CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

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You have charged them of the Grand Jurors affected the
Court & Court the special cognizance of the Claim of the Govern-
ment & Said the Prisoner the Court commanded to the prosecut-
tion on behalf of County that the last time a man who
would join Prisoners interest, the reputation & Character
Effect by the commission of a crime without a motive & Gentle-
like a man who would be guilty of offence taking place amongst
Friends & Countrymen but that the man who was his Captain must
Court that man be found in a crime or not? Jurors are for
Claim to be found the Act of that motive & Consider the two questions
Gentlemen of the Court. Look at the the Prisoners Counsel
Look with a Eye like a Falcon, and a nose that would do honor
to a Bloodhound of Mule, a chin cut smooth and a sharp clean jaw
everything in form and feature shows the Head and a ready
hand, and then look at the other a poor feeble whey-faced
Kid timidity in every feature mechanical creeping, cautious
hesitation in his steps and self distrust in every turn. Look at
this and say if you can that he led and the witness followed.
Now Gentlemen, the witness is a man you would pick out of
many as having a Head to plan and a Hand to execute
a Man of Such a man to Prison or Prison or Prison would not
be running counter to every the steps that they should be evidence
to convict them. The unimpeachable witness is not a man to do things
by halves and he must be a clear job in this case.

But what the witness Nelson is much less guilty than his
associates in Crime? We tell you that he was then a soldier
in the United States Army. [redacted] By an
express Act of Congress and [redacted] Law for
Command that Government must [redacted] the Prisoner in such
[redacted] of the provisions of this Court [redacted] a Captain in the
[redacted] Regiment was stationed at Galena
and did Guard duty over this very Cellar. He was then Custody from
from the moment it came into possession of our Forces. He was the
Officer which effected it. He was accustomed with Military Laws and
knew the penalty of their infraction. He was all the Luck
and in the worst sense of the word. Think you Gentlemen
he [illegible] and it without a motive? Think you that he
was in danger without knowing the Secrets.

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Just let us look at the circumstances again and consider the facts which the witness acted in this interesting affair.

He went to the Store with Dillon and Meloy the Prisoner. For what purpose did this ~~Witness~~ go to Younger the Prisoner? and ask him if he wished to buy Cotton? Did it appear accidental? It might have been an accident if his connection with the affair had ceased there but his subsequent conduct completely shuts out that consideration.

When the Sergt. said there was no danger that part of the Cotton did not belong to Government, why did not the witness contradict the statement. He knew it to be false. He knew that every pound of Cotton belonged to the Government. But you may say perhaps he did ~~say~~ so. He has not denied it. Very true but could any sane man in this Court possibly have mistaken a thing so much to his own credit as this testimony if it had not been the case? Assuredly Not.

Dillon sits the prisoners Counsel and Younger goes into another room and then no doubt the witness would have the Court understand, sends the Sergeant for this Cotton? Gentlemen mention that is no evidence to convict this witness! No and he did not mean there should be. He did not mention to witness any such Contract? He did not say anything about it. He was not instructed at all? That is no evidence against him.

Is it possible there was an understanding between himself and the innocent Sergeant? Could he do so? he was said to "Younger go on" Will God you? it will suit you? Will you believe in consequence of that kind? It would be the first withstanding between him afterwards. It is plain on the face that he assisted in carrying off the Cotton, and in this state he confesses himself to have been an accessory.

Why did he manifest such extraordinary interest in the Cotton persistently afterwards? Did he not go with Younger to sell the Cotton to Cook? Did he claim any of the proceeds? He does not say that he did. I am afraid Younger would make a bad bargain or was he afraid that would be known among Troops?

and that he would not get his share of the plunder?
Why did he so write Cook and Johnson to see the Colonel?
When did he hand them and see the Bill of sale made out?
Why does he appear anxious the prisoners Counsel appears
and get them to intrust it the Cotton.

Gentlemen of the Court
on of two things must be true, the witness either had an interest
in the robbery or he had not. If a part of the profits must
then have been his or he had no motive for committing the crime
or participating in it.

Then could there be other motive
than interest in the success and profits of the transaction which
could have induced him to have engaged in it.

You what are the conditions under which an accomplice is
allowed to testify? What is the policy of all Law in regard
to it? He comes here under an implied promise of pardon.
What must he do to merit this pardon? He must make a full
and free and true confession of his ~~guilt~~ crime and a complete
and true disclosure of his accomplices. Any reservation, pre-
varication or avoidance in regard to this leaves him liable
to same punishment the testimony the same as in case of
any other witness.

