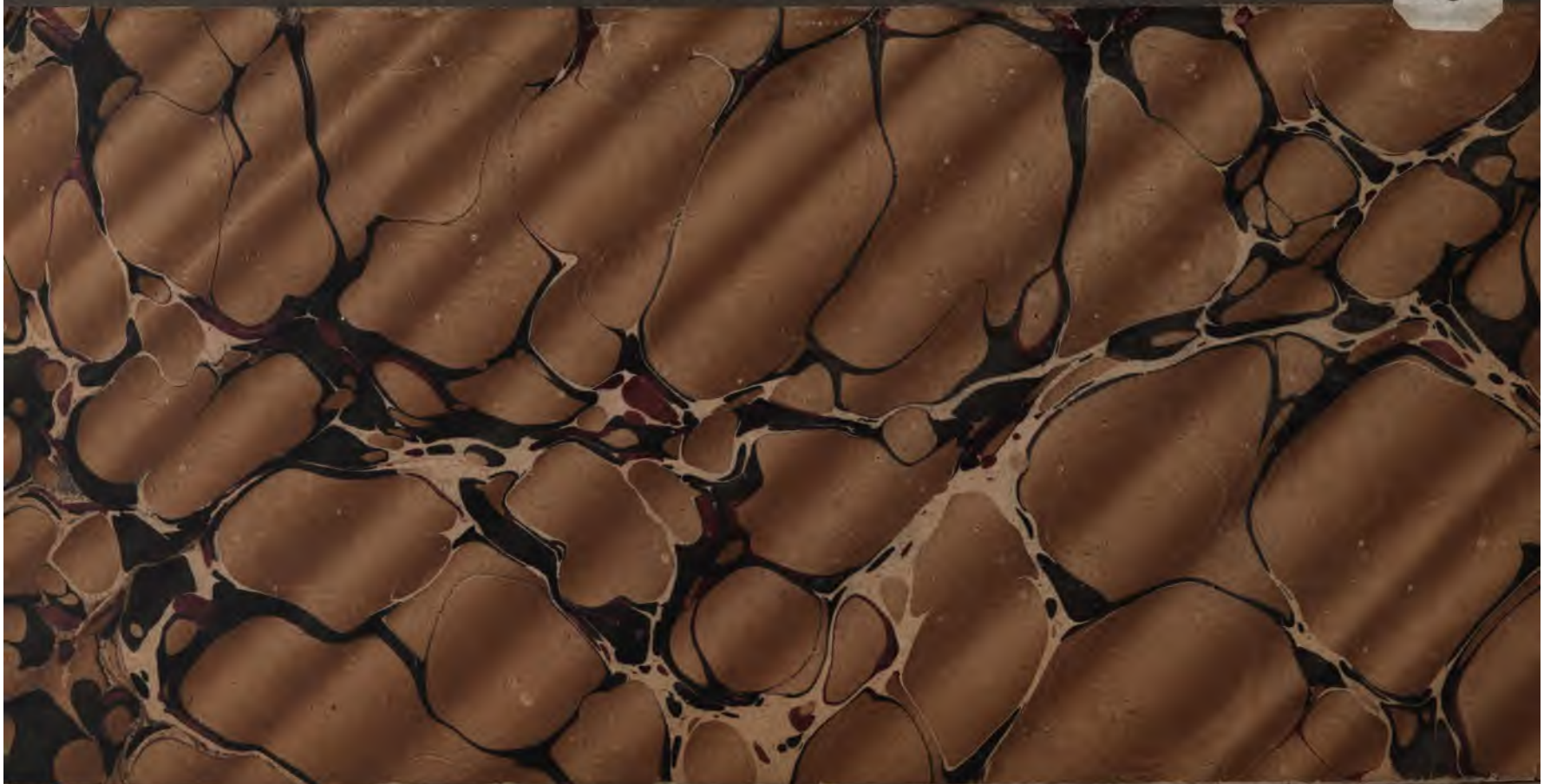
Child · Review of a Report on Case of William Vans · 1833





# REVIEW

OF A

# REPORT

TO THE HOUSE OF REPRESENTATIVES

OF THE

Commonwealth of Massachusetts,

ON THE CASE OF

# WILLIAM VANS.

WITH OBSERVATIONS UPON

# THE DISPENSING POWER

OF THE

# LEGISLATURE,

AND UPON A DECISION OF THE

## SUPREME JUDICIAL COURT,

"NULLIFYING" THE SAID POWER.

BY DAVID L. CHILD,

Counsellor at Law.

Boston:

PRINTED FOR THE PUBLISHER.

1833.

# PREFACE.

*To the People of Massachusetts :*

THE following pamphlet is an appeal to you from the decision of a Committee of the House of Representatives —not of the House itself, because the House was deceived.

This pamphlet shows :—

1. How and in what respects the House was deceived. You will find that it was deceived by statements of Theron Metcalf, Esq., which are not true, and by his omitting to state things which are true, and material to the rights of a citizen and to the justice of the Commonwealth. These are important assertions ;—but if they are not supported—supported even to superfluity, by proofs, then let the Petitioner never be heard more. But if it be made manifest that they are true, then is William Vans a most aggrieved citizen ; then is he entitled to your protection ; then is it your duty to redress his great wrongs, provided you have the power to redress them.

2. The latter part of the pamphlet shows that you *have*, by your Representatives, (whom the Constitution denominates your "servants and agents,") the power to grant William Vans a trial of his rights, and redress, if he has been wronged. This power, though inherent in every *sovereign*, and expressly declared in your Constitution, has been taken from you by certain of your own "servants." It is one of the objects of this publication to show how and when this was done, and that it was erroneously and perniciously done.

Cicero makes this exclamation—"Miserable is the sla-

very of that people, where the law is uncertain." When Mr. Vans returned from Europe he consulted many of the first legal gentlemen who were then upon the stage. They informed him that although he was barred by the limitation act, yet the Legislature had power to permit him to prosecute his claim. This was the opinion of that learned and distinguished jurist, JOSEPH STORY. CHARLES JACKSON and SAMUEL PUTNAM, subsequently Judges of the Supreme Bench; T. O. SELFRIDGE, H. D. SEDGWICK, SAMUEL DANA, afterwards Chief Justice of the Circuit Court of Common Pleas for Suffolk, Essex, and Middlesex; GEORGE BLAKE, DANIEL DAVIS, Solicitor General, and AUGUSTUS PEABODY, were consulted from time to time, and all but Judge Jackson and Mr. Blake retained. Mr. Blake had no doubt of the constitutionality of the dispensing power, or of the justice of the claim, but declined, for other reasons, to engage in the case. Judge Jackson did not express an opinion one way or the other, further than to say to Mr. Vans, on returning him his papers, "You must get permission of the Legislature. I cannot go before a Committee." The expense to Mr. Vans of the consultations and services of these gentlemen, amounted to six hundred and forty dollars. That honorable lawyer SAMUEL D. WARD, brought an action for Mr. Vans in the Court of Common Pleas, in 1829. Stephen Codman pleaded in bar the statute, limiting actions against *executors* and *administrators*. The Court were of opinion that by reason of that statute, the action could not be sustained; but we feel authorized to affirm that this judgment was passed with more regret than any other since the present learned judges have occupied their seats.

Neither the people nor their representatives have ever

acquiesced in the decision of the Supreme Court, that the Legislature have not power to suspend laws. A large and sound portion of both, have always believed and maintained that the Legislature have that power.

It is then *still a question;* the law is uncertain, and consequently obnoxious to that impartial condemnation of the great and virtuous magistrate and orator of Rome.

Every citizen has an interest in this question, as will appear on perusal of these pages. If it had been settled twenty-five years ago that the suspending or dispensing power was clearly and definitively done away in Massachusetts, Mr. Vans might have applied himself anew to commercial enterprise, and once more acquired affluence; or to manual labor, and gained a pittance for his old age. Next to having justice, the greatest blessing is to know once for all that justice is not to be had. It is better to realize the worst, than to be kept in suspense, for then we can abandon betimes a hopeless pursuit, and redouble our diligence in order at once to forget and repair our wrongs. Any thing but *ignis fatuus* justice. Any light but that delusive one which hovers over muddy and stagnant pools. *There must be a troubling of the waters.*

The Legislature have never yet discussed the question whether it was right to deprive them of the dispensing power. They have not yet been consulted on the subject. The whole thing was done in a corner. We say that the Supreme Judicial Court, in the case of *Holden* vs. *James*, made a greater change in the Government of this State than was made by the Convention of 1820.

We think that we have proved this change to have been sheer usurpation, and that the Legislature and People will so decide, whenever the question shall be fairly and clearly presented to them.

# REVIEW,

&c. &c.

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THERE are many errors and omissions in this Report, which the friends and neighbors of Mr. Vans are desirous of seeing presented to the people of Massachusetts, and to their representatives.

The report commences with setting forth its claim to be received by the Legislature, and by the public, with great confidence in its correctness. To this end it informs us that the Committee had been through "a long and laborious examination of evidence," and had given "an attentive hearing to counsel."

The impression which this is calculated to produce, is not entirely just.

The Committee consisted originally of Messrs. J. Lucas, of Plymouth, Barrett, of Concord, Metcalf, of Dedham, Houghton, of Barre, and Fearing, of Hingham.

Mr. Fearing was called away on public business after two days of the sitting of the Committee, and did not again take his seat in it. Mr. Loring, of the same town, was appointed in his place; Mr. Lucas was absent at Plymouth during one or two days; Mr. Barrett was absent, according to the best of our recollection, one day at Concord; Mr. Houghton was absent two or three weeks at Barre, with a general understanding that he was not to return during that session of the Legislature—before he did return nearly the whole evidence had been put in; Mr. Loring was occasionally absent for an hour or two to attend the sessions of the House, and so also was Mr. Metcalf. Indeed, each of the Committee was thus absent repeatedly. A *majority* was always considered by them sufficient to proceed on the business with which they were charged. It may be safely asserted *that no member of the Committee was present during the whole hearing.*

Mr. Metcalf was the only one who professed to take regular notes. In general the other members took none.

We suppose that these facts are very necessary to be considered in connexion with the introductory paragraph of the

Report, alleging its claim to full faith and credence, on account of the long, laborious and attentive examination and hearing. It bears the signatures of five gentlemen, not one of whom can say that *he* heard the whole case—one of whom can say that he heard very little of it—and four of whom can say that upon all nice points of fact, in all cases of doubt, and in all matters of law, they relied on the notes and opinions of one man.*

At page 8 of the Report, it is observed :—

"As this statement of a French judgment against J. and R. Codman, has been made by the petitioner in repeated petitions to the Legislature, as well as in numerous publications, the Committee have most carefully examined the document, and deem it to be their duty to state the substance of it with exactness."

At page 9 the Report proceeds :—

"The record begins by stating that J. and R. Codman were partners in a house established at Boston, which continued until May 1798, when notice of dissolution was published there by John C. That Richard C. in 1794, removed to Paris, and there established a private banking house. It then proceeds to state the arrangements between Richard C. and the Petitioner."

