THE COURTS.

THE ALLIBONE AND NEWHALL CASE.

SIXTH DAY.

DEFENCE CONTINUED.

Acquittal of the Defendants.

[Reported for The Press.]

QUARTER SESSIONS—Judge Thompson.

Mr. Haverstick resulted.

To Mr. Thayer.—Numerous checks to the extent of $50,000 having been drawn out by Mr. Newhall, his account shows that he had put in a *larger* sum, and after the 27th of August, 1857, a large balance to Mr. Newhall's credit existed of sometimes $100,000. On the 27th of August, the balance to Mr. Newhall's favor was $168,000 and upwards; on the 3d of September it was $220,000.

To Mr. Loughead.—This balance on the combined accounts on the 3d of September, 1857, stood:

T. A. Newhall & Co.,	$148,800 00
T. A. Newhall & Co.,	75,700 00
G. L. Harrison, Treasurer,	1,500 00
	$226,000 00.

To Mr. Thayer.—The three accounts were, severally, satisfactory, and nothing overdrawn.

Thos. S. Harrison sworn—

To Mr. Thayer.—I was a clerk in 1857 in Mr. Newhall's establishment; in November the failure of the Bank of Pennsylvania, the 25th September; I know that after that Mr. Newhall took to his business, in Pennsylvania: Bank notes and checks; about $50,000, not probably more. This came under my immediate observation; I took them in one instance, and I think I did in another; they were taken, at par; taken by Mr. Newhall; the goods were sold at the same prices for which they were sold, before; other money; some of those goods were sold before the failure of the bank; some of the customers of the bank were customers of the refinery, and we received from many of them their checks after the bank had closed; the refining establishment is at the corner of Race and Crown streets; we have a large number of customers, in various parts of the city.

To Mr. Loughead.—I am not the person who had an account in the bank as treasurer; the concern was called the "Pennsylvania Sugar Refinery;" Mr. Newhall is one of the firm; the firm is composed of Thomas A. Newhall, Gilbert H. Newhall, and Francis B. Allibone, son of the president of the bank; my department was cashier and book-keeper; I paid; there were others to whom bills were paid, but I mostly saw to it myself; cannot speak with certainty as to the amount, but from September 25 to October 25 our receipts were 130,000 $50,000 of which was in Pennsylvania Bank funds; I was the principal salesman; Mr. T. A. Newhall also sold; primary sales, in the refinery, the goods were passed to Mr. Newhall's account, and then paid to the bank; the refinery account and shipping interest account were kept separate; Mr Newhall is an exporter of sugar, importer of molasses; the sugar and molasses accounts were kept separate; cannot say when we stopped taking Pennsylvania bank funds; we received them as far on as January, 1858, not a large quantity, but principally caused doing so the last time in November, 1857.

H. G. Stebleggen recalled—

To Mr. Thayer.—I was general book-keeper in the Bank of Pennsylvania; I have carefully made out from the books of the bank an account showing the deposits, checks drawn and balances of every day, from August 3, 1857, to September 25, 1857.

This is a true and correct transcript of accounts of T. A. Newhall, T. A. Newhall & Co., and G. L. Harrison, treasurer of Pennsylvania Sugar Refinery. (Same given in evidence, showing an average daily balance in the interim of these dates of $122,258.49 3-10.) (Handing witness two checks.) These are the double bills of the Bank of Pennsylvania on the Southwark Bank of $26,000, and of the Tradesman's Bank for $21,000 for balances due before she failed, and settled on the 29th September, by giving these due-bills.

To Mr. Loughead.—I know nothing of the endorsement; this is the first time I saw them; I received the 24th or 25th the bank could not settle her indebtedness to the city banks by $51,000; Mr. Phillips was not well; I made the settlement; I found $1,000 due Bank of Penn Township, and $500 due Bank of North America, which occasioned a disappointment in her accounts.

Morris L. Hallowell called. To Mr. Thayer: We had some notes in the Bank of Pennsylvania before its failure which were protested; we had deposited them, and heard rumors of the difficulties of the bank and wished to see if my deposits were safe; I felt apprehensive that the bank would suspend specie payment, and went with the view of preventing loss and delay; I went to see Mr. Allibone, but saw Mr. Newhall; told him I would like our deposit to be *special*; and to be applied to any notes which might mature at the bank; there were two notes falling due there on the 9th day of 10th month; this was the 9th month; I wanted the money pledged to me, as an officer, and as Thomas A. Newhall; that it would be properly applied, and the note should be there on maturity; I would have been satisfied with his assurance in either capacity; afterwards, I saw Mr. Allibone, who confirmed the statement made after the failure, Mr. Newhall renewed his *individual* guarantee; John Welch was standing by; this was a day or two after the failure; I was anxious to have the transaction closed and wrote to Mr. Newhall to know the facts, stating that I would pay them at once; I asked him when I met him if he received my note; his reply was, that he had—and "sufficient for the day was the evil thereof;" I felt satisfied and left him.

