one that was rotten should charge you with dishonesty while he disposed of the rest. If a conspiracy existed it was a combination between the officials, the architect and the contractors to cheat the State in the building and equipment of the Capitol, and this was the theory of the prosecution as shown not only by statements but by the indictments. There were not thirty little conspiracies, and the prosecution ought not to have been permitted to gain advantage by such oppression. Both the Constitution of the United States and the Constitution of Pennsylvania provide: "No person shall for the same offence be twice put in jeopardy of life or limb." Huston was acquitted of one of these subdivisions of a conspiracy. He was tried again for another and convicted. Amid this juggling with an alleged crime what became of the constitutional provision?

In thirty-two of the thirty-seven cases the prosecution entered pleas of "nolle prosequi" and abandoned the charges. The case of Frank Irvine is especially pathetic. He was a mere clerk in one of the departments. While I was Governor the bills would come before me for approval, often hundreds in a day. They came certified by the proper official. I formed the habit of occasionally select-

ing one at random and examining the details. On one occasion a bill came for Capitol work and I sent Irvine to make the measurements which he reported. The poor fellow did not dare to disobey. It might have cost him his position to offend his superior. The Audit Company of New York found his name on the paper and the Commonwealth had him arrested. Brooding over an accusation which seemed to him unjust and which he had no means of meeting he became insane, and was sent to an asylum, where I believe he is still confined. Then the prosecution went into Court and admitting that they had no evidence against him abandoned the case.

Two of the cases, being those against Charles G. Wetter, the partner of Payne, contractor for the Capitol, were abandoned upon the payment by him of \$14,000.00. Thirty-two of the cases were abandoned upon the payment to the Commonwealth of the sum of \$1,100,000.00. Deducting the \$95,981.16 paid for the investigation, the \$107,961.41 for lawyers' fees and expenses and the \$40,000.00 appropriated to the Attorney General for deficiencies, if there were no other expenses of which we are uninformed, the net sum received by the State was \$870,057.43. It had been better sunk in the sea. The course pursued

is simply morally indefensible. If the defendants were guilty of crime then they ought to have been convicted and punished. If they owed to the State six millions of dollars as alleged in the bills in equity filed, these sums ought to have been recovered. It has been said in an effort at palliation that the payment of \$1,114,000.00 was a confession by the defendants. If the giving up of that sum was a confession by the defendants then much more was the giving up of five times that amount a confession by the prosecutors. Where the money came from is a hidden mystery. Extortion from the fears of widows and orphans, from the dread of further publicity and prosecution, from the timidity of corporations who might perchance lose their substance, it may have been. They had seen that neither the long and meritorious service of Snyder, nor his reputation among his fellow men, had been enough to protect him in the Courts of the land and they might well be in fear. But confession it could not be for the reason that Sanderson, Payne and Mathues were in their graves and beyond confession. When a woman or a man has brought a charge of crime, and for money then offers to withdraw it and have a "nolle prosequi" entered, she or he is properly discredited and disbelieved.

The deed is no better when done by a State. When the Attorney General settled those prosecutions for money, and went into Court and said officially upon the record that they had been improvidently brought, he dragged the Commonwealth down to the ethical plane of the blackmailer. Proud of the State in which my people have lived for two centuries and a quarter, and of which I have been the Governor, when a man from New York or Chicago, into whose ears have been poured false, treacherous and defamatory tales, points with derision to the Capitol, I stand erect and confute him with facts of which he has never heard. But when a solemn decree is entered by the Court of Dauphin County dismissing a charge of crime against the State for a consideration, what recourse is there save silence? Thirty-four of the thirty-seven cases were disposed of after the manner above narrated. In another case Cassel, Huston, Shumaker, Snyder and Mathues were all acquitted and the jury found that the costs should be paid by the prosecutor, which means that in their judgment the suit ought never to have been commenced. In only two of the thirty-seven cases did the prosecutors succeed. I have read with the utmost care the 1403 printed pages of testimony in the one case