The following is the translation of that portion of the Judgment of which the above purports to be the "substance." It is a translation certified on oath by a French interpreter, read to the Committee by Mr. Vans' counsel, while the counsel of the respondent, (Stephen Codman) or rather of the heirs, executor and administrator of John and Richard Codman, compared it with a translation which was procured by his clients many years ago; and whenever doubts were suggested by said counsel as to the accuracy of the translation by Vans' counsel, reference was had to the original. All this shows the great and just importance which both parties attached to the contents of the Judgment. The precise meaning of particular words and phrases was frequently a subject of much discussion, but there was but one word on which there was finally any difference of opinion, and that was in a subsequent part of the Judgment, and will be mentioned in its place. The Judgment says :—

"The brothers John and Richard Codman, had formed in the year 1791, a partnership in trade, of which the seat was at Boston, in the United States of America. This partnership had subsisted there until 1798, when John Codman caused to be inserted in the American journal called the Columbian Centinel, of the sixteenth of said month, the following note (*note*)."

Then a copy of the "note" is set forth upon the record, in which

*This conclusion is strengthened by information, which we have recently received, that the Chairman of the Committee was and is of opinion, that the alledged release of Vans to Catherine and Stephen Codman, was of no validity, *as a release*, but null and void.

John Codman declares that the partnership between him and his brother, "which commenced on the first day of May 1791, is this day dissolved." Dated Boston, May 2d, and signed "John Codman." After this the Judgment proceeds:

"Meantime, in seventeen hundred and ninety-four, Richard Codman had come to France, and established a private banking house, but leaving his partnership still to subsist in America."

In writings touching contracts, every one knows that the utmost accuracy of expression is required. The writing, whether it be with or without seal, or a record of court, (the most solemn and authoritative form which a contract between man and man can assume,) is the chart which is to govern the course of execution. A pin's head on the chart, makes leagues on the voyage. The smallest error or omission on the former, may cause the loss of vessel and cargo on the latter.

But in nothing is the strictest accuracy more necessary, than in relation to *dates*. There is sufficient difference between the expressions "from date" and "from the day of date," to make the fairest estate in America change hands. An alteration of a date renders a writing void. He who undertakes to vary in this respect the terms of an instrument or record, shows that he is fully aware that a little variation may produce great consequences.

The expressions which the report puts in the mouth of the French Court, are *materially* different from those which the Court use, and they are expressions which bear upon the vital question of the *date* of dissolution.

The Report says the partnership "*continued* until May, 1798, when *notice of dissolution* was published there (at Boston,) by John C."

The Judgment says "the partnership *had subsisted* until 1798, when John Codman caused to be published a *note*."

The difference between these two representations, is obvious to any capacity. The first implies that the partnership *ceased* in May, 1798. The other carries no such implication, but rather implies that it continued after that date, and that the precise period of its continuance is intended to be an open question to which the court will return after they have narrated the facts, and when they shall come to pronounce their opinion upon them. The court did not call the note a "notice of dissolution." This would have been not to try but to decapitate the case. They describe minutely the acts done, but they abstain from giving, either directly or indirectly, an opinion of their legal character and consequences.

Here then, we say that a weight was taken from Vans' side of the scales, and thrown into the opposite one, destroying decisively that equilibrium, which the justice of the Commonwealth requires to be preserved betwixt its citizens. If there be any who cannot see the distinction between this part of the Report and the Judgment, it must be those who wish for the confounding of distinctions, and especially that of *meum* and *tuum*.

It is proper to state in this place, that Theron Metcalf, Esq., the writer of the Report, was the only member of the Committee who understood French; and that he occasionally consulted the original Judgment, during the hearing, and carried it away with him for private examination.

The main object of introducing the passage of the Report which we have now compared with the original Judgment, remains yet to be stated.

It does not appear from the Report, why the "note," or as the reporter calls it, "notice of dissolution," was introduced at all into the French record, or into the case! For any purpose apparent in the Report of the Committee, an advertisement of hemp and cordage, signed "John Codman," might, with equal propriety and significancy, have been recorded in the Court of Appeals at Paris. Throughout the Report not a syllable is said of any use or application which the French Court make of the fact, they are so careful to state in detail! Will it be believed, that one of the most learned and exalted tribunals in France would set forth verbatim, upon their record, a document having no connexion with the case, and not again to be alluded to in the progress of it?

The Judgment affords no such evidence of ignorance and folly in the French Courts, as the Report would lead us to suppose. The Judgment contains more, much more touching the partnership, which does not appear in the Report.

And here we must mention a fact, which we would willingly pass over, if it had not become of great importance by the decisive and very improper use which was made of it to influence the final vote of the House upon the subject of this Report.

There was originally embraced in the Report, a further mention of the partnership, though we have reason to believe not near all which should have been mentioned. There was however, sufficient to indicate that the French Court made the partnership a *ground* of their decision, and sufficient also to fix a stigma upon the transactions of John and Richard Codman in France. The Report was submitted to the House in an evening

session, at the moment of adjournment. It was not read, but laid upon the table, and ordered to be printed. The printing was a substitute for reading, and any paragraph or word, which would have been read by the Clerk, should also have been placed before the Members by the printer. This was the order of the House. Besides, and this is the great ground of complaint, it is a universal rule of deliberative assemblies, that the act of making a full and final report upon a subject, *discharges* the Committee from the further consideration of it, as completely as a vote of the House could do, if they asked to be discharged without making any report. In the language of law, a Committee which has reported, is *functus officio*, or defunct as to the commission with which it was charged. Thenceforward its members, either individually or collectively, have no more power over the subject or the report, than any other Member of the House.

Nevertheless, while the report was in the hands of the printer, and after it was in type, the respondent caused to be delivered to Messrs. Dutton and Wentworth, Printers to the State, the following note:

"*Mr. Dutton*—Please to leave out of the Report upon Vans' Case, that part which has a note attached to it, together with the note. (Signed)

T. METCALF."

The passage was left out accordingly, Mr. Metcalf himself calling at the printing office to see it, a few minutes after the above note was received.

These are the facts. They are submitted without comment, to legislators and to all intelligent men. The defence attempted by Mr. Metcalf, before the House, in answer to a hand bill by Mr. Vans, will be considered hereafter.

It will be necessary, in order that the positions of the parties in the French Courts may be understood, to give a succinct history of certain transactions which took place in France, between John and Richard Codman, immediately before the suits were commenced.

John Codman went to Paris, in the latter part of the year 1800, and attempted to negotiate a settlement with Mr. Vans. Mr. Vans had been for some time earnestly pressing for payment.

On the 30th day of January, 1801, John Codman offered to Mr. Vans, as the basis of a compromise, property estimated by John Codman to be worth $80,000. This property consisted of some capital messuages in France, together with gardens, forests,

vineyards, &c., of great extent and value, and several notes and bonds against American merchants at Paris.

This amount was not half that was due to Mr. Vans, and he rejected the proposition, but at the same time submitted another, which he declared would be satisfactory to him. This embraced additional property, both real and personal, to a considerable amount, and particularly an elegant and valuable chateau, called *Firmancourt*, situated in Normandy, and a rich estate called *Cremille*, situated near Tours.

On the day following this offer of John Codman, Richard Codman executed a bond to him for the sum of $22,000, (110,000 francs,) payable in six months, purporting to be for a *loan* made previously to that time, to be employed in *Richard's* business; and he mortgaged as security for the payment, the estates of *Rouvrey* and *Thuilerie*, the former being estimated by Richard at $22,000 (110,000fr.) and the latter at $16,000, (80,000fr.) These two estates had been offered to Mr. Vans by John Codman, in the proposition abovementioned.

Although this bond imported that it was given for a *loan*, yet the power of attorney by which John Codman authorized a person named Devaux, dwelling at Dreux, to accept it for him and in his name, spoke only of the *balance* of an account *settled*, as the consideration of the bond.

On the 6th of February, six days after the above transaction, Richard executed to John Codman an assignment of a bond, to the amount of $30,236 63, (151,183fr.3c.) and a mortgage as security for the payment, on the estate of Cremille, consisting of 2000 acres of land, and valued at $40,000. This assignment purported to be for and in consideration of a balance due from Richard to John on an account *current*.

Nevertheless, on the 15th of February, *fifteen days* after the estates of *Rouvrey* and *Thuilerie* were mortgaged, and the mortgages registered agreeably to the forms of law in France, Richard Codman again offered to Mr. Vans, by way of compromise, *those same estates*, adding that they were *free* of all *incumbrances*, except one which he specified of $6600, (33,000fr.) but which was not a mortgage to John Codman, but to one Babut, the agent of the brothers, and afterwards of Stephen Codman, executor and administrator of the brothers.

This second proposal was a great declination from the first. The first proposal was $80,000 according to John Codman's estimate; the last but little more than $40,000 by Richard's. Mr. Vans was urged strongly by the latter, and with an appearance of sincerity, to accept the last offer before his brother should depart from France. In a letter to Mr. Vans, dated February 16, 1801, he says:—

"The terms I offered," (meaning the day before) "I have now in my power to give, because my brother is yet here, and will discharge his claims, if I can immediately adjust with you. It is infinitely more for your interest to close with those terms, than to take any other method. The Firmancourt estate is not in my hands, but perhaps I can obtain it again at this moment. I will give you that which is worth 60,000fr. ($12,000) and my note, payable in ten years, for 100,000fr. ($20,000) or in lieu of the Firmancourt estate, I will give in cash in two months from the present date, 40,000 *livres*, ($8000.)

"If you see fit to call immediately after the receipt of this, you will find me at home, and my brother also, who goes at 12 o'clock."

It is a striking fact that the offers of the two brothers declined from the 30th January to the 15th February, 1801, $40,000 The cause of this great and sudden change was probably the *cover* which had been placed upon the property by the brothers during that period.

*Nathaniel Cutting, Esq.*, formerly Consul of the U. States at Havre, speaks of these transactions, both in a deposition and in letters, dated at Washington, D. C. in the years 1810 and 12. Mr. Cutting was very intimate with Richard Codman in France, and testifies that he was an inmate of his house and family, both in town and country, during a portion of the years 1795 to 1801. In a letter dated Washington, Oct. 22d, 1810, Mr. Cutting touches, as we apprehend, the secret spring of the engine employed by the brothers to coerce or crush Mr. Vans.

"I remember," (says Mr. Cutting) "you authorised me also to make a proposition to John Codman, for the settlement of your claims, which proposition I considered to be very liberal on your part. I believe I have now in my portable desk, at Baltimore, the very paper containing the conditions you offered in your own hand writing. They were such as I verily believe Richard Codman would have gladly agreed to, but the obstinacy of his brother John, who thought he had the better end of the staff in his own hand, rendered all amicable arrangement impossible.

"Please to acquaint me with your progress in pursuit of a little bit of equity, on the American side of the Atlantic."

A farther confirmation of this view is found in a letter of Mr. Vans to Richard Codman, dated Paris, February 19, 1801, two or three days after John Codman's departure. It was produced at the hearing by the representatives of J. and R. Codman.

"I cannot suppose," says Mr. Vans, "that we shall agree after you have been innoculated by your brother."

Another circumstance worthy of note, is that John Codman also held the *Firmancourt* estate, during these negociations, when Richard was writing to Vans with such profound uncertainty, "Firmancourt is not now in my hands, but *perhaps* it might be obtained at this moment."

This was the way in which John Codman "held the staff."