On October 10th I again met him; he asked me how we were going to pay these notes; I replied, by a check on the Pennsylvania Bank for $14,000, and the remaining $25,000 by checks on other banks; he asked if I would give the checks payable to his order; I said I had no objection; I wrote to him to bring the notes to me; he came, and the transaction was concluded by myself or Mr. Jo. Traquhair, my partner, at our counting-room.

To Mr. Loughead.—I asked Mr. Newhall to bring the notes; my object was to secure my notes without delay and risk.

Charles D. Borie called.

To Mr. Thayer.—I am a banker of the firm of C. & L. Borie; Mr. Newhall, on the 27th of August, 1857, obtained from me $100,000, in two checks of $50,000 each; produces checks; these are the checks, on the Bank of Commerce; I understand that he used these in receivable and a cargo of coffee; the agreement was made in regard to notes of the Reading Railroad Company, and D. S. Brown & Co.—that $35,000 of the Reading Railroad Company acceptances and $15,000 of the acceptances of D. S. Brown, for which he was to pay cash; this was the pledge he made and performed; about the end of September, (September 29,) at the final settlement, he gave me bills receivable to close the transaction; (hands list of bills receivable to witness;) this is a list made out partly by my bookkeeper and my brother; have a distinct recollection that the notes mentioned there are the notes which were given to me by Mr. Newhall at the time; some of the notes were endorsed; cannot recollect if the third party was endorsed or not; I did not take any Reading Railroad note; he was taking Reading Railroad paper from me; I remember the receipt of G. W. Thomas, president of Insurance Company, being settled by a check on the Bank of Pennsylvania, after its failure; and redeemed by Mr. Newhall, in current money; had been in the habit of having large transactions with Mr. Newhall; and was under the impression that he did not want money for himself at that time.

To Mr. Loughead.—The date of the transaction on these checks was August 27. The check of Mr. Thomas, president, was, I think, $2,000; am not certain.

To Mr. Thayer.—One of the checks is payable to order—the other payable to bearer; they are both perfectly regular, and have been paid.

John B. Newbold sworn—To Mr. Thayer.—I exchanged Reading Railroad notes for claims on the Southwark and Tradesman's Banks to the amount of $50,000 on the Bank of Pennsylvania. [Producing due bills.] These are the due bills; they were both taken at their face; no discount either way.

To Mr. Loughead.—This was about the 6th October; am not quite certain as to date; they were Reading Railroad notes; some had matured; they were in various amounts of two thousand and twenty-five hundred dollars; except one of $10,000, which was made payable—within a few days; this was the one due on the 6th; Mr. Austin, of the Southwark Bank, met me and stated that if I heard of any one wishing to exchange for any other securities to acquaint him; these notes were offered and accepted; also, under same arrangement was made with the Tradesman's Bank; I collected one of these amounts from the trustee of the City Bank, Mr. Rogers, for $4,850; it may be another one; I collected it at Mr. Newhall's request, thus producing the indebtedness.

G. Pallier, Jr., recalled.

To Mr. Thayer.—[Having a paper handed to him.] This is a memorandum of the renewal notes given for W. S. Boyd notes; the amount is $10,200; the $200 is for interest; I gave Mr. Newhall, for these, a discount check on the Bank of Pennsylvania, after it had broken, for $10,000; the amount gained by the bank was $34; so only $116 interest was paid; no interest entered to Mr. Newhall; they were subsequently paid, with interest, on the 29th of October; Mr. Newhall said that he got it for $10,000, and the bank should have the benefit of the transaction.

To Mr. Loughead.—They were discounted on the 6th of October; I extended these notes, deducting interest and making $10,000; it is the identical check given to Mr. Hungerford.

Colonel W. C. Patterson sworn—I was president of the Bank of Pennsylvania, acting for a short time; I was chosen about the last of October, 1857; I had been, previously, a director—10 days—and subsequently, with Messrs. Taylor and Savage, became an assignee; I settled Mr. Newhall's account, and marked his checks good for the balance due to him about the last of October or the beginning of November; it was before the charges were made against his account from the exchange drawn by his firm, and Mrs. Betton, and without reference to them; Mr. Newhall has more than sufficient in bank to cover any deficit created by the draft of his son and Mrs. Betton; there is a balance of eight or nine thousand dollars in his favor.