and the 962 pages in the other, and the one immense, overpowering and overwhelming fact that appears in this testimony is that there is not a word of evidence anywhere that either of the officials received a dollar from the contractors, and there was not the slightest attempt to offer such evidence. The hurricane of graft which blew around the editorial chambers was not even a zephyr in the Court room. Mr. Carson, the Investigation Commission and the Court all alike failed to find any trace of its existence. I have a copy of the evidence bound and shall present the volume to one of our libraries so that it may be seen hereafter upon what kind of testimony men in our day were imprisoned. You will probably ask me, if this be correct, how did it happen that they were convicted. Evidence was given that certain articles cost too much, that certain measurements were incorrect, that certain charges which ought to have been made under one item of the schedule were made under another, and from such facts the jury were left to guess at, to infer the guilt. You may at various times have paid too much for a ton of coal and it may even have been short in weight, but I take it you never understood that you were in consequence guilty of a crime.

I wish to be entirely respectful to the learned Judge before whom the case of Snyder was tried, and I entertain for him personal and professional regard, but there are some features of its conduct to which reference must be made. The very foundation stone of English and American criminal law is that the defendant is presumed to be innocent. He who asserts that his fellow has committed a crime must prove it. The presumption in favor of innocence must be overcome by proof. There are some Judges who take care that no case be tried before them, not even that of the most hardened offender, without the jury being made to understand this attitude of the law. There never was a case tried where it was more important that this principle should be explained and emphasized than in that of Snyder. He came into Court condemned by newspaper trial and required to disprove a conclusion reached in advance. Every juror knew that should Snyder be acquitted he, too, would be attacked, recklessly accused of having been bribed, his face put in the morning's papers, and if ever any of his second cousins had killed a sheep or begotten a bastard, the fact would be printed over the land.

Never before in the history of jurisprudence

had this kind of pressure been equalled. In the very midst of the trial, one of the Counsel for the prosecution had two interviews with a member of the jury in his office, an arrest resulted and five newspapers proclaimed the fact saying among other things that sleuths had followed the juror for days and that four other arrests were to follow. Then when the attention of the Court was called to the matter by the defence, the prosecution admitted that a mistake had been made, that the man arrested had been discharged, and that no juror was suspected (Testimony, page 1091). Nevertheless the Judge did not even refer in his charge to the fundamental principle of the law that the defendant was presumed to be innocent.

There is another wise legal provision founded upon experience and never anywhere disputed. Public officials in the performance of their work are presumed to have been faithful to their duties. Had the jury been informed that this is the universal law always invoked it might have saved Snyder. The charge of the Judge was silent upon the subject.

An experience of nearly fourteen years on the bench leads me to say that in the trial of causes, which are disputed and supported by

testimony, there are always certain facts disclosed which, when read in their proper relation, point inevitably to the truth of the controversy. This case is no exception. I shall now go over with you a series of events occurring in this trial which illustrate what I mean and the deductions from which are unanswerable and conclusive. No analytical and trained mind can escape their significance.

In his opening address to the jury in the trial of Huston, his counsel, the Hon. George S. Graham, said:

“We will show you that our attitude has always been the same and that when this matter first came up before even the first case was tried (Snyder’s) we went to the Attorney General of the Commonwealth of Pennsylvania and his distinguished associates who sit at this table and told them the story of that letter and that it was a lie, *at a time when under the promise extended to us Huston had no expectation of ever being tried for this offence.*” (Testimony, page 484).