Although Richard Codman writes as we have seen on the 16th of February:—

"My brother goes at 12 o'clock; you will find us both at home if you call before that time."

Yet it appears by another note from Richard to Vans, that John Codman did not go at the time so specified, and that the above was not the only last hour appointed to Mr. Vans to grasp at once the proposed compromise, pitiful as it comparatively was, or forego the opportunity forever. In the latter note Richard says again:—

"My brother goes for Calais to-morrow morning. If you will call on us before 10, you will find us at home; meantime I adhere to my proposal of last evening."

The reader is requested to take these close limitations of time, and these pressing invitations to call before their expiration, in connexion with the fact previously communicated and implied, viz: that it would be essential to an arrangement that it should be completed before John Codman's departure, in order that he might thereupon discharge *his* claims,—and then to say whether it be not a perfectly fair conclusion, that if John Codman had *not* been copartner, and had not interfered decisively in the partnership concerns in France, Mr. Vans would have obtained his money, or the greater part of it; and instead of suffering thirty years of poverty, degradation and insult, —thirty the best years of life—he would have been in the enjoyment of an ample fortune, and spreading, with open hand, enjoyment around him. He would have been the superior in point of property, as in other qualifications, of proud men and proud families, who courted him, rich, but spurn him, poor.

It was evidently John Codman who directed and superintended the dealing of this hard measure to an old friend and benefactor of his house. We say benefactor, because we are of opinion, upon the whole evidence, that the seasonable resources which Mr. Vans' property furnished at a particular juncture, to John and Richard Codman, prevented serious embarrassment, if not failure of the firm.

The Committee state, p. 9, that a controversy arose between John Codman and the judgment creditors of Richard, viz. Mr. Vans and his assignees,

"As to the validity of the mortgages made to John C. That on the 15th

June, 1803, an interlocutory judgment was rendered, calling on John C. to produce within thirty days, the account between him and Richard C., out of which his (J. C.'s) demand arose. Said account not having been produced, the court proceeded to render judgment against the claim of John Codman, as being without any valuable consideration, and fraudulent as against the creditors of Richard Codman."

Why "as against the creditors of Richard?" Will the reporter favor his constituents and the Commonwealth with an explanation, why Richard Codman's conveyances to John, should have been pronounced fraudulent "as against the creditors of Richard," provided a dissolution of the partnership really took place at the time the Codmans and the Committee state? If the partnership was "*bona fide* and sufficiently dissolved" in May, 1798, John Codman was, in 1802, a lawful and honest creditor of Richard, and stood for the balance due to him on adjusting the partnership accounts and paying off the debts of the firm, on the same footing as every other creditor of Richard. If he committed fraud against "the creditors of Richard," he committed fraud against himself, for he was one of them. As against partnership creditors, all their conveyances from one to the other, would be fraudulent and void, but not as against the personal creditors of either. To say the conveyances were fraudulent and void as against the creditors of Richard, is unmeaning, unless the creditors of Richard were likewise the creditors of John. On this supposition the statement of the reporter is reconcileable with reason and known principles, but on any other it is absurd.

But why was not "the account" produced in the French courts? It was contended in those courts, by John Codman, that it was a true and honest account, and that a large balance was really due from Richard to him, as the result of it. The same was contended before the Committee, and an account was actually produced, showing such a balance. And it was also contended by the respondent, that it would have been produced in France, if sufficient time had been given for that purpose. But John Codman appealed from the judgment, which the Committee are pleased to imply went against him by reason merely of the non-production of this account, and it was *more than a year* after this Judgment before the appeal was tried. Was not this sufficient time to have sent to Boston for the account, and had it in court at Paris?

But this account could not be produced in any court without making matters worse for John Codman's estate, than they would be without it. This appears to us to have been the reason, why the account (if any existed) was not exhibited in the French court, when that court enjoined it. For the same rea-

son we feel confident that it would never be exhibited in a court of Massachusetts if one were opened to Mr. Vans.

If a general account, extending through seven years of an immense partnership business, and purporting to have been made three years after the alleged dissolution—had been presented before the court, its accuracy and good faith might have been questioned. It might have been asked, why it was that a partner, who all agree had nothing but skill and labor to carry into the firm, and who, by admission of the respondent, was entitled "to one third of the profits," was ultimately dismissed from a *prosperous* and "*opulent*" house, saddled with a dead loss of $50,000 ?

Mr. Vans would have demanded that the partnership books, from which the account if a true one, was made out, should be produced, and they must have been produced, or the account would have been thrown out. If the books kept by *both* brothers had been produced, they would have shown beyond a doubt when the partnership *did* terminate, if it had terminated at all, and to *whose* account, Richard's or *John and Richard's*, Mr. Vans' property was passed.

But even if the books had confirmed the fact of the pretended dissolution, (and if they would, should not those who had them, have been glad of an opportunity to place them before the court?) still the date of the alleged account would have proved, that John Codman, who had undertaken to put his brother out of the firm in France by an advertisement in Boston, had not proceeded thereupon to adjust the partnership accounts, and wind up the old concern, as the law required him to do; but instead of this, had continued trading upon Richard's share as well as his own precisely as if the pretended dissolution had not taken place. John Codman therefore, by the very date of the account alleged to have been settled at Paris in 1801, would have been debtor to Richard for one third at least of all the profits of the concern during the years 1798–9, and 1800, years of great commercial prosperity to this country.

As a mere creditor of Richard, Mr. Vans would have had a right to come in and claim Richard's real share in the partnership stock, credits and monies, at the date of the dissolution, together with interest and profits up to the date of the account; and the books must have been shown, if demanded, in order to ascertain what the rights of Richard, and consequently of his creditors were. Without the books kept by both brothers, in France and America, it could never be known what property Richard had in the firm, and if it was never known, it could never be separated and appropriated to the payment of his just debts.

If therefore the alledged *account* had been produced, the *books* must have been produced, and the books could not be produced without showing one of two things; *either* that the partnership had never been dissolved, and that Vans' property went into the firm; *or* that a large amount of interest and profits due from John to Richard remained unaccounted for, and must be accounted for to him or his creditors. Indeed it would in all probability have mattered little to Mr. Vans, whether Richard alone or Richard and John were bound to him, if the real extent of Richard's interest in the partnership property had been ascertained.

But though the account was not produced before the Court of Appeals, yet a note of hand purporting to be for the balance due on that account, and to be the ultimate basis of the bond, the assignment, and the mortgages upon the estates of *Rouvrey*, *Thuilerie* and *Cremille*, was produced as a substitute; *meantime* that the account was incapable for want of time of being produced. The court in giving judgment took no notice whatever of this new piece of evidence.

What then is the result? It is that Stephen Codman, carrying on suits in France for and in the name of a deceased brother, preferred to permit him to be pronounced a *defrauder*, rather than produce the account and books, which would have charged him as *partner*, or would have led to the ascertaining and taking out of Richard's real share in the property, for the benefit of his honest creditors.

But these subterfuges failed, as the best contrived ones often will. The French court did, nevertheless, find that John and Richard Codman were copartners at the time the conveyances were made by Richard to John, viz. January 31st, 1801; and it was because they did so find, that the case was carried to the Court of Cassation, and Mr. Vans detained in France. The barrier of the pretended dissolution being broken down in France, the party wished to gain time to prepare the main defence behind the limitation law of Massachusetts, keeping up, however, a moderate skirmishing to detain their adversary at a distance, until the name of the Commonwealth would cover and protect all these transactions.

We complain of the Report for not stating that the French courts did find the fact of partnership. Had they stated this, it would not have seemed quite useless and ridiculous in those courts to have introduced the subject of the partnership at all.

The judgment says:

"*Taking into view the obligation of the 31st January*, 1801, *accepted by Devaux, for John Codman, for a* loan *previously made to his brother.*

"*Taking into view the power of attorney from John Codman to said Devaux, to accept an obligation for the balance of an account settled between the two brothers.*

"*Taking into view the assignment of the* 151,180*fr.* 3c., *made by said Richard to said John, on the 6th February, to acquit said Richard to that extent of sums due to said John, according to an account current.*

"*Taking into view the letter of Richard Codman to Vans, on the 15th of the same February.*

"*Considering that by their judgment of the 15th of June, the Court ordered that John Codman should produce in eight days the account settled, between him and Richard Codman, mentioned in the said power of attorney;—*

"*Considering that, the account settled, which ought to be the true consideration of the obligation of* 110,000*fr., not being presented, it is to be presumed that it does not exist, and that this obligation not being based upon any other consideration, John Codman is destitute of any legal claim;—*

"*Considering that the non-existence of the account mentioned in the power, attaches the authority of evidence to the signs of deceit and fraud which already bore upon that obligation; signs which had induced the order for the production of the account, and that it results;—*

"1*st. From this, that the power of attorney, under private signature, given by John Codman to Devaux, for the acceptance of an obligation for the whole or a part of the sum, in which Richard Codman had been stated to be debtor to John, according to the account settled, does not announce the sum, which Richard Codman owed;— that this sum being* indefinite, *it was impossible to deduct from it that of* 110,000 *fr., to become the subject of a notarial obligation;—*

"2*dly. That this obligation does not import that the sum of* 110,000 *fr., acknowledged to be due, is the total or partial balance of the account indicated in the power of attorney, but, on the contrary, imports that it is for a loan previously made to Richard Codman, to be employed in his business;—*

"3*dly. From this, that supposing John Codman had really been the creditor of Richard, in consequence of the account settled between them, before the 17th of January,* 1801, *in such a sum that it was possible to deduct from it the sum of* 110,000 *fr., without acquitting Richard Codman entirely of the debt, it ought, at least, to have been stated in the obligation, that Richard was acquitted to that extent of the balance of this account;—and from this, that the obligation importing for a consideration, a loan previously made, by John to Richard, the latter would not have ceased to be indebted in the sum, which he was stated to owe in the account settled.*

"4*thly. From this, that Richard, in assigning to his brother, on*

*the 6th of February the sum of* 151,180 *fr. &c. of a debt secured by mortgage, says that it was to acquit him of sums due to his brother according to an account* CURRENT, *which excluded the idea of an account* SETTLED *a short time before;—*

*5thly. From this, that in the letter of the 15th February, Richard Codman in offering to Vans in payment of what he owed him, the domain of Dreux and that of the Thuilerie, represents the domain of Dreux as entirely unencumbered, and that of Thuilerie as encumbered only with a mortgage for* 33,000 *fr.,* while *the mortgages to secure the obligation of* 110,000 *fr. were existing upon both of them, which induces still further the belief that this obligation was not serious.*

*Considering finally that John and Richard Codman are brothers, that they have been presented as* COPARTNERS, *which has not been denied by the counsel of John Codman; and that this double relation, joined to the signs aforesaid, authorizes the legal presumption of compliance to become accessary to an act of fraud;—*

*The* COURT *says that the said obligation of* 110,000 *fr., shall be stricken from the list, as deceitful, and made without cause, to defraud the legitimate creditors of Richard Codman, and that the said mortgage taken by John Codman upon the domain of Thuilerie, shall be erased; declares the present judgment common to Richard Codman, the party seized and making default, and adjudges John Codman to pay the costs."*

This Judgment was rendered on the 22d day of June, 1803. John Codman appealed from it on the 10th of December following. But he died at Boston the 19th day of May preceding. Yet Babut, the agent at Paris, already mentioned, who had been the agent of John Codman in his life time, and was acknowledged by Stephen Codman before the Committee to have been the agent of himself as executor, still carried on the litigation in France for and in the name of John Codman, without suggesting or admitting his death. Indeed this fact was never admitted by the executor, his agent or counsel in France, but always denied. It is observable that the appeal was not taken until long enough after John Codman's death, for Babut to have sent to America and obtained the directions of the executor. But to carry on a suit thus was a fraud, which the laws of France would have punished with examplary penalties, if the author had been within their reach.