I was present during part of Mr. Taylor's examination. The bank paid demands in bills receivable; the creditors of the Commonwealth were paid in current funds throughout; Mr. Newhall got the Reading Railroad check of $10,000 for the purpose of making a settlement of a claim by which the bank could not be injured. I prefered having it in his hands to that of the bank; I have understood that it was applied in the settlement of the claim of the Southwark and Tradesman's Bank; I have examined into Mr. Newhall's accounts and found them correct; I have always found Mr. Newhall ready and prompt to give any explanation of his affairs in connect on with the bank.

To Mr. Loughead. Two of the checks marked "good," were T. A. Newhall & Co.'s for $3,000 and odd; and T. A. Newhall for $5,616 09: I recognised these two; I have made up Mr. Allibone's account.

Charles Borie recalled.—To Mr. Thayer. After Mr. Newhall had redeemed the D. S. Brown and Reading Railroad notes, he exchanged the D. S. Brown acceptances for Pennsylvania Bank notes.

John D. Taylor recalled.—To Mr. Thayer. There was a meeting of the directors at the Bank of Pennsylvania, on the 25th September, at 8 o'clock in the morning, in the room where the board always met.

To Mr. Loughead.—The day of the suspension; to hear the report of the other city banks read.

To Mr. Wharton.—Any one going in the bank had to go up the steps.

Wm. L. Savage recalled.

To Mr. Thayer.—I am one of the assignees, with Messrs. Taylor and Patterson; I understand that there is a small balance due by the bank to Mr. Peabody; he has credited the bank with the £50,000 bill, and the present indebtedness arose since that bill was remitted; Mr. Peabody makes no claim on the bank for it; he has credited the bank with the whole amount; I have always found Mr. Newhall prompt to give any desired explanation of matters asked of him; I regard the acceptor of the £50,000 bill of exchange fully competent to pay the bill.

To Mr. Loughead.—I am defending a suit for the £50,000 bill.

To Mr. Thayer.—The offer is, by the holders, that the question should be left to three referees of the amount; that Mr. Newhall had lost by the bank, and then the suit would be withdrawn; if he has no claim the bill will be destroyed.

To Mr. Loughead.—This suit is brought to compel a settlement for Mr. Newhall; Mr. Newhall and the holders of the bill are willing to have a reference of the question as to how much Mr. Newhall has lost or been damaged in the sale of that bill to the bank, and if they found anything due the bank would have to pay it; if there is anything to pay with; and on such some deration of the reference being made on these grounds, the holders will give up the bill; so I understand.

John Welsh sworn—To Mr. Thayer.—I know Mr. Newhall; I have had considerable to do with the efforts made to keep up the Bank of Pennsylvania, and know that Mr. Newhall manifested great interest in the premises; and was indirectly connected with me in these efforts; he made unpaid and extraordinary efforts for the purpose; Richard Renton & Co., and, commercially very favorably; I know the house well, and believe them to be responsible; I have had occasion to buy sterling bills of the bank—perhaps more than once—and once on credit a £12,000 bill; for our obligation, 60 days; it is not at all an unusual circumstance; they were negotiated with the president; it is usual for boards of directors to leave the negotiation of sterling bills to the president of the bank.

To Mr. Loughead.—I do not mean to say that it would be correct not to report these transactions to the board, but that it is not necessary to convene the board for the purpose; the bill was bought and paid for; I was present when it was made and did not draw another bill in payment of it at the same time.

To Mr. Thayer.—The banks of which I have been a director did not deal in exchange.

A. O. Michener recalled.

To Mr. Brewster.—I am the principal of Mr. Orne, who was examined; I remember the morning of the suspension; I arrived there between 8½ and 9 o'clock; the morning; Mr. Orne mentioned that the president had taken from the Girard Bank, book, a check for $10,000; I looked at it; my statement is, as I stated it had not been changed, and found correct; I have a corresponding diminution in another, leaving the amount the same precisely, a mere substitution of one thing for another; I was bound to account for the sum; opposite that statement, and any deficit would have fallen upon me and made an impression on my purse as well as on my memory; the bank could not have lost a cent by the transaction; the substitution occurred before I came down to the bank; the amount had been taken from one and added to another before I came; and the alteration made after I came; this was before the bank had opened for actual business. I (Having a book, the second teller's statement, handed it to him.) This is my statement of September 24; the amount here would have gone to the exchanges on the 25th; it appears from this to have been taken from the Girard Bank book added to the checks on our own bank; I did not look at the checks at the time, and I should have been $10,000 short in my cash if it were not correct. (There was then had to witness a book where the work of the three tellers is consolidated. The fact stood the same in this as in the other book.)