If this statement of Mr. Graham be correct the Attorney General made a bargain, under the terms of which Huston was not to be prosecuted, and he failed to keep his compact. If Mr. Graham be not correct, nevertheless it

is certain, that some such arrangement either avowed or tacit was made. In the Snyder case Mr. Graham on behalf of Huston asked for a severance, and much to the surprise of all who watched the scene the prosecution assented to the proposition. This was followed by the appearance of Stanford B. Lewis, the man of affairs for Huston, who had charge for him at the Capitol and was in a sense a partner, as a witness for the prosecution. Incidentally you will observe that since Huston was the central figure in all of the Capitol transactions the prosecution never would have assented to his escape save from a knowledge that the evidence in their hands did not prove their case. It makes no difference whether or not the statement of Mr. Graham accurately narrates what occurred. Huston and Lewis, who was likewise indicted, believed that if they helped the prosecution they would avoid the trials which threatened them. The consideration given for the testimony of Lewis was either promise or hope. He took the stand for the prosecution. He assumed responsibility for the preparation of the letter from Huston to Carson, he came into collision with both Carson and myself, and he testified that Sanderson once said "he had to put up a big wad for other people." These state-

ments show his willingness and eagerness to earn his reward. He never was tried. We may feel sure that we know whatever he and Huston were able to tell. He did not produce a letter, or a check, or a memorandum, or a paper of any kind which disclosed a conspiracy, nor in the hundred pages or so of his testimony did he give any fact more serious than the uncertain and vague statement heretofore attributed to Sanderson. It is plain then that Huston knew of the existence of no conspiracy and since he did not know of it there could have been no conspiracy.

When the Snyder case went to the Supreme Court this was the result: "A majority of the Court are of the opinion that the judgment appealed from should be affirmed on the opinion of the Superior Court." It was whispered among the bar that three of the Justices were in favor of sustaining the conviction, that three of them were of the opinion that there was no evidence whatever of a conspiracy, and that the seventh concluded that the charge of the Court below was inadequate, but that since counsel for the defendants did not ask for fuller instructions the judgment ought to be affirmed. Counsel were weary, principles had been forgotten, and therefore Snyder properly suffered. Certain it is that

the minority of the Court were decided in their views or an opinion would have been written in this the most important case that ever came before them, involving the liberty of men of high standing in the community and the reputation of the Commonwealth.

In the other case the conviction of Huston was secured with painful difficulty. He had already been acquitted upon one of the subdivisions of the supposed conspiracy and should he be again acquitted it would make the punishment of Snyder an absurdity. After the trial the prosecution secured affidavits of eleven of the jurymen detailing what occurred during their deliberations. According to one of these affidavits, only four of the twelve, according to ten of the affidavits only five of the twelve, voted in favor of conviction of conspiracy.

Evidently the jury then made a compromise because they brought into Court this verdict:

“We find the defendant guilty of defrauding the Commonwealth.” The indictment did not charge him with defrauding, but with conspiracy. This conversation then ensued:

“THE COURT: Gentlemen, do you mean by this that you find the defendant guilty of the conspiracy charged in the indictment?”

THE FOREMAN: No, sir.

THE COURT: You must determine. The question for you to determine is whether he is guilty of the conspiracy charged in the indictment. You mean by this, you find him guilty of the charge contained in this indictment?

THE FOREMAN: It is changed, don't you see?

THE COURT: You say the defendant is guilty of defrauding the Commonwealth. We ask you whether you mean by that whether you find him guilty of the charge contained in this indictment. Is that what you mean?

THE FOREMAN: We let the conspiracy off, we agreed to let the conspiracy off.

THE COURT: The question to determine is whether he was guilty of the conspiracy.

THE FOREMAN: That is what we would not agree.

THE COURT: Have you considered that?

THE FOREMAN: Yes, sir, and we agreed that there was no conspiracy; we have agreed on that."

It would appear as though the Court had pushed the inquiry to the end and secured a

definite statement by the foreman of the finding of the jury with respect to the crime charged. A jury cannot all talk at once. The foreman is their spokesman. If he states the finding inaccurately any one of the jury may object and counsel have the right to have the name of each jurymen called so that he may answer. Neither event occurred and the foreman had stated that the jury agreed that there was no conspiracy. It will be further observed that the Judge in pressing these queries repeated three times in almost the same words this thought: "The question to determine is whether he was guilty of the conspiracy." That was not the question they were to determine. There was another alternative. The defendant might perchance have been innocent. This possibility does not appear to have been in the mind of the Court. The newspaper presumption even in Court overpowered the legal presumption. The situation shows how important it is, if we are to maintain our system of government and law, that some means should be found to prevent the influence upon trials of irresponsible publication. The Court then continued:

"The question for you to determine is whether the defendant is guilty of the conspiracy charged in the indictment,

being party to the conspiracy charged in the indictment to defraud the Commonwealth. That is what you mean?"