S. Codman now says that this was done without any knowledged or inteference on his part; that Babut the agent was a rogue, and would not correspond with him, and in fact never did write him, but once, which was simply to acknowledge the receipt of the circular announcing John Codman's death. Stephen Codman also states that Babut cheated him and other persons interested in the property out of the greater part of the property, or he *supposes* such to have been the case. It is difficult to conceive what motive Babut could have for carrying on year after year several very expensive suits, in which the Cod-

mans had been beaten through the gauntlet of the French courts, and in which there was no possibility of gaining any thing but *time*. If Babut was a rogue and a sharper, does it appear probable that he would have done this of his own accord? It could be no object to him to gain time. He had no motive for detaining Mr. Vans in France. On the contrary it was for *his* interest, supposing him to have been what Stephen Codman represents, that Mr. Vans should retire from France, and leave him without a competitor for the Codman property. Mr. Vans' remaining there was calculated directly to defeat Babut's alleged scheme of getting all the property for himself. Stephen Codman's statement respecting the character and conduct of his agent, were made to exonerate himself from the charge of intrigue and management to detain Mr. Vans in France until his claim should be barred by the limitation law in Massachusetts. But his statement was mere *assertion*. No proof of it was attempted to be given. Not even a single letter of complaint or reprimand addressed by him to Babut was produced. It was not pretended that any such had been written, or that any dissatisfaction with Babut's proceedings had ever been manifested or felt, or that any attempt was made to reform or remove him. Upon this part of the subject the reporter is pleased to throw into a parenthesis the following singular sentence, page 9 :—

"(It does not appear by whose order or direction this appeal was taken, the respondent [S. C.] denying any participation or interference in it—one Babut, who had been employed in the life time of John, appears to have continued to act as *agent*.)"

"The respondent *denying*!" And was that conclusive with the Committee? By what rule of evidence or of common sense was the mere *say so* of a *party* allowed this weight, and that too against the legal presumption that every man's agent obeys his orders? But suppose Babut *was* a rogue and disobeyed the orders of his honest employer, would that make the employer any the less responsible for acts of his agent within the business of his agency, so long as he permitted him to appear to the world in that capacity, and to enjoy a credit and other facilities. All the time of the pendency of the suits in France, Babut had power to draw bills, and to borrow money in Stephen Codman's name, to carry them on. Babut became the surety of a dead person for the costs of the last appeal. Would he have incurred this risk without the order of Stepen Codman, and an assurance from him of an indemnity? Would he have taken this method to make money?

But the reporter says Babut continued to act as *agent*." Whose agent? How strange, how unaccountable, that Mr. Vans should be required to show that the agent obeyed his principal, the principal admitting all the time the fact of the

agency; or that the learned reporter should have overlooked the rule of law that the principal is responsible for the agent, whether the agent be obedient and faithful or not. He who reposes a confidence must suffer from the breach of it, not an innocent third person, who is injured through the agent by means which the *principal furnishes*. But it was admitted in another stage of the investigation, that Babut did write to Stephen Codman "something about carrying the cause to the Court of Cassation."

This of course was a different letter from the one, acknowledging the receipt of the circular of John Codman's death, both because the latter was stated by those who have the correspondence in their possession, to contain only that acknowledgment; and also because it does not appear probable that Babut would talk of the Court of Cassation before he was through the Court of Appeals, unless indeed this executor was consulting and communicating with him long beforehand how Vans might be detained in France, and was laying by anticipation a plan for accomplishing that object. *No reply of Stephen Codman to the Cassation letter of Babut, was produced.* If he had expressed great indignation at such a villainous scheme, and ordered Babut to desist, and to quit his service, it is probable that he would now have availed himself of this proof of his integrity and of the alleged want of it in his agent. Babut might have been dismissed in a month, and if he was a tithe part of the knave which Stephen Codman represents him to have been, it was his bounden duty, by his obligations as executor of his brother, to have dismissed him. The executor was liable for any waste, which an agent might commit against the estate, if he continued him in his agency, knowing that he was a knave. Stephen Codman pofesses a great horror at the idea of acting unfaithfully to his trust by omitting to plead the privilege of the limitation law against Vans; but he felt no scruple to continue the agency of the wicked depredator, Babut, although he must have known, very early, that all was not right, by the refusal to correspond. John Lowell, Esq., the brother in law, friend and legal adviser of the deceased, visited France in 1804, and whether it was the sole or principal object of his visit or not, he certainly did concern himself with the affairs of the deceased in that country. A man of more sagacity and energy could not have been found, to detect Babut and bring him to condign punishment, than Mr. Lowell, to say nothing of superior zeal arising from relation and friendship.

There was evidence before the Committee, that in March, 1805, Babut was *still* acting as agent. This was a letter of Mr.

Vans, addressed to Stephen Codman; proof of which letter and of its arrival in the United States, having been given by Mr. Vans, Stephen Codman produced the original. It stated that Mr. Vans had consented to a proposition made him by Babut, and *recommended by Mr. Lowell*, to *suspend* the prosecution of the case in the Court of Cassation, *until Babut could write to Stephen Codman for authority* to compromise. The letter also stated that the fees of lawyers and the costs of courts had already amounted to 200,000 fr., ($40,000;) and that if he (Mr. Vans) were to obtain all the property in France, a sum would still be due him equal to the original debt. He complained bitterly of Babut, (proof positive that that personage *had* obeyed too well his orders,) and of the lawyers, whose delays and chicaneries were consuming all the property. Finally, he entreated Stephen Codman to put an end to this state of things. *To this letter Stephen Codman never made any reply;* and the knave *Babut* was continued in his agency!

Under these circumstances, how could the Committee say that "it did not appear by whose order or direction the appeal was taken," and that Stephen Codman "had no participation or interference in it?" But Mr. Vans would not have complained of this or any other conclusion which the reporter could state, if he had stated the facts. Mr. Vans' letter of March 1805, delivered by the late Marshal Prince into Stephen Codman's hand, and now brought forth by Stephen Codman himself, is *not mentioned* in the Report! This letter was of great importance:

1st. As it showed that Babut was still agent, and was asking, or pretending to ask of his principal, authority to compromise: i. e. was seeking new tricks, stratagems and frauds, to retard the final decision, detain Mr. Vans in France, and despoil him of his last shilling.

2dly. That Stephen Codman acknowledges information within *two* years after John's death, of Mr. Vans' claim.

3dly. That Stephen was looked to by all concerned, as the *sole* authority that could either terminate the suit by compromise, or prosecute it further in the Court of Cassation.

The letter of John Lowell, Esq., which the Committee have mentioned, p. 7, written to Mr. Vans, and dated Paris, 18th July, 1804, is additional and powerful proof to the same point. Mr. Lowell says to Mr. Vans: "I have written Stephen Codman, the *executor*, giving him as dark a picture of your expenses and delays of justice, as I thought they deserved." Neither the "dark" letter of Mr. Lowell to the "executor," nor any reply from the executor to the same, was produced.

With all this before them, and all this kept back, the report

says that the Committee did not know by whose direction the appeal was taken, and it sets forth as accredited evidence, the naked assertion of Stephen Codman, that "*he* had no participation or interference in it." This is astonishing.

The Court of Appeals tried the case at Paris, Aug. 7, 1804. After a full hearing of the evidence and the arguments of the most eminent counsel in France, no less than *nine* lawyers being employed in the cause, and among them for the deceased Codman the celebrated Berryer, who plead the cause of Marshall Ney, the Court gave judgment in the following words:—

"*Upon the appeal of John Codman from the judgment of the Court of Meaux of the 22d June, 1803, the court* ADOPTING THE REASONS OF THE FIRST JUDGES, *order that that from which the appeal is taken, do proceed to its full effect, and be executed according to its form and tenor—condemns John Codman to the common fine of sixty francs—declares the present judgment common to Richard Codman, and adjudges John Codman to pay all the costs of the appeal and of the principal causes to all the parties.*"

At this trial the counsel of John Codman did for the first time, viz:—Aug. 7, 1804, deny that John and Richard Codman were partners at the time of making the bond and mortgages, but admitted that they had been so until 1798. Mr. Vans' counsel replied that they had been charged to be partners before and had never denied it; and that "all operations of Richard Codman at Paris with Mr. Vans and others, were common to the two brothers, and that therefore even supposing Richard Codman were indebted to his brother for advances and remittances of funds, which John Codman might have made, *he could not nevertheless be paid until the entire payment of the creditors of the House.*"

But the Court of Appeals, consisting of twelve learned judges, overruled the positions of John Codman's counsel, and gave the case against him for the reasons given by the Court below, one of which, and the principal one, was that John and Richard Codman were partners at the date of the bond and mortgages in question, viz: on the 31*st day of January*, 1801.

Such is the real result of the Judgment, given in evidence to the Committee, both in the original and in a translation by the counsel of Mr. Vans.

We cheerfully leave it to the people of Massachusetts to decide upon the degree of credit which is to be given to the imposing remark in the Report, that the Committee, (i. e. Mr. Metcalf,) had "examined carefully," and stated "with exactness," the "substance" of this Judgment.

Other judgments were offered to the Committee, but the Committee by suggestion of Mr. Metcalf, waived the reading

of them. In fact, as Mr. Metcalf had informed the Committee that "he could make out the meaning," the rest of the members appeared to rely implicitly upon him.

We shall give an enumeration of these judgments, as follows, viz :—

1. A Judgment against *Richard Codman*, rendered by the Court of Commerce at Paris, January 23, 1801, for the sum of 5000 *fr. rentes*, or 100,000 *fr.* principal ;* equal to an annual income of $1000, or a principal of $20,000.

2. A Judgment against *Richard Codman*, rendered by the same Court, June 20th, 1801, for 8,415 *fr. rentes*, or 168,300fr. principal, equal to annual interest of $1683, or a principal of $33,660. This judgment was also for rentes in *arrear*.

3. A Judgment rendered by the same Court, on the 20th July, 1801, against *Richard Codman*, for 32,098fr. rentes, or 642, 360fr. principal, equal to an annual interest of $6,419 60, or $128,472 principal.

In each of the foregoing judgments, Richard Codman was required to pay these sums in *rentes*, within the space of three to ten days, at the prices of the day, such having been the condition on which Mr. Vans had *loaned* the two first sums, and *deposited* the last. This might be an advantage or disadvantage to Mr. Vans, according as the prices at the times of payment might happen to be. Mr. Vans however always had full faith in the preservation of the public credit of France, and had invested nearly all his property in the national debt, when the French funds were at a low ebb, feeling assured that they would ultimately take a rapid rise. This opinion was soon verified, for after the revolution of 18th Brumaire year 8, (8 Nov. 1799,) which placed Bonaparte at the head of affairs, those funds began to rise, and with temporary fluctuations have continued to rise. The *rentes* are now above par, and if Mr. Vans had been paid agreeably to the judgments, and had continued to hold his stocks and receive his semi-annual interest, he would at this day have had a clear capital in the funds of France of $189, 417 ; and he would have received from the year 1801 to the year 1833, the sum of $291,411 20, interest, making a sum total at this day of $480,828 20.