To Mr. Loughead.—By which I mean there was no deficiency in cash; reference to this book will show what check was substituted; I told you that I could not recollect anything of the transaction beyond the books when you sent to see me on the subject.

John Welch recalled.

To Mr. Thayer.—I was called upon to raise money for the Bank of Pennsylvania on the 10th of September, 1857, to help her out of her difficulties; I negotiated for $200,000; I also sold exchange for the bank, £20,000; for the Philadelphia Bank, on the 21st of September, 1857.

To Mr. Loughead.—It was a bill drawn by the Bank of Pennsylvania on G. Peabody & Co.

W. Welsh sworn.—To Mr. Thayer. I know the firm of Richards Renton & Co., of Philadelphia; their commercial standing is very high; I am personally acquainted with the members of the firm; I have not corresponded with them; our house corresponds with G. Peabody & Co; I have seen Mr. Morgan, partner of Peabody & Co, twice in the last two weeks, who said that his house had been paid *in full* for the £10,000 bill, before the last hour of the day on which it was due, and that the bank obtained full credit for it on their books.

To Mr. Loughead.—He did not say by whom it was paid.

Anthony J. Dexel sworn—To Mr. Thayer. I know Mr. Newhall; I am intimately acquainted with the firm of Drexel & Co., of New York; we cashed a check drawn on the Bank of the Republic by Mr. Newhall; I know that Mr. Newhall went to New York to provide funds in payment of his check.

To Mr. Loughead. That was on the 2d of September.

To Mr. Thayer. I sold for Mr. Newhall a large quantity of Pennsylvania Bank notes after its failure—at least $100,000—at various rates of discount, from 75 to 85 per cent.

To Mr. Loughead. It was from the 5th of November to January 1st 1858. I sold them; I mean checks and notes on the Bank of Pennsylvania; a large part of the amount was his check marked "good," on the Bank of Pennsylvania; I cannot recollect the details of the affair.

Mr. Thayer offered a deposition of Michael M. Rooker, a member of the firm of Rostron & Co., of Manchester, England.

Objected to by Mr. Loughead as not usual in a criminal case, although the court directed the taking of the illness of the witness, the said deposition be taken.

Mr. Thayer did not press the matter.

The deposition was not admitted.

The defence here rested on behalf of the defendants.

Mr. Loughead. May it please your Honor, I was very much impressed, and listened attentively to everything that fell from the lips of my friends who opened the case on the part of the defendants. I was most impressed with what fell from my friend, Mr Thayer, upon the behalf of his client, Mr. Thomas A. Newhall.

The circumstances of the case, as presented by the Commonwealth, are such that I felt it to be my duty to press upon this jury a conviction of the defendants, for the offence here charged.

If the case had rested—and I am speaking of Mr. Thomas A. Newhall, as upon the testimony, presented by the Commonwealth; I should have felt constrained to press a conviction of these defendants, as they stand indicted. I should have urged upon the jury the conviction of Mr. Newhall as a conspirator. I therefore listened with great interest to the explanations which were offered by Mr. Thayer in his opening, and I have given great attention to the evidence, by which his remarks have been corroborated.

I feel that I should very badly discharge the duties of the office that I am exercising if, when a perfect explanation is given of conduct which appeared very doubtful, and wore a different aspect, I should hesitate to perform that duty, or argue to this jury, upon the testimony laid before us, the conduct of Mr. Newhall as being a party to a conspiracy. That he has taken unusual interest in the affairs of the Bank of Pennsylvania—an interest for which it is impossible for me to account, but, still, interest which we have seen, as developed by the testimony presented—there can be no doubt; and I think I have the approval of this court in saying that I find the acts charged against him, and which I believed, evidenced a corrupt conspiracy, so plainly and fully cleared up by the testimony in this cause, on the part of the defendant, that the more manly course upon the part of a prosecuting officer is to say so, and I adopt that course. I cannot find it within my heart to press a conviction, which has been given, to argue to this jury that Mr. Newhall has been corruptly engaged in the ruin and destruction of this bank. Under the testimony offered, may it please the Court, and under the construction which has been given to it by your Honor, I respectfully submit my course is to submit this bill of indictment, as the acquittal of one defendant will be the acquittal of both.