You will again observe that only an interrogation point, an intonation of a voice which can no longer be heard, saved this from being an absolute finding by the Court against the defendant.

"THE FOREMAN: They all agreed. That is the only way they would agree.

THE COURT: We will have to send you back and you will have to determine the question before you. This indictment charges the defendant with having conspired with the other persons named in the indictment with the conspiracy to cheat and defraud the State by means of the false bill set forth therein. That is the question you are called upon and you are sworn to determine. If you have not considered that or reached a determination upon that you may retire and consider that question. The charge is that of conspiracy, with having acted in concert with the other persons named in the indictment to cheat and defraud the Commonwealth in the manner set forth pursuant to an understanding between him and the others.

MR. GRAHAM: If they are not guilty of the conspiracy they are not guilty of anything.

THE COURT: If he is not guilty of the conspiracy, if he is not guilty of the charge in the indictment, then you say so by your verdict. If he is guilty, if you are satisfied beyond a reasonable doubt that he is guilty of conspiring with the others to cheat and defraud the Commonwealth by means of the false bill set forth therein, you say so by your verdict. Suppose you retire and consider that. You understand that the charge is that the defendant passed this bill, that he passed this bill set forth in the indictment, knowing that it was false, with intent to cheat and defraud the Commonwealth and did so pursuant to an existing understanding between him and the other persons named in the indictment who also approved and certified and caused the bill to be paid."

The jury retired to their room, yielded, and brought in a verdict of guilty as indicted. The Supreme Court affirmed this judgment, likewise without an opinion, and by a divided Court.

In his closing address to the jury in the

Huston case, the senior counsel for the prosecution said: "Every guardian selected by the law to protect the Commonwealth was faithless to his trust." This language accurately expresses the theory of these prosecutions that all of the men whom you elect to responsible office are given to iniquity and proper to be condemned. The theory is false, conceived in mental narrowness and obliquity, and is contrary to human nature, and contradicted by all human experience.

In the evidence in the case of Snyder (page 851) appears this letter, written by him to Sanderson, July 10, 1905:

"Replying to your request as to whether advances will be made on goods which have been partly completed or wholly completed and not yet delivered into the possession of the State, I desire to say what I have repeatedly said to you heretofore, that no advanced payment either wholly or in part will be made on account of your contract of June, 1904, designated as special furniture, carpet, fittings and decorations schedule at the new Capitol in Harrisburg, Pa. No payment will be made on account of the contract until the goods are delivered and in possession of the State, and then only upon goods and

items under the special schedule, of which you were the successful bidder and for which the contract was awarded to you by the Board of Public Grounds and Buildings in June, 1904. Before any payment is made, even after delivery of the goods into the possession of the State, the architect must certify by certificate designating the item in the special schedule under which these goods were made, and certify further the amount you are entitled to receive, and that the goods had been made according to plans and specifications and at the price you were awarded the contract. The Superintendent of Public Grounds and Buildings must further certify that the goods had been delivered and are in the possession of the State. And your bills must be specially itemized and show in what rooms these goods are placed, and the correctness of your itemized bills must also be certified to by the Superintendent of Public Grounds and Buildings. And I wish further to say that a warrant will not be drawn for the payment of any item, part or parts, either in whole or in part, unless it was awarded you under your contract of June, 1904, and that it

has been made according to the plans approved by the Board of Public Grounds and Buildings. Any deviation will be considered a just cause to withhold a warrant until the bill has been corrected and properly certified as hereinbefore stated."