It is impossible to be exact in this calculation, because the *rentes*, which Richard Codman was adjudged to pay were never bought by him, and furnished to Mr. Vans; and therefore we do not know precisely what those Judgments would have been liquidated at. Our estimate of the rentes is *at par*, which they

* *Rente* means interest on the public debt of France, payable *semi-annually*. In France the certificates to holders of the government stock, are not for the capital, but for the *return* which that capital yields, i. e. *reditus* or *rente*.

are now above, but for the most part of the above period have been considerably below; but we have not taken into the account the costs of suits, fees of counsel, the rentes in arrears, &c. The costs of suits in France were enormous. A duty of *four per cent.* on the whole amount sued for was to be paid before an action could be entered.

Richard Codman appealed in the two first of these cases, and Mr. Vans in the third, and judgment went in favor of Mr. Vans in every one of them. The object of Richard's appeals appeared to be delay. Mr. Vans object was to have the 32,098 *fr. rentes*, adjudged to be paid *in rentes* at the price of the day, instead of being paid in cash at the price of the day when he deposited the capital with Richard Codman, and ordered him to invest it in stocks, which he did; but afterwards pledged them to his banker to raise money to meet the payment of bills drawn on him by John Codman.

4. A Judgment against *John Codman*, rendered by the Court of First Instance of Dreux, Sept. 28, 1802, that John Codman's bond be stricken from the list, and his mortgage upon the estate of Rouvrey be erased, and that he pay the costs of suit.

5. A Judgment against *John Codman*, by the Court of First Instance of Meaux, September, 1802, that the same be done in regard to the estate of Thuilerie, and that he pay costs of suit. In this case it was alleged on the part of Mr. Vans, that "John Codman, brother of Richard, was his partner in all his undertakings and operations of banking at Paris, and that his demand upon Richard of 110,000 francs, for which the mortgage was given, was a mere pretence." And this was not denied by John Codman. The Court, besides ordering the bond to be stricken from the list of creditors, and the mortgage to be erased at the Register, condemned John Codman to pay a fine of thirty francs to the Nation for his false claim.

6. A Judgment against *John Codman*, Nov. 30th, 1802, on an appeal from Judgment rendered at Dreux, on the 30th August and 20th September, 1802. The Judgments of the court below are confirmed, and John Codman condemned to pay costs and a fine of sixty francs to the Nation for his false claim.

7. The Judgment on the final appeal, of which the Report principally speaks.

Such is a brief statement of the nature of such Judgments as Mr. Vans has brought with him and preserved in America. But there are as he states, and as we fully believe, more than twice this number on reeord in France. The late Thomas O. Selfridge, Esq. received from Mr. Vans, as his counsel, several Judgments as well as other valuable papers, which Mr. Vans could never again obtain. Among the rest was a written opin-

ion of Judge Parsons, given when he was at the bar, that John Codman was a partner of Richard, and bound by Richard's contracts in France at the time of Mr. Vans' dealing with him.

It may be asked why, if Mr. Vans considered John as partner, he did not sue him in France, jointly with Richard? The reason was, that all the property in France, whether it belonged to Richard or the firm, stood in Richard's name. The French Courts distinguish him from John, as "the party seized of the estates," i. e. having the title and possession of them. All the property therefore which was attachable, in France, to answer Mr. Vans' demand, could be reached in an action against Richard. As for John Codman, he was not know to have any ostensible property in France, not even that fraudulently obtained, and he could not be arrested without a previous judgment against him, specially subjecting his body to arrest, and imprisonment in default of payment. There was no motive therefore to sue John with Richard in France. John's property could not be reached, his person could not be arrested. In fact, Mr. Vans never contemplated any harsh measures in respect to either; for although the judgments against Richard were, that he *be constrained by body* in case of nonpayment, yet Mr. Vans never caused this part of the judgments to be executed upon him.

Mr. Vans also believed that the property in France, standing in Richard's name, was abundantly sufficient to satisfy his claims. He had offered, in reply to John's proposals, to accept that property in full satisfaction, including the estates of Firmançourt and Cremille; and if it had not been for the frauds of the brothers, and the delays and chicaneries resulting from those frauds, through a long series of years, that property would have been obtained by Mr. Vans and his demands thereby satisfied. Undoubtedly it would have been better if the suits for the *rentes* had been prosecuted against them jointly; for altho' that would have been of no importance in France, it might have been in America. But it could not then have been anticipated that the partnership would ever be denied. In none of the negociations at Paris, in none of the courts of France was it ever denied by John Codman or his counsel, until August, 1804, although it was alleged in the court of Meaux, by Mr. Vans, as early as September, 1802, as a ground for adjudging the conveyances of J. & R. null and void.

As soon as it became important to Mr. Vans' rights to allege and prove before the courts, the fact of partnership, he did so; and the courts did decide that the fact was made out, and that the brothers were partners at the time of making the conveyances.

If the question had been, in France, whether John Codman

should be condemned to pay Mr. Vans 45,000 *fr. rentes*, instead of whether his mortgages should be erased, and fines and costs imposed upon him, we have not the least doubt that he would have been condemned to pay the *rentes*.

Our conclusion therefore is, upon this part of the case, that the courts of France did find enough to hold John Codman to the payment, jointly and severally with Richard, of all Mr. Vans' demand.

This may be stated thus:

If John & Richard were partners in 1801, then they were both chargeable with Mr. Vans' demand.

The courts find that they were partners at that time.

Therefore they find them chargeable with the said demand.

The Report says, p. 9:

"The court ordered John Codman to pay costs to all the other parties."

Mr. Vans was *one* of the parties, and all the rest of them, though prosecuting in their names, were prosecuting for his benefit, and he is now the owner of every debt and evidence of debt, and every bill of costs, which each and all of them recovered.

Again, p. 9th, the Committee admit that Mr. Vans has a judgment against John Codman (they might have said several,) "for costs of suit." Now, when readers recollect how expensive lawsuits are in all countries, how peculiarly and oppressively so they are to strangers in any country; and when it is recollected also, that for two years John Codman was multiplying and appealing these suits in his life-time, though condemned at every trial, and that he continued to do so for *four* years after his death, they will not be long in coming to the conclusion that those "costs of suit" may have amounted to a very large sum.

Can any good reason be given, why John Codman's estate should not pay Mr. Vans the amount of those costs? Can any good reason be given, why Mr. Vans should not be permitted to prove the amount to a court and jury of his country? The Committee do not say that they have ever been paid. There was not the least evidence that they had been. No doubt if they had been, it would have been stated. A debt is incurred in harrassing a man with tedious, vexatious and groundless suits, keeping him from his country, consuming six years of life, and stripping him of his last farthing to pay lawyers;—this debt is stated by the Committee, in effect, to be still due; and yet it does not occur to them that it *ought to be paid!* This view of the matter seems not to have engaged their attention. Why is this?

The costs and charges of these suits were stated by Mr. Vans in his letter to Stephen Codman, in March, 1805, to amount at that time, to 200,000fr. or $40,000.

Would it not have been worth the while of legislative fathers to consider whether it was wholly unreasonable for an aged citizen reduced from affluence to poverty, by the very frauds which occasioned these costs, to be permitted to prosecute for them in the courts of Massachusetts? Those courts would not be very ill employed, if they should, in a case so very clear as the Committee find that of "the costs" to be, take from the pocket of Dives, a little money which does not belong there, and put it into that of Lazarus, where it does belong?

But the Report says, p. 9, that "it was suggested that large amounts of property were realized on the estates of Richard Codman, by the Petitioner."

Is it usual for Committees to tell of the "suggestions" of parties? But if they do take suggestion for proof on one side, it is in good keeping to take proof for suggestion on the other. The writer of the Report knew that the estate at Meaux sold for but $10,000, and that Babut the agent of the Codmans held a mortgage on it, which was paid to the amount of $6,600 and costs, before Mr. Vans could touch a sous; thus leaving to him less than $3,300, out of which the expenses of sale were to be deducted. It may be asserted with perfect truth, that enough was never realized from Richard Codman's estates to pay a third of the costs and charges of the suits.

The Report says further on this topic, that the Committee did not deem it necessary to inquire into that matter, (viz: the "large sums realized,") as it was not comprehended in the petition. Gentlemen who are satisfied with "suggestions" of one party, have no occasion to *inquire* into any thing. Inquiry would be of no use to them.

The Petitioner alleges "that John and Richard Codman became indebted to him in France," that they did not pay him, that as soon as he could get his judgments there, he came home and requested payment of the executor and heirs, that they refused to pay him, and he then asks to be permitted to call them to answer to him in court. It is however "suggested" to the Committee, that Richard has paid and satisfied this very demand; but the Committee "do not deem it necessary to inquire into that matter, because it is not comprehended in the petition!" Every thing else which exists, besides a good deal that never existed, the Committee find to be "comprehended in the petition;" but as to these *monies*, paid the Petitioner by one of the men, whose representatives he asks leave to prosecute; why in sooth, they do not find the said monies comprehended at all!

Pause for a moment upon this. Revolve it. The representatives of John and Richard Codman suggest that Mr. Vans has been fully paid out of Richard Codman's property. They offer no proof of it. The Committee faithfully report "the suggestion," and give it a better setting out in the world than Mr. Vans' "proofs" have obtained. Mr. Vans says John and Richard were partners. Now then is it not seen that if Richard was a partner of John, then payment by Richard, or out of Richard's estates, was also *payment by John;* and that the fact "suggested," and not deemed by the Committee to be comprehended in the petition, would if established, be a complete and triumphant answer in *any* place to Mr. Vans' claim, whether it be a claim on Richard, or on Richard and John. We shall soon come to an explanation of not deeming the monies and payments of Richard Codman to be comprehended in the petition.

Why should the writer of the Report have neglected entirely the fact stated in the Judgment, that Babut, the Codman agent, realized two thirds of the Meaux property; and have substituted for it the "suggestion" of Stephen Codman that Vans "realized large sums."

But granting "the large sums," admitting any and every "suggestion" of one party, and rejecting or neglecting legitimate proofs of the other, still the question returns, was a payment by Richard of his *debt*, a payment by John of his "costs?" If it was, then the two brothers were partners? Is it not in fact true, that the reporter unconsciously, and in the full tide of involuntary conviction, does practically take the brothers to be partners, and treat them as one and the same, applying a payment by one as if it were payment by the other? This is just the way in which experienced *lawyers* are in the *habit* of treating partners. Habits are stronger than *intentions*.

We put to the reporter this dilemma. If the property attached by Mr. Vans, from which something was paid to him, was Richard's, then John's costs according to the Report remain due, and Mr. Vans ought to be allowed to prosecute for them.

If the property was not Richard's, but Richard and John's, then they were partners, and Mr. Vans ought to be permitted to prosecute the representatives of both for his whole demand —subject of course to a deduction of the amount realized from the property taken in execution in France, with interest thereon.