Judge Thompson. Precisely so, sir.

Mr. Loughead. I do not, sir, matter of great regret that I have not that testimony which I believed to be the legal and legitimate evidence bearing upon the acts of these defendants, to constitute the crime with which they are charged. It is, permit me to say, gentlemen of the jury—for I address the observation somewhat to you—the fault as much of the law as of the evidence, that those who ruin institutions of this character cannot be punished as they deserve. There is no statute or act of Assembly by which an offence of this description, though a bank were totally ruined by the acting-president or any single officer, by which he could be reached in a criminal court. Unless I could show that the acts together led to the ruin of the bank were the result of concert and combination, and thus make out a conspiracy, it is the only possible offence which could be alleged or sustained. When, therefore, ruin and desolation is brought about by the act of one man, it does not constitute a conspiracy, however much I may regret that I cannot force cases, or that the evidence does not go to show such a conspiracy as the law will punish. I have great pleasure in knowing that the trial of this case will be a warning to every similar institution in the State of Pennsylvania, and, I hope, elsewhere. In submitting the case to you, therefore, under the construction given the explanations afforded to him of indictment, I do so honestly and straightforwardly, saying that, if the facts, evidence and corrupt acts as charged against Mr. Newhall, they have been his relations and his acts, I do not feel it to be my duty to press a conviction upon them.

From the rulings of this Court, I understand the law to be, that where one of the defendants escapes, upon a charge of conspiracy, the bill of indictment falls, and the case must fall.

I submit it, then, saying that Mr. Newhall has exculpated himself, so far as his transactions have had any connection with the bank, and though there are many things which I might say as to its direction and the manner in which the acts of its officers were suspected by its directors, it is not within the scope of my present duty, and I commit this bill of indictment into your hands, under such remarks as the Court may see proper to make upon the subject.

Mr. Wharton. Before proceeding further, may it please your Honor, I would like to say one word upon the subject of the remarks just made by my learned friend, the District Attorney.

The only exception which I take to them is that he should have expressed his regret that the evidence adduced in this cause, which has been for so long a time so sedulously nursing, and pressing with so much skill to the attention of the court and jury, should have resulted in his entire conviction of the innocence of the defendants of the only charge which has been preferred against them. Now, I would have thought, sir, from my knowledge of the District Attorney personally, that, instead of qualifying his course with the expression of a regret that he had been unable to convict these defendants, that his generous disposition would have prompted him to say that it heightened the satisfaction of his conduct, in this regard, to know that the Commonwealth had failed, to discover either a stress highly suspected against gentlemen guilty of the charge which, in the course of his official duty, he had thought proper to bring against them. That a man, like my client, having passed his life among us, who was born here, who for twenty years had an unblemished and unassailable reputation, called as he was to fill a post which he did not seek, who unfortunately fell with the institution which was in some measure, though not entirely, committed to his charge, the father of a numerous family, the dispenser of many private charities, and the performer of much public good—that a man like himself should have been shown, after a long and tedious investigation, to be entirely innocent of the charges preferred against him—that such a result should be a matter of regret to the prosecuting attorney of this county, is to me somewhat inexplicable. Now, sir, if I feel any satisfaction at all in this case, it is, first, that the District Attorney has pressed it to an unusual length, and with marked ability and energy; in the next place, that no impediment was thrown in the way of this investigation, other than that mantle which the law has thrown around the rights of every citizen; that every opportunity was given with the view to an explanation and satisfactory of the accounts of these gentlemen, which could in any manner bear upon the charges laid against them, and that after such a course there was nothing to justify the District Attorney in pressing a conviction of the defendants upon this bill. I wish, sir, that the intelligent and upright Judge who now presides in this court, the twelve gentlemen whom I am now addressing, and the District Attorney *himself*, as well as all others interested, could have participated in the same pleasure, without the commotion that have been made by the Commonwealth's officer. I hope that the verdict will be given in the spirit of gratification, as I feel grateful to believe that the fair fame of Philadelphia has not been sullied, nor the reputation of any of her sons tarnished, in the course of this investigation.