You Gentlemen of the Court see what
an effect to accredit the testimony of the witness Selecy.
He has sworn to tell you the truth and the whole truth in
regard to the matter in issue. He was admitted a witness
upon the condition that he should confess all of his own share
in the crime. Has the witness Select done this? Has he told
you what was to be done with the proceeds of the speculation
or are the Court to presume that he was to share no share
in the dividend. That he had no material interest in the
success of the plans which he so zealously aided in com-
mitting. In hope of gain from the Cotton, when subsequent
disposed he so zealously looked after. Then must the Court
admit that the witness is a man unworthy of credit. If
he committed a crime without motive he is scarcely to be
considered as understanding the nature of an oath?
But it may be claimed by the prosecution that it is not

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Essential to a full confession of his own guilt that he should state what was this share of the plunder? Was it a part of the truth which he was sworn to tell in relation to this case? & could the knowledge of this effect in any manner the standing of the prisoners in the eyes of the Court? Could it in any manner effect the findings of the Court in this case? Was it an essential part of the truth which this witness was bound both to tell to the Court? Let us suppose a case in point. Say that the Witness had loaned the prisoners money to buy the Cotton and was to have half the proceeds on condition that Younger would settle in this county, would the knowledge of this fact have any weight or bearing with the Court? Was it not manifest that the Court should have known the share the the Witness was to receive in order that the other prisoners may not have more than their just share of guilt on the transaction — But again does the concealment of this affect the credibility of the witness? We contend that it does. The entire force of the Witness's testimony has been to implicate Younger as the man who was interested as the ring leader in the crime? We was afraid it would have a bad affect upon the Court should he confess that he brought the prisoners Wilcox and Sergt. Whitson to the store, listened to the conversation between them, helped to remove the cotton, and then had a large share of the proceeds. We knew that the Court would not consider himself less guilty than the prisoners, but on the other hand would see that the feeble prisoner was merely a tool in the hands of his crafty associate.

But not only does the Witness fail to show the Court the interest which he had in the transaction but he failed to show how he became involved in it at all. He did not dare to say that Younger made overtures to him in the store for he feared to be impeached by the witness. Whitson. He dare not confess that he had previously arranged the whole matter with Younger for he feared that it would prejudice him in the mind of the Court & endanger his own safety.

View it in any light you may, Gentlemen, there is evidently there must from return of things, be a part of the truth in this case

A part of the Truth too affecting the comparative guilt of the Prisoner Younger which this witness has kept back or else the Witness must be something more or less than human — He has not staked all of his own share of the guilt but left it for some poor Scape-goat of a Prisoner to bear in his stead. He has made a Statement to the Court which it is utterly impossible to Consider as complete and sworn it is all he knows concerning the Transaction — He must have known more. He must have had an interest in the Plunder, or he never would have committed the Crime. He has withheld from the Court some part of the Knowledge of his own guilt which if known would certainly affect the comparative guilt of others. It is simply impossible to believe that the proceeds of the sale of the Cotton were to go into the pocket of Younger alone — and yet this is the unavoidable inference from the testimony of the Witness.

There is however but one tenable hypothesis in regard to the case, One interpretation which may be given to the facts alleged which will fully account for the acts of all Parties. If the testimony of the Prosecution proves anything it proves beyond the possibility of a doubt that the Head and Front the life and Soul of all this plot was the Citizen — It was he who before the 21st day of July had proposed the matter to Younger and prepared him to receive the proposition of the Sergeant Watson, It was he who brought Watson and Wilcox to the Store, It was he who planed the secret contract between the Prisoners Younger and Wilcox, It was he who planned the crime who kept the timid heart of Younger from fainting during its Commission who made him the instrument of his own Crime and the Scapegoat of its consequences — He made Younger his dupe and is now making him his victim. He has hidden his tracts so deftly that there is no evidence against him, and now carries the favour of the Government by confessing just enough to implicate Younger and concealing everything that could blacken his own record or show his own part in the felony Why does he not tell upon what conversation he had with Younger in regard to the matter Either before or after the visit of the Soldiers to the store. He must have had some or he would not have been on hand to assist in the theft —