The Report says, p. 10:—

"It was alleged by the Respondent, that the date of R. Codman's note of the 8 Vendemaire, year 9, had been fraudulently altered, so as to carry it back two years. To show this, he produced a copy of one of the notes, and a translation of the other, in the Petitioner's hand writing, enclosed in a letter to Rufus G. Amory, Esq., dated October 27, 1809—and the explanatory

words, "or September, 1797," are added. The other note is truly translated, as dated in the year 9, adding the words, "say Sept. 1800." According to the French calendar, the 8 Vendemaire, year 7, would be Sept, 29th, 1798, and not 1797, as explained in the Petitioner's copy. Sept. 1797 would be before, and Sept. 1798 after the date of the dissolution of the house of J. & R. Codman. On recurring to the original of that note, the date of the day of the month and of the year are in figures, and the figure representing the year has maninfestly been scratched and blotted; and the date of the year, in the certificate of the stamp duty written on the margin, has been taken out with a sharp instrument.

"Henry Codman testified that he attended the hearing on the Petitioner's petition before the Legislature, in the winter of 1811-12—that the original note for 8,415 francs rent was then claimed by the Petitioner, and supposed to be dated in the year seven, and that there was no blot on the figure—that in a subsequent hearing in January 1814, he found it was dated in the year nine, and that the figure had been written over or erased, but there was then no blot upon it—that the Petitioner was then charged with having altered the date, and an angry discussion ensued—that the blot, which now appears on the figure representing the year, has been made since that time. The blot now entirely defaces the figure, and a hole has been worn through the paper.

"The Committee are satisfied that this date has been intentionally altered and defaced, and that the date of the stamp has been intentionally cut out.

"The date of the day and year, in the other note, is not in figures, but written at length in words, and appears unaltered. The certificate of stamp is also printed in the latter, but in that of the former it is in manuscript."

This is substantially a charge of *forgery*. Mr. Vans has passed through a long life, without incurring the charge or suspicion of crime before. He has been the associate of the eminent and honorable of this and other countries. Though poor and perhaps friendless, he is entitled to the common presumption in favor of innocence, until guilt is proved. If a member of this Committee had ever been accused upon some suspicion of stealing, he could not have been more entitled to the shield which general good character affords, than Mr. Vans under the accusation of forgery. The public will see that the old man has fair play. They will not let him be overwhelmed by partiality of which they themselves or their children may become victims, as soon as the same passions happen to be arrayed against them.

There are many who think Mr. Vans is peculiarly entitled to this favorable construction, because though for forty years accustomed to the ease and luxuries of riches, he has not yielded to the temptations of poverty. Neither has he yielded to despair, nor sought to make reprisals upon his species for the wrongs done to himself. These things which his neighbors have observed and will attest, bespeak a good character. They are proofs stronger than it falls to the lot of most men to afford, of tried virtue, invincible either by adverse or prosperous fortune.

Why was it then that the Committee, contrary to the common sense of mankind, contrary to the sense of Mr. Vans'

neighbors and acquaintance, are so ready to cast new burdens upon him? Was it not enough for the case to find that Mr. Vans had no claim in law or equity against the estate of John Codman, without adding the charge of an infamous crime? Did they think that the criminal justice of the Commonwealth was weak and needed assistance? Did they think grand jurors and magistrates incompetent to their duties? Whatever they thought, they have charged Mr. Vans with an infamous crime, and whether truly or falsely, it will be fatal if not answered.

If Mr. Vans had really been guilty, or *believed* to be so, it is probable that a complainant would have been found, who had public spirit or private animosity enough to procure a prosecution and state prison for him. It would be no bad denouement of a tragedy of "thirty years."

If the reader will look carefully at the extract, he will observe an utter confusion and uncertainty as to which note the Committee mean, when they say the date has been intentionally altered. To show the forgery, they say the respondent (Stephen Codman) "produced a copy of *one* of the notes, and a translation of the *other*, in the petitioner's hand writing, enclosed to Rufus G. Amory, Esq. and the explanatory words 'or September, 1797,' are added." Added to which? The clause is equally applicable to both notes. The Report proceeds: "The *other* note is *truly translated*, adding the words 'say September, 1800.'" Which note, we ask, is meant by the "other note truly translated?" We turn to pp. 4 and 5, where the notes are reprinted, and we find no information which of them is "translated" and which is a "copy." No fault is found with either in respect to the dates as they stand there. The Report says, both are truly dated, and that this was not denied by either party. The Report goes on: "According to the French calendar the 8 Vendmaire [Vendemiaire] year 7 would be Sept. 29th, 1798, and not 1797, as expressed in the petitioner's *copy*." At p. 10 they further say: "The date of the day and year in the *other* note is not in figures, but written at length in words, and appears unaltered." This is delightful confusion for the face of an indictment for felony! Here we have "one" and "the other," "copy" and "translation," "a translation" and "the other" "copy," dancing and serpentizing, *right and left*, through the mazes of this sentence. An Hibernian would say,—

> Sure! one is one and tother's the other,
> And both is the same, and all is a bother!

It would be an imposition upon the reader to undertake to clear up or to criticise such a passage as the above.

*We* will explain the whole affair as we understand it, leaving

this precious parcel of the Report to be puzzled into nothing, or swallowed as everything, as may best suit customers.

In the year 1809, soon after Mr. Vans' return from France, he sent (it seems) to Rufus G. Amory, Esq. at his request, a copy of the note for 5000 *fr. rentes*, and a translation of that for 8415 *fr. rentes*, of which the original is in French. In respect to the French note, Mr. Vans is said to have made a mistake in translating the "*an neuf*" of the French calendar, "1797" instead of 1800. Mr. Codman brought this translation and copy before the Committee in 1811, and Mr. Vans at the same time brought the *originals*. On comparing the translation with the French the mistake was observed, and according to the testimony of *Henry Codman, Esq.* an intention on the part of Mr. Vans to defraud, was immediately charged. This was very absurd; because Mr. Vans produced the originals, which would of course be *alone* resorted to as *evidence*, and the deception could scarcely be momentary.

Mr. Vans at that time, as at all times, exposed his original notes unreservedly, and left them *lying on the table*, as he was occasionally absent from the room.

Henry Codman testified further, that at the hearing in 1811, it was found, (we think he said by himself, and that he first called attention to it,) that the date of the French year had been altered in the original of the note for 8415 *fr. rentes*. The Reporter makes Henry Codman say that the alteration was to the year "9," but that cannot be because the year "9" was the original date. Henry Codman, according to the Committee, says that the date at the hearing in 1811, "was *supposed* to be the year 7." "*Supposed!*" The testimony is as loose if possible, as the indictment, upon the principle we suppose that the proofs should *agree* with the allegations. However in 1814 it was discovered that an alteration had been made, and Mr. Vans was then charged in good earnest with making it with an intent "to defraud," *not* "his legitimate creditors," but his legitimate *debtors*. Then occurred that "angry discussion," of which the Committee make careful mention, and in which the fault would of course be all on Mr. Vans' side, and a new proof of guilt.

Now, 1833, a new discovery is made by Henry Codman, viz: that the date of the year has been so blotted "as entirely to deface the figure," and also that the date of the stamp has been "cut out," and Mr. Metcalf, (we *cannot* say the Committee,*) charitably concludes that these alterations have been made intentionally, meaning by William Vans, and that he has committed a crime for which he is liable to State Prison.

* We have good authority for affirming that one member of the Committee expressed abroad utter disbelief and contempt of this charge; why then is his name to the Report?

This charge, such as it is, rests exclusively on the testimony of Henry Codman, whose feelings have been for many years warmly enlisted on one side. He is the son of Stephen Codman, the executor. He was one of the legatees of John Codman. He has been several times of counsel for the representatives of John and Richard Codman. He has been twenty years in the focus of the contest. He testified therefore under a strong bias. Let us try the details.

First—*as to the misdate of the translation sent to Mr. Amory in* 1809.

Even *Frenchmen* often make mistakes in computing by the revolutionary calendar, much more are foreigners liable to err. There could not be a stronger proof of this than is furnished by the Report before us. For example, at p. 5, the Committee translate "11 *Pluviose, An 9*," by 31st January, 1801, and on the next page they translate "17th *Pluviose*" by February 5th. Both of these *cannot* be true. The first is a mistake, and it is repeated in the Report *three times*. At p. 5, "13th Vendemaire," [Vendemiaire] "year nine," is called by the Committee "4th October, 1800," and on the same page "8 Vendemaire year 9," is called 30th September, 1800. It is plain that one of these is an error. "8 Vendemiaire" is the 29th, not "the 30th" of September.

The Committee say, p. 6, "the petitioner, his divorced wife, and his said assignees, recovered three Judgments against Richard Codman in June and July, 1802." Now in fact one of these Judgments was not recovered in "June or July," and *neither* of them in the year "1802." All three were recovered in 1801.

We observe several other errors of the same kind. One is almost laughable after the freedom with which the most heinous intentions were imputed to Mr. Vans. It occurs in the date of one of these very notes!

The Committee speak of the "8th Vendmaire [Vendemiaire] year 7," but without having shown us where they find this date. The "7" *does appear* on the note, and there the writer of the Report must have found it, and yet he tells us that "the figure is so blotted as to be entirely *defaced*." The original was "year 9." We shall presently throw light on the change from the "year 9" to the "year 7."

2. *The alteration of the French note, detected by Henry Codman in* 1814.

In the year 1813, Mr. Vans procured a translation of the note in French to be made and certified by *Samuel Mackay*, an accurate and experienced translator. *This translation gave the true date* of the year, viz: "1800." Now it

is only the *year* that Mr. Vans is charged with attempting to alter. The certificate of the translator is dated "February 16, 1813." And this translation with the date of that year, which the Committee say, p. 5, is the true date, has accompanied the original ever since, has been shown to every Committee, and has been published these ten years in Mr. Vans' books! If Mr. Vans meant to alter in "1814" the date of the year, why should he have permitted to go and be exhibited with the altered and fraudulent date, the true date in the translation? This is as probable as that he would intentionally put a false date to the translation sent *by request* to Mr. Amory, and then carry the original before the Committee to conceal his crime! Really the artifices of this old man surpass all belief! His intrigues to circumvent his adversaries and deceive committees are about upon a par with his pecuniary ability to "corrupt counsel" and "corrupt the Legislature," as he was accused by Mr. Stephen Codman, before the Committee last winter, of doing.

3. *The cutting out of the date of the stamp.*

Although the date of the *stamp* is cut out, yet it appears by the certificate of registry, made soon after the note, and without which the note would not be evidence in the courts of France, in what year the note was made. Besides, the actual date of the note appears in the certificate of the registry! But more than all the rest, the certificate of registry appearing on the note, would always show where a *true copy* of the note as it *originally* was, can be found, so long as the public records of France shall endure. It does not seem probable that Mr. Vans would blot out the year, and cut out the date of the stamp, and yet leave the certificate of registry, which is of no importance in this country, and might have been separated without prejudice to the note, to remain as an index to point out, at all times, the certain way of obtaining a true copy, and detecting the fraud!