Mr. Thayer. I deem it my duty, may it please the Court, to add that I think the learned gentleman who has represented, with so much zeal and energy, the cause of the Commonwealth, has, in the discharge of his duty, in announcing to the jury his impression that he had no case upon which he could ask them for a conviction—done that which was precisely his duty in the premises, and that it was impossible his official duty could be discharged in any other way. The remark which I have to make, in reference to the cause, is, that I am glad it has furnished another instance of the immortal and the invulnerable character of truth and honesty; that it is an instance not soon to be forgotten in this community, or in this State, or in this country, that no matter how much an honest man may be belied; no matter how blue the tongue of slander may have been with his name; no matter into what meshes, into what inextricable labyrinths and false positions he may have been placed by circumstances over which he had no control, and no matter how much he may have been misunderstood, or how unfairly he may have been judged by some people, that it has proved, at last, that honesty and truth are of such an eternal and invulnerable nature, that they must always eventually triumph.

Mr. Loughead. I have simply said, sir, and I desire to repeat it, that, in reference to the case which has been before us, I think that every circumstance which I adduced against these defendants, and in which Mr. Thomas A. Newhall was concerned as a party, has been fairly and honestly explained; and that, as the bill of indictment jointly charges them with a conspiracy, which at the time I believed, and as I have proof that the allegations of the Commonwealth have been improperly taken in implicating him; also that, as a verdict of acquittal in his favor would result in the acquittal of all who are charged with him, I cannot do otherwise than say that the evidence brought forward by Thomas A. Newhall in support of his character, and his interests with the institution of which he was a director, vindicates him, and vindicates myself in the duty which I am bound to perform. I do not desire to make any unnecessary remarks. I am restricted to a narrow discharge of duty, and I feel myself obliged to repeat that Thomas A. Newhall has exonerated himself in such a manner that I could not consistently press upon this jury a conviction of his guilt; and I presume, in law, that a bill of indictment charging conspiracy and freeing him, also exonerates those connected with him. That is all I have to say, may it please your Honor.

Judge Thompson. Gentlemen of the Jury: This bill of indictment is about to be submitted to your charge, with the explanation that has now been heard by you from the District Attorney, in regard to what he considers to be his duty, in the position which the case has assumed, after the hearing in full of the testimony on the part of the defendant whose particular case has now been brought to a close. Within in September of 1857, it was announced to the public that the largest banking institution of our city and of our State had failed, it was not remarkable that those interested in this institution, those whose property had, by a failure of this kind, been swept away and perhaps some of whose households had thus been desolated, should look around to ascertain and ask for an explanation of the manner in which this was brought about. It did so happen, as we all know, that this question was principally narrowed down to the acts of those who were most active in taking an interest in the proceedings of this bank at, and immediately before, the time of its failure. These two individuals were, of course, gentlemen at the head of this institution, and one of them a director, who had made himself most prominent in its operations. Public opinion pointed to them, and it was for this reason that the District Attorney, in the discharge of his official duty, thought proper, and *properly so thought*, that his official duty called upon him to make such an investigation of this whole matter, as should, if possible, settle the difficulty which appeared to exist with regard to this institution in the public mind, and to ascertain whether there had been such violation of the laws of the land as it would be his duty to bring to light. He consequently caused the bill of indictment which is now before you, to be sent to the Grand Jury; a true bill was found; and after passing through one or two preliminary examinations before coming to trial, it is now before you, and you have heard the evidence bearing upon it.

As has been said by the District Attorney, the laws of this State do not provide for any criminal proceedings in matters of breach of trust. You have heard, and probably it has made an impression upon your minds, that an England persons have been prosecuted for the mismagagement of moneys under their charge, and recent instances have come to us in which severe penalties have followed on conviction.

It is not, perhaps, known, as it ought to be known, that these trials have been based upon special acts of Parliament, which provide for the investigation and examination of such offences, and for the punishment of those who violate these special acts. In this State we have no such act of Assembly, which meets just such a case, and it was a matter of necessity, that the officer whose duty it is to inquire into these affairs, the District Attorney was obliged to resort to the common-law form of an action of conspiracy; otherwise there was no provision in our law to meet the alleged offence. He did, as, perhaps, his duty pointed, charge the two gentlemen who were, probably, the most prominently interested in the affairs of this bank, and as far as his opinion was an investigation at the time, he ascertained that there were many matters in which these two gentlemen had been closely connected, in regard to the concerns of the bank, and, perhaps, not having the opportunity of so full an investigation as he would have had, had he been more fully cognizant with these gentlemen, did—what appeared to be his duty—present them as implicated in an alleged conspiracy. Upon the trial of this case, after these gentlemen had very frankly, and I must say, without any desire on their part to avoid this investigation, and having appeared at every time and all times, when called upon by the proceedings in this court to appear, their trial has come on before you, and perhaps as great an extent has been allowed to the examination, on the part of the Commonwealth, as has ever been allowed under similar circumstances. This extent, or this range rather, was not prevented by the court, from an earnest desire that if there were a conspiracy it should be fairly shown to this jury, and if there were not, that these gentlemen should have an opportunity fully to vindicate themselves; that there should be nothing hidden or concealed on the part of the Commonwealth. On one hand, and that there should be nothing stated which these gentlemen would not have an opportunity to explain, on the other.