In any ordinary case where the jury were permitted to form their own conclusions from the testimony offered, this letter in itself would have resulted in the acquittal of Snyder. Written to the contractor at the outset, at a time when no one knew how much money would be expended, it is entirely inconsistent with the thought of the existence of a conspiracy.

The same counsel for the prosecution described Huston as a man "endowed with genius to coin forms from leaf and star and cloud, entrusted with the fame of his State, respected by all who knew him," and then declared that "he had received his meed of ill gotten gain without what seemed to be the grime and the crime and the dirt of the hands that thrust it upon him." He was, therefore, at the same time both an angel of light and an imp of darkness. The character is too complex to be accepted as probable. The artist has made his contrasts too bold and glaring to be natural, and we may

rest assured that he has handled his brush too carelessly to be accurate. For one part of the statement the proof is the Capitol standing on the banks of the Susquehanna, where all the world may see, but the expenditure of over two hundred thousand dollars failed to result in the discovery of any trace of "ill gotten gain." The lack of proof was supplied by the vehemence of the editor in his office and of the advocate in the court room.

I have already called your attention to the report of the Investigation Commission upon the information secured by them that "at no point did it show or appear to show that any of the moneys paid by the State to its contractors in this connection had been directly converted to the credit or use of any of the State officials." In the trial of Snyder the Court found as follows:

"The uncontradicted evidence in the case and *the admission of the Commonwealth* is that every piece of furniture charged, billed and paid for was delivered to and received by the State from Sanderson, one of the defendants." And again:

"The uncontradicted evidence in the case and *the admission of the Commonwealth* is that all the furniture and every

article charged, billed and paid for was of the quality which Sanderson, one of the defendants, was required and had contracted to furnish.”

Never before in the history of the world, so far as I know, were criminals imprisoned, not even William Penn and Robert Morris, who were likewise sent to jail by the foolish of their day, with such astounding certificates on record of their integrity and of their efficiency.

I have now told you the story of the desecration of the Capitol and have given you my reasons for the belief that it has been an exhibition of egregious folly, sordidness and wickedness. No doubt I should have been more comfortable if I had gone along to the end of my life leaving this wrong for the future to redress, but I have endeavored throughout my career hitherto never to flinch from what I conceived to be the performance of a duty and I do not propose to begin in a matter of such moment in which I have been concerned. It is due to Huston, Snyder and Shumaker that I should bear my testimony to the merits of their achievement. It is due to the Commonwealth that some one, with a semblance of authority and the power of speech, should raise his voice in protest against the

harm done to her and in answer to the reproach which has been cast upon her and which she little deserves. The hypocrisy which claims praise for the Capitol, for the effectiveness of that which is useful, the beauty of that which is ornamental, the paintings of Abbey and Violet Oakley, the tile floor of Mercer and the statuary of Barnard, and gives no credit to Huston who secured them all for us, whose genius designed and whose energy completed the work, is a disgusting thing, to be held aloft for condemnation.

The results of the investigation and the trials, imperfect at every step as I have shown them to be, have been both sad and baneful. The reputation of Pennsylvania through the erection of a public building massive and ornate, with such promptness and skill and within the revenues, would have been strengthened over the world if a perverse stupidity had not intervened to prevent. Hereafter what official will dare to undertake any important task for the welfare of the State, with the knowledge of the fate which befell Snyder confronting him? What architect of reputation will risk its loss in your service? What contractor will not want compensation for his work and also for the danger he runs of losing his payments and being accused of crime by some future