4. *As to all these alleged frauds and forgeries.*

The note is described *seven times* by its *true date* in the Judgments, and in one of them *it is copied verbatim with all the dates* of its making and registering. This Judgment Mr. Vans had before the Committee and offered to read.

Mr. Vans never pretended that the debt for which the notes were given arose until December 1798; all his Judgments fix this as the date of the loan, which was seven months after the pretended dissolution. Does it seem very probable that he would alter the date of his note in order to get it behind the date of the pretended dissolution, when he has always said that the consideration itself for which the note was given existed not until seven or eight months after?

But *one* of the notes is altered. If the object were to cheat, why should not both have been altered?

What motive had Mr. Vans to make an alteration of either note? He had his judgments, which would always be better evidence for him than the note, because they are higher in their nature, and moreover give him a great amount of costs, which if he relied upon the notes alone he must lose.

What motives had the opposite party to make the alteration? They had this motive :—to discredit at one stroke Vans' papers and Vans' character. For the latter purpose one forgery is as good as five thousand. On this supposition we can account for *one* note being "defaced" and "cut," from time to time.

The cutting could not have been done with shears or scissors. Any one who examines it will say that it was done with a sharp pointed knife, as the note lay spread upon a hard smooth surface; and the person who did the cutting proceeded cautiously and timidly, as if in the presence of others immediately occupied with some other part of the case. He first cut or picked several little holes, which are scarcely discernable, and would not be noticed by any one unless he were led to look critically, after having his attention aroused by the great cut, which coups out the date. Our idea is that the person who did the deed resorted to a gradual advance to his main object, in order that he might if any one happened to observe him, appear to be doing nothing mischievous, or idly amusing himself in picking the blank margin of the paper. By and by, being emboldened by success, and finding himself unobserved, he made a push at the date.

The fact that the year was altered to "an 7," is another circumstance worthy of notice. That alteration *fails of its object*, supposing it was done by Vans to carry back *one* note behind the pretended dissolution. This would be too little by a year! The learned Reporter tells us this, and that "8th Vendmaire [Vendemiaire] year 7," would be Sept. 29th, "1798," a year after the date of pretended dissolution, whereas the forgery is charged to have been committed, in order to make the original French note correspond in date with the translation sent to Amory, in which the first forgery was committed, in order to carry back the date of this demand into the year previous to the pretended dissolution!

How account for so gross a blunder, if the alteration was made by Mr. Vans, and of course deliberately, for the notes were always in his hands, and he could plot at leisure. Would he have made so gross a blunder?

But upon the supposition that it was done by a person under

the instant apprehension of detection, the mistake can be easily accounted for.

There was another reason why the adverse party should make the alteration. Nothing could be more for the interest of their cause, than to make Mr. Vans appear to *wish* to carry his notes back behind the date of the pretended dissolution. It would make him (besides committing a crime,) yield in the most emphatic manner, the great point which he has always maintained, and which they most wish him to yield, or be driven from, viz: *that the partnership was not then dissolved*, that in fact it never was dissolved until death dissolved it. With Mr. Vans' view of the continuance of the partnership, it was of no sort of consequence whether his note was dated in 1797 or 1800. This ground, until a court and jury shall have pronounced it untenable, he will never yield. He has maintained it unshaken through the fiery trials of "thirty years." It is obvious that nothing could be more beneficial to the estate of John Codman, or more tranquilizing to his representatives, than to have him yield it, and above all, accompany such yielding with an infamous and obvious crime.

*Lastly.* The alteration of the date of the note makes it *null and void*, and it could not be recovered if forty thousand juries were to be granted to Mr. Vans. If the date be altered, and altered by Mr. Vans, what grounds have the representatives of John and Richard Codman to fear meeting him in a judicial court, when that alteration is a complete defence against the note, and where they can at the same time nullify the note and Vans forever?

The Committee say, p. 8:—

"John C. died in May of the same year, (1803.)"

They again observe, p. 8:—

"John Codman, as has been before mentioned, died in May, 1803."

And now again, at p. 9, they repeat:—

"It will be observed that John Codman had died at Boston in May 1803, before the interlocutory order was made to produce the account."

The purpose of this last repetition appears to be to convey the idea to the members of the House of Representatives, that John Codman being dead, could not produce his account and look after his lawsuits. Was this fair? Does not the French record prove that he was contending with Mr. Vans before the judgment seat of France three or four years after he was summoned to a higher? We grant that "thirty days" was an in-

sufficient period for procuring the account from Boston, although we have no doubt at all, that if the account existed, and was made at Paris, as the one produced before the Committee purported to be, a duplicate always remained there, and was in the hands of John and Richard Codman's attornies when the order to produce it was made. Would the Codmans have omitted to place in the hands of their attornies during the two years that the validity of the mortgages had been contested, that very document which they had relied on to support the good faith and virtue of those mortgages? It is not credible. But the Committee make a mistake as to the time which the Court gave. It was not "thirty," but only "eight days," and so the Judgment says. The Court never dreamed of giving time to send to America. The counsel of neither of the Codmans asked for it; and it does not appear that they objected to the time given.

But the account was not produced on the trial of the appeal, more *than a year after the Judgment* was given, in which the court declare that "the *non-production* of the account is evidence of its *non-existence*," and that therefore all the pretended obligations and mortgages purporting to be based upon that account, were fraudulent and void. If the pretended account had been produced, we feel confident that it would never have been heard of more. It could not have stood the test of five minutes' examination before an enlightened legal tribunal.

What then becomes of the studied innuendo of the Reporter, directly calculated to prevent the inference that John Codman or his executor had no such account, or that if he had, it was of such a character that it was not thought prudent to produce it.

Even now if the partnership was *bona fide* dissolved in May, 1798, and the pretended account was an honest account, these two facts together would be a complete answer to Mr. Vans, in any court of law. Because in that case, John Codman instead of being liable for Richard's contracts made in 1799 and 1800, would not only have been clear of that liability, but would have had a large claim on his brother, which would have been just as good as any other creditor's, and he would have held the estates mortgaged to secure it, just as well as Mr. Vans. The whole reasoning and opinion of the French court takes for granted that this would have been the case. But the court say there was no account. *This declaration of the Court the Reporter has not thought proper to mention.* He thinks proper to insinuate that there *was* one, instead of *saying* as the court did, (of whose Judgment he was professing to give "the exact substance,") that there *was not.*

If the partnership was dissolved in May, 1798, and an honest

and sufficient settlement of the accounts of the firm was made, would it not have been better for the heirs and devisees of John Codman to have shown this once for all in a court of law, and thereby have prostrated Mr. Vans' claims forever? An expenditure of two or three hundred dollars would have effected this, whereas they have now expended many thousands, to maintain their ground behind the limitation law, to say nothing of the fees of counsel and agent to detain Mr. Vans in France, so that he might be barred by it before he arrived here. It was pertinently observed by a member of the House,* in the debate the last session, that the Codmans had thousands to expend *before Committees*, but not a cent before a *court of law*.

The Report also charges Mr. Vans with forging the copy of a letter, purporting to be written to John Codman in February, 1801.

"Several offers of compromise were made and rejected between the Petitioner and Richard C., and John C., in a letter dated Paris, 31st January, 1801, enclosed to the Petitioner a statement of a compromise to which he should recommend to Richard C. to agree, (though he had not consulted him on the subject,) and recommended to the Petitioner, for the credit of both, (the Petitioner and Richard C.,) to terminate their disputes. This letter, and an alleged answer to it from the Petitioner, dated Pluviose, but without any day of the month, were much relied on by the Petitioner, as tending to show that John C. was liable with Richard C. on the notes. The Respondent denied that the alleged answer was ever sent to John C., but contended that it was a fabrication. The supposed answer acknowledged the receipt of John C.'s letter of 31st January, and of the statement enclosed, and proceeded to state that the phraseology of the letter proved John C.'s interest, and that he (the Petitioner) could prove them (J. and R. Codman) copartners. This answer was a copy written on a loose half sheet of foreign paper, and there was no proof that the original was ever received by, or sent to John C. The Respondent produced an original answer from the Petitioner, to the same letter of January 31st, dated the following day, also acknowledging the receipt of the letter, and of the statement enclosed, but in nothing else corresponding at all with the alleged copy produced by the Petitioner. On the contrary, the original answer reproaches John C. for persisting in his demand on Richard C., to the injury of his (Richard's) creditors, and does not intimate that the Petitioner had any claim on John C., or that the matter of the inscriptions was a partnership transaction. No answer from John C. to the letter, of which the paper exhibited by the Petitioner was alleged to be a copy, was produced by him; but he produced, as an answer to it, a letter from Richard C., appearing to be dated 17 Pluviose, (February 5th,) saying that he could not accept the offer made by the Petitioner, and referring to a sum of 60,000fr., mentioned in a letter from the Petitioner of *that date*. The Respondent, after the argument of the Petitioner's counsel was closed, offered to exhibit another letter from the Petitioner to John C., (mentioning the same sum of 60,000 francs) as that to which the letter of Richard C. was an answer; but the Committee declined receiving it, in that stage of the hearing, as they did not find there was in the case any satisfactory ground to believe that the alleged letter of the Petitioner was ever sent to John

* Mr. Robinson, an able member from Marblehead.

Codman. No other evidence was given to the Committee of any claim made on John C., or on the partnership, by the Petitioner, while John C. was in France. It was admitted, however, by the Respondent, that some time after John C.'s return to the United States, the Petitioner made a claim on him by a letter to a Mr. Derby."

In respect to this charge as well as in respect to the foregoing, it does not appear from the Report that the petitioner made any reply, or attempted to make any. From the fairness and impartiality which are expected to characterize a Committee of the Legislature, it will generally be understood and believed that as but *but one* side of these questions is presented by the Report, therefore there *was* but one side. Mr. Vans, however, did make replies to both, and we shall now repeat that in relation to the alleged forgery of a letter, as we have already repeated that in relation to forged alterations of the notes. Having done this, we shall cheerfully leave the public to decide whether Mr. Vans is guilty or not; and whether the Committee were not bound as just men, as well as by the Constitution and their oaths, to have permitted the two Houses to read Mr. Vans' answer, along with these atrocious accusations.

1. The copy appears by paper, ink and color to be a cotemporary of all the other papers in the case; they were nearly every one written in France, on French paper, and therefore if it be a fabrication, it must have been fabricated about the same time and place that it should have been written, if genuine; and would prove (and this was all that could be proved by it in any view,) that Mr. Vans did regard John Codman as partner in February, 1801.

2. The whole spirit of the correspondence shows that Mr. Vans always regarded John Codman in that light. He said to the brothers in an earlier letter—"I will not take a cent less than my whole debt," and other words to the same effect. He said also, "I will not be put upon *Richard's* list of creditors." At another time he said, "I am willing to accommodate as to time—for the remainder I will take a note for ten years, to be signed *by whom I please.*" What fair interpretation can be given to this, except that Mr. Vans cast his views beyond any security which Richard Codman *alone* could give, for the balance which might be due to him after receiving property proposed to him by John and Richard Codman, in the offers of compromise. On the 16th Feb. 1801, in the same month with the date of the pretended forgery, Richard acknowledges the receipt of a letter from Mr. Vans, addressed to "Messrs. John and Richard Codman." He makes no remarks upon that style of address. John was yet in Paris. This letter of Mr. Vans' has not been produced by the representatives of John and Richard Codman, without doubt because the contents would *correspond with the address.*

In the letter of John Codman to Mr. Vans, dated 30th of January, the same which the reporter mentions so often as that of "the 31st January," John Codman in enclosing his proposal for a compromise with Mr. Vans, says :—

"I have not consulted my brother about it, for he too *is gone out.*" (Richard had then gone to Normandy, *fifty* or *sixty miles.*) "Think of it well, and meet him or me on the subject."