With regard to a branch of this case, that which came naturally, in the order of trial, first—Mr. Newhall's particular branch—the examination, as you know, has been full and complete, and I am very happy to say so, for it is a matter in which I think it my duty to say so. I am happy to say that the testimony in this case, on the part of the defendant, that the more manly course upon the part of a prosecuting officer is to say so, and I adopt that course. I cannot find it within my heart to press a conviction, which has been given, to argue to this jury that Mr. Newhall has been corruptly engaged in the ruin and destruction of this bank. Under the testimony offered, may it please the Court, and under the construction which has been given to it by your Honor, I respectfully submit my course is to submit this bill of indictment, as the acquittal of one defendant will be the acquittal of both.

Judge Thompson. Precisely so, sir.

Mr. Loughead. I do not, sir, matter of great regret that I have not that testimony which I believed to be the legal and legitimate evidence bearing upon the acts of these defendants, to constitute the crime with which they are charged. It is, permit me to say, gentlemen of the jury—for I address the observation somewhat to you—the fault as much of the law as of the evidence, that those who ruin institutions of this character cannot be punished as they deserve. There is no statute or act of Assembly by which an offence of this description, though a bank were totally ruined by the acting-president or any single officer, by which he could be reached in a criminal court. Unless I could show that the acts together led to the ruin of the bank were the result of concert and combination, and thus make out a conspiracy, it is the only possible offence which could be alleged or sustained. When, therefore, ruin and desolation is brought about by the act of one man, it does not constitute a conspiracy, however much I may regret that I cannot force cases, or that the evidence does not go to show such a conspiracy as the law will punish. I have great pleasure in knowing that the trial of this case will be a warning to every similar institution in the State of Pennsylvania, and, I hope, elsewhere. In submitting the case to you, therefore, under the construction given the explanations afforded to him of indictment, I do so honestly and straightforwardly, saying that, if the facts, evidence and corrupt acts as charged against Mr. Newhall, they have been his relations and his acts, I do not feel it to be my duty to press a conviction upon them.

From the rulings of this Court, I understand the law to be, that where one of the defendants escapes, upon a charge of conspiracy, the bill of indictment falls, and the case must fall.

I submit it, then, saying that Mr. Newhall has exculpated himself, so far as his transactions have had any connection with the bank, and though there are many things which I might say as to its direction and the manner in which the acts of its officers were suspected by its directors, it is not within the scope of my present duty, and I commit this bill of indictment into your hands, under such remarks as the Court may see proper to make upon the subject.

Mr. Wharton. Before proceeding further, may it please your Honor, I would like to say one word upon the subject of the remarks just made by my learned friend, the District Attorney.

The only exception which I take to them is that he should have expressed his regret that the evidence adduced in this cause, which has been for so long a time so sedulously nursing, and pressing with so much skill to the attention of the court and jury, should have resulted in his entire conviction of the innocence of the defendants of the only charge which has been preferred against them. Now, I would have thought, sir, from my knowledge of the District Attorney personally, that, instead of qualifying his course with the expression of a regret that he had been unable to convict these defendants, that his generous disposition would have prompted him to say that it heightened the satisfaction of his conduct, in this regard, to know that the Commonwealth had failed, to discover either a stress highly suspected against gentlemen guilty of the charge which, in the course of his official duty, he had thought proper to bring against them. That a man, like my client, having passed his life among us, who was born here, who for twenty years had an unblemished and unassailable reputation, called as he was to fill a post which he did not seek, who unfortunately fell with the institution which was in some measure, though not entirely, committed to his charge, the father of a numerous family, the dispenser of many private charities, and the performer of much public good—that a man like himself should have been shown, after a long and tedious investigation, to be entirely innocent of the charges preferred against him—that such a result should be a matter of regret to the prosecuting attorney of this county, is to me somewhat inexplicable. Now, sir, if I feel any satisfaction at all in this case, it is, first, that the District Attorney has pressed it to an unusual length, and with marked ability and energy; in the next place, that no impediment was thrown in the way of this investigation, other than that mantle which the law has thrown around the rights of every citizen; that every opportunity was given with the view to an explanation and satisfactory of the accounts of these gentlemen, which could in any manner bear upon the charges laid against them, and that after such a course there was nothing to justify the District Attorney in pressing a conviction of the defendants upon this bill. I wish, sir, that the intelligent and upright Judge who now presides in this court, the twelve gentlemen whom I am now addressing, and the District Attorney *himself*, as well as all others interested, could have participated in the same pleasure, without the commotion that have been made by the Commonwealth's officer. I hope that the verdict will be given in the spirit of gratification, as I feel grateful to believe that the fair fame of Philadelphia has not been sullied, nor the reputation of any of her sons tarnished, in the course of this investigation.