Berry looking for office and encouraged by this example? Edwin S. Stuart, genial, good hearted and worthy, had in mind one important work with which he hoped to signalize his administration. On the stump and in many public addresses he urged the construction of a great highway to span the State from Philadelphia to Pittsburgh. In deference to his opinion and his wishes the Senate and House passed a bill providing for its construction. He vetoed the bill. He did not do it for the lack of money. If a Capitol could be constructed from income so could a road. He found over eleven millions of dollars in the treasury left by his predecessor. It was because he thought it wiser and safer for himself and those around him not to undertake what he believed to be for the benefit of the State. After the route should be selected there would be many towns through which the road could not pass, after the contracts should be awarded there would be many contractors whose bids were not accepted, and all over the State there would be ambitious and insincere politicians ready to take advantage of the situation. He saw before his eyes and learned from his own legal adviser the kind of reward which had been meted out to men who accomplished important tasks in aid of the

public, and he declined to support his own proposition. For the next hundred years Pennsylvania will reap the crop which has been sown for her and will pay with substantial losses for the indignities which have been heaped upon the officials you elected to your highest offices. One such loss irreparable in its character she has already suffered. Edwin A. Abbey was one of the contractors for the decoration of the Capitol. Born in Philadelphia, he had attained world-wide reputation for his wondrous skill in art. When employed by the architect he expressed his intention of doing the most important work of his life upon the Capitol of his native State. Then came the scandal, bruited in London as elsewhere, with its demoralizing results, with its uncertainty as to whether he would ever be paid for his labors, and his activities temporarily ceased. Now he is dead, with his task but half completed, and Pennsylvania has lost forever the treasures themselves and the opportunity of signalizing the genius of one of her sons. And consider the wickedness and cruelty which were a part of this degradation. Sander-son, Mathues and Payne were driven to their graves and Irvine to an insane asylum. A fiendish malice gloating over their misery has suggested that they died and became in-

sane because of a wrong they knew they had done. In the days of our barbarous forefathers, when the lightning struck and consumed the hut and meager possessions of some peasant, they assumed that he had committed a crime and that the Lord was angry with him. The leper lost his reputation as well as his life. We are not yet very far removed from barbarism. Who ever knew a thief to die of remorse? Men perish because the burdens laid upon their shoulders and their brains are too heavy for them to bear, and the imagination can conceive of no load more grievous and more likely to crush humanity to the earth than the consciousness of having labored faithfully and attained success only to be followed by persecution and ingratitude. John Fitch, after inventing the steamboat and running it for three months upon the Delaware before a people too dull to comprehend, went out to Kentucky and hanged himself.

Huston, Snyder and Shumaker, knowing the good they endeavored to do and accomplished, need have no sense of shame and do not require your sympathy. The shame is on those who misused the power of the Commonwealth. Let those who fanned and fostered the scandal take the responsibility. When in future ages the curious delver turns from the

beauties of the Capitol to dig among the forgotten records of these trials it will be with strange wonderment that such events could have happened in the twentieth century, and to write the names of these persecutors alongside of those of the Council who clamored for the execution of John Huss and of those Judges who burned Joan of Arc in the market place of Rouen.

It is well that manners soften as the world grows old. France in the wild days of her revolution cut off the head of Roget de Lisle, who had written for her that most inspiring of lyrics, *La Marseillaise*. We have treated the architect who created and adorned the Capitol for us in a milder and more gentle fashion. We have only robbed him of his earnings, blackened his fame and sent him to prison to meditate upon the vicissitudes of fortune and the rewards of public service.

A poet has written that time turns the old days to derision. The frettings and controversies which agitate the souls of men disappear with the morrow. In the lapse of a few summers the dreariest bank of cinder and ashes becomes clothed with verdure and fragrant with flowers. The blackest of clouds bear with them the waters that give life to vegetation. It is a comfort to know that there are but

few of the efforts of men, even those that originate in their baser instincts and are conceived in iniquity, that do not in the end result in some benefit. The winds that blew for a time with such threat and fury have sunk into silence in the far off wild woods of Broceliande. It may well be that the Capitol on the banks of the Susquehanna, through the coming centuries, meeting the needs of the Commonwealth, and gratifying the pride of her people, will be the more appreciated because of the fierceness with which it has been assailed, and that its granite walls will glisten in the sunlight of the future more brightly because of the murk and fog which followed its construction.

Sam^e W. Pennypacker