And will you, can you gentlemen, accept this Allen's testimony ~~for the whole~~ as the truth and the whole truth in relation to the matter? If he has refrained from telling what we know from the nature of things must have taken place, between himself and Younger & how can you accept as true what he has told us true! And can you gentlemen convict a prisoner of crime upon the ~~testimony~~ unsupported testimony of two false witnesses! Will you upon the evidence of two perjured villains, both of whom by their own ~~testimony~~ were formerly associates in the crime convict another man because he may have been their dupe and tool! Will you convict the prisoner Younger and sentence him to suffer death upon the testimony of witnesses bribed by virtue upon a confession which bears the stamp of insincerity and falsehood, goes forth untouched and free! If the prosecution have proved anything they have proved their own witnesses were the actors and the prisoners their dupes, their victims and their intended victims — Is this the testimony which is required to convict a man of so grave an offence —

But it may be said that these witnesses do corroborate each other in part — It would be strange if two such perjured scoundrels as these witnesses could corroborate each other so as to agree sometimes — But the question is still if such testimony is to have any weight at all even for a moment before a Court, then farewell justice — Blessed be the days of vigilance Committees, for it is better to trust to the wild furious of honest men than the machinations of perjured Scoundrels —

The entire evidence with regard to Cobb rests upon the statement of the witness Wilcox and even this does not in any manner connect him with the theft. — He bought the Cotton paid the full market price for it, took a bill of sale, borrowed a team and hauled it to the Depot — in the daytime — before the eyes of all. Maybe even accompanied it himself as it was taken along the road. He left it at the Depot and openly acknowledged that he had bought it of Younger. There is only one thing that could by any possibility lead us to infer any criminal knowledge on the part of Cobb was the answer to Younger's question asking if he knew where it came from — I suppose I do — And this only rests on the rotten ~~testimony~~ of the rotten villain who comes here to turn state's evidence by confessing everything that will not implicate himself and as little as possible ~~that~~ would — But does this in its worst view taken in connection with his acts show any criminal intent? Is he a fool? If not would he pay all the Cotton was worth, tell every one where he bought it, neglect the warning of Simpson and ship the Cotton openly to N — Y — while there were twenty witnesses of his own admissions where he purchased it and two witnesses of the bargain. It is impossible gentlemen. It may have referred to some supposed irregularity in the manner of Younger [illegible] [illegible] of the Cotton but the [illegible] [illegible] [illegible] the theft would only the [illegible] [illegible]. His entire subsequent course, his previous good character his [illegible] [illegible] word denies it — Even if the testimony of the witness Wilcox are perfectly reliable, [illegible] not be found guilty by the ~~[illegible]~~ [illegible] [illegible] [illegible] [illegible]

We ask the Court then to consider whether they have sufficient evidence before

them to convict any ~~for~~ for the prisoners of
the Crime for which they stand charged — 8
And here let me ~~by~~ introduce to the Court the
authority of Bench page 248 — X Have you
[illegible] testimony [illegible] before you on the side
of the [illegible] except that of accomplices —
One of them [illegible] with, but his
own Evidence establishes an indisputable pre-
sumption [illegible] and the testimony
of H. Cotes [illegible] implicates making
him a [illegible] guilty than either of
the [illegible] prisoners — And that in any case
[illegible] can only be
[illegible] accomplice was supported
by [illegible] testimony in many material
particulars [illegible] — But suppose we take the
[illegible] Caroline Wilcox
as [illegible] an accomplice [illegible] by the Victim
[illegible] must be supported and Cor-
roborated [illegible] unimpeachable
[illegible] Where is it supported
in any [illegible] point by the testimony
[illegible] implicated —
[illegible]
[illegible] possibility that the
[illegible] even the prisoners
[illegible] if he
[illegible]
[illegible] to the Court then
[illegible] and Cook
[illegible] evidence
[illegible] in any manner
[illegible] the ~~[illegible]~~ testimony of the
accomplices [illegible] this by him
[illegible] testimony [illegible] must
be [illegible] as ~~wholly~~ inadmissible and
[illegible] to convict any one ~~[illegible]~~
[illegible] in this ~~[illegible]~~ Court [illegible]
[illegible] before them —

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230
70
40
340

The second objects to the admission and consideration of all testimony offered in this case by the officers of the prosecution in reference to the nature and contents of the Government Current [illegible] [illegible] of the month of May 1865 [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] shown [illegible] [illegible] [illegible] [illegible] and better [illegible] [illegible] same point but on the other hand have shown at least conclusively that they might have done so had they desired

The [illegible] of this question naturally divides [illegible] into two parts.

1st — Direct evidence was within the power or possession of the the Government, or the prosecuting officials, [illegible] [illegible] to produce it or forfeit all evidence in the case?

and

2nd — [illegible] evidence within the power or possession of the prosecuting officials.

The Court will please recollect that the question is not Can the prosecution now, at this instant produce this evidence, but could they have done so during the month and more which they have taken to prepare this case.

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