Mr. Thayer. I deem it my duty, may it please the Court, to add that I think the learned gentleman who has represented, with so much zeal and energy, the cause of the Commonwealth, has, in the discharge of his duty, in announcing to the jury his impression that he had no case upon which he could ask them for a conviction—done that which was precisely his duty in the premises, and that it was impossible his official duty could be discharged in any other way. The remark which I have to make, in reference to the cause, is, that I am glad it has furnished another instance of the immortal and the invulnerable character of truth and honesty; that it is an instance not soon to be forgotten in this community, or in this State, or in this country, that no matter how much an honest man may be belied; no matter how blue the tongue of slander may have been with his name; no matter into what meshes, into what inextricable labyrinths and false positions he may have been placed by circumstances over which he had no control, and no matter how much he may have been misunderstood, or how unfairly he may have been judged by some people, that it has proved, at last, that honesty and truth are of such an eternal and invulnerable nature, that they must always eventually triumph.

Mr. Loughead. I have simply said, sir, and I desire to repeat it, that, in reference to the case which has been before us, I think that every circumstance which I adduced against these defendants, and in which Mr. Thomas A. Newhall was concerned as a party, has been fairly and honestly explained; and that, as the bill of indictment jointly charges them with a conspiracy, which at the time I believed, and as I have proof that the allegations of the Commonwealth have been improperly taken in implicating him; also that, as a verdict of acquittal in his favor would result in the acquittal of all who are charged with him, I cannot do otherwise than say that the evidence brought forward by Thomas A. Newhall in support of his character, and his interests with the institution of which he was a director, vindicates him, and vindicates myself in the duty which I am bound to perform. I do not desire to make any unnecessary remarks. I am restricted to a narrow discharge of duty, and I feel myself obliged to repeat that Thomas A. Newhall has exonerated himself in such a manner that I could not consistently press upon this jury a conviction of his guilt; and I presume, in law, that a bill of indictment charging conspiracy and freeing him, also exonerates those connected with him. That is all I have to say, may it please your Honor.

Judge Thompson. Gentlemen of the Jury: This bill of indictment is about to be submitted to your charge, with the explanation that has now been heard by you from the District Attorney, in regard to what he considers to be his duty, in the position which the case has assumed, after the hearing in full of the testimony on the part of the defendant whose particular case has now been brought to a close. Within in September of 1857, it was announced to the public that the largest banking institution of our city and of our State had failed, it was not remarkable that those interested in this institution, those whose property had, by a failure of this kind, been swept away and perhaps some of whose households had thus been desolated, should look around to ascertain and ask for an explanation of the manner in which this was brought about. It did so happen, as we all know, that this question was principally narrowed down to the acts of those who were most active in taking an interest in the proceedings of this bank at, and immediately before, the time of its failure. These two individuals were, of course, gentlemen at the head of this institution, and one of them a director, who had made himself most prominent in its operations. Public opinion pointed to them, and it was for this reason that the District Attorney, in the discharge of his official duty, thought proper, and *properly so thought*, that his official duty called upon him to make such an investigation of this whole matter, as should, if possible, settle the difficulty which appeared to exist with regard to this institution in the public mind, and to ascertain whether there had been such violation of the laws of the land as it would be his duty to bring to light. He consequently caused the bill of indictment which is now before you, to be sent to the Grand Jury; a true bill was found; and after passing through one or two preliminary examinations before coming to trial, it is now before you, and you have heard the evidence bearing upon it.

As has been said by the District Attorney, the laws of this State do not provide for any criminal proceedings in matters of breach of trust. You have heard, and probably it has made an impression upon your minds, that an England persons have been prosecuted for the mismagagement of moneys under their charge, and recent instances have come to us in which severe penalties have followed on conviction.

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