Our object in quoting these letters is not to show the existence of the partnership in 1801. We leave that to the Judgments of the French courts. What we now aim to demonstrate is, that Mr. Vans is unjustly accused of forging the letter, and that the reporter did wrong in withholding from the Legislature Mr. Vans' reply to that charge.

In a letter to Mr. Vans, dated Paris, *Sept. 1st*, 1800, Richard endeavors to excuse himself for not purchasing stocks with the proceeds of Mr. Vans houses. He alleges that he kept the proceeds as security for a credit which he had given Mr. Vans on John Codman, (although he had promised at the time to invest the proceeds of the houses in stocks, and that too in full view of the credit to Vans on John,) and he then adds :—

"If therefore I had invested the balance due you yet in inscriptions, [French stocks,] I should have had scarce any security at all, and such as no prudent man would have taken, and in fact such as considering my circumstances, and CONNEXION with my brother, I did not think myself AUTHORIZED to take."

With such admissions of both brothers in his hands, what motive had Mr. Vans to resort to a wretched and far-fetched forgery to prove—what? why, that he charged them with that which they had often confessed and never denied.

3. In 1802, as soon as it was necessary to the maintaining of his rights, Mr. Vans charged John and Richard Codman as copartners, in the French Courts ; and *the fact was not denied* at that time, nor at other trials in the year following, nor ever until the trial in the Court of Appeals in 1804, when the Court, nothwithstanding the denial, and after full argument for John Codman, by the ablest counsel in France, did find *the fact* of copartnership.

4. In 1802 we find Mr. Vans engaged in *proving* by the testimony of some of the most extensive merchants in France, the very fact, which he is now charged with committing forgery merely to *assert!*

The deposition of Col. James Swan was taken at Paris, June 6th, 1802, and recorded on the 17th of said month. Col. Swan is pretty well known in this country to have been a great and intelligent merchant: Mr. Thomas Melvill who resided and

traded in Paris, from 1795 to 1811, testified before the Committee, that Mr. Swan, or rather the house of Dallard, Swan & Co. at Paris, did more business at the time Richard Codman was residing and transacting business there, than any other house in France, and that in fact, for a portion of this time, Col. Swan's house controlled the commerce of that country!

*Col. Swan testified that "he knew John and Richard Codman as merchants and partners;" that "he and his former house of Dallard, Swan & Co., had done business with John and Richard Codman, at Paris, Havre, and Boston," and that "Richard had receipted in* his own name alone *for money which the deponent had paid to John Codman."*

This question is then put to Col. Swan;—

"Question.—*Do you know whether the house of John and Richard Codman is dissolved?"*

"Answer.—*I have never received notice in France of the dissolution of partnership of John & Richard Codman, either by letter or by any public act either of John Codman or Richard Codman."*

A certificate signed "P. DALLARD & Co.," and dated June 16th, 1802, says:

*"We have had an account current open with* Richard Codman, *merchant, at Paris, since the year* 1794, *old style, and have always considered said Codman as copartner of the house of John and Richard Codman; further, we have never had any knowledge that the said house of John & Richard Codman is dissolved."*

The deposition of BENJAMIN CALLENDER was taken a few days after Col. Swan's, viz: June 23d, 1802, at the request of Mr. Vans. After stating that the deponent knows John and Richard Codman as merchants and partners, the deposition proceeds as follows:—

"Question.—*What was the occasion of Richard Codman's residing in France?"*

"Answer.—*It was generally believed that Richard Codman resided in France to carry on the commercial business for his house of John and Richard Codman."*

"Question.—*Have you done business in France with John and Richard Codman?"*

"Answer.—*In one thousand seven hundred and ninety five, I bought on account of my house of Putnam and Callender, the ship Governor Bowdoin, belonging to John and Richard Codman."*

"Question.—*Did Richard Codman sell you the said ship as belonging to himself alone, or as belonging to his house of John and Richard Codman?"*

"Answer.—*Richard Codman sold me in his own name alone, the said ship Governor Bowdoin, as a ship which belonged to John and Richard Codman, as appears by the account current of Richard Codman with Putnam and Callender, a copy of which account I have delivered and deposited in the Clerk's Office."*

"Question.—*What right had Richard Codman to sell you in his name alone, a ship which belonged to John and Richard Codman?*"

"Answer.—*I have always considered Richard Codman, although acting in his name alone, as representing the house of John and Richard Codman. I have therefore thought the contract of sale signed by himself alone, valid and binding upon John and Richard Codman, and I have never understood any thing contrary thereto.*"

"Question.—*Have you had any other dealings with Richard Codman?*"

"Answer.—*I have had sundry dealings in Paris, at different times, with Richard Codman. I lent him in the month of Pluviose, third year,* (1795) *sixty thousand livres in* assignats, *for which I took his note in his name alone, considering at the time his brother and partner John Codman as responsible for all the engagements of Richard Codman; because every body knew in Paris, that Richard Codman was in partnership in Paris with his brother John Codman, and that he carried on commercial transactions in his name alone for the account and concern of John and Richard Codman.*"

"Question.—*Have you been informed of the dissolution of the partnership of John and Richard Codman?*"

"Answer.—*I have never been informed by letter, or any public act, of the dissolution of the partnership of John and Richard Codman.*"

The following depositions, although not taken at Paris, nor at the time the foregoing were taken, bear also upon the question of forgery.

Nathaniel Cutting, Esq. formerly Consul of the U. States at Havre, and a clerk in the War Department of the U. S. in 1812, the time of taking his deposition, testifies as follows:—

"*I was resident in France, and principally in the city of Paris and its vicinity, during the greater part of the years* 1795, 1796, 1797, 1798, 1799, 1800 *and* 1801; *that I was well acquainted with John Codman and with Richard Codman, late of Boston, deceased, who were then reputed copartners in trade; that during a portion of the time above stated, I was an inmate in the house and family of the said Richard Codman, both at his town residence, at Paris, (Rue d'Anjou St. Honore,) and at his country seat, about seven leagues from thence, at a place called Dammartin, [the Chateau of Thuilerie;] that although I do not remember ever to have had a commercial transaction with both or either of the said* Codmans *that required the signature of their house or firm, yet from the verbal and voluntary testimony of Richard Codman aforesaid, I always felt assured, and am still confident that he was really and truly a copartner with his brother, the said John Codman; and that he was fully anthorized to use and sign the firm of the said copartnership or association, viz: "John and Richard Codman," in France and elsewhere; and I always supposed and* believed, *that the extensive business in which he the said Richard appeared to be engaged, and the vast acquisitions of Real Estate which I observed him to make in France, were founded on, and were for account of the joint Funds and Interest of the copartnership aforesaid; and I was the more confirmed in this*

*opinion, when about the close of the year* 1800, *or beginning of* 1801, *I observed the aforesaid John Codman come personally to Paris, and apparently enter into possession of the property that had been previously acquired in France by said Richard Codman, and proceed conjunctly with him in the adjustment of his open accounts. Nor did I ever hear or know within the period aforesaid, that the said copartnership was dissolved or annulled in France, either by Public Advertisement or otherwise.*

*I also perfectly well recollect to have heard, and do verily believe, that the aforesaid Richard Codman did speculate pretty largely in the public Funds of France, commonly called* "Inscriptions sur le Grand Livre," *or in other words, "the Perpetual Debt of France," which nominally bore an interest of* 5 per centum per annum ;—*which speculations I understood to be, and I do verily believe were, for the joint account of the concern or association of John and Richard Codman.*

*I myself was engaged in similar speculations, as were most other Americans then at Paris ; and to the best of my recollection and belief, in the summer of* 1797, *when those speculations were carried to the greatest height,* that stock *was bought and sold from* 25 *to* 45 *livres tournois for one hundred livres of the Capital Stock, the price fluctuating in the market according to the news of the day or the caprice of speculators ; until in the course of the said year* 1797, *the Government of France then styled the* Directory, *aided by the two Legislative Councils, reduced the said Fund, (although it was called the* Perpetual Debt,) *to one third part of its nominal sum and value, by paying off* two thirds of the Capital or Principal *of the said Debt,* in depreciated paper money.

*The* one third *thus continued was thereafter called* "le tiers consolide," *or* "the consolidated third."

*After the Consular Government took place in France, (Oct.* 8, 1799,) *and the system of Finance in that country was improved, the evidences of this remnant of the Public Debt, became of greater value, and have ever since remained at a higher price in effective money, than the whole capital was at any period between the year one thousand seven hundred and ninety-five, and the Epocha of its Reduction, as aforesaid."*

*Mr. Thomas Melvill, Jr.'s* deposition was taken at Pittsfield, Massachusetts, on the 5th day of May, A. D. 1812, in perpetual remembrance of the thing. It is as follows :—

*"Thomas Melvill, Jr. of Pittsfield, in the County of Berkshire and Commonwealth of Massachusetts, gentleman, of lawful age, makes oath and says, that he (the deponent,) in the year seventeen hundred and ninety five, became acquainted in France with the late Richard Codman, and which acquaintance continued until his departure from thence in the year eighteen hundred and two. Circumstances at times connected the deponent and said Richard together in commercial operations, from whence the deponent knew that said Richard transacted his mercantile business at Paris, under the firm of* Richard Codman, *and that in said business he was in partnership with his brother John Codman, of Boston.*

*The deponent also became acquainted with John Codman, on said John's arrival in France, which was as near as the deponent can recollect, in the year eighteen hundred and one—at which time said John consulted the deponent respecting certain claims of Mr. William Vans, upon said firm of* Richard Codman, *and said John made known to the deponent, propositions that had been made to Mr. Vans for a settlement, and for the purpose of facilitating said compromise, at the same time proposed making over to the deponent, several estates in France, as security for the advances necessary for this object. This however was declined by the deponent, on account of some irregularity in the papers, the particulars of which, or of the propositions made to Mr. Vans from the lapse of time, the deponent does not recollect. And further the deponent says not.* THOS. MELVILL, JR."

## COMMONWEALTH OF MASSACHUSETTS.

*Berkshire, ss. Town of Pittsfield.*

*This fifth day of December, in the year of our Lord one thousand eight hundred and twelve, personally appeared before us, the subscribers, two Justices of the Peace, in and for the County of Berkshire, Quorum unis, the aforesaid deponent, and after being carefully examined, and duly cautioned to testify the whole truth, and nothing but the truth, made oath that the foregoing deposition by him subscribed, is true. Taken at the request of William Vans, now resident at Salem, in the County of Essex, Merchant—to be preserved in perpetual remembrance of the thing. We not knowing any persons living within twenty miles of said place of caption, interested in the question or property whereto the aforesaid deposition relates, did not notify any persons to attend.*

TIMO. CHILDS, } *Justices of the Peace.*
REYNOLD M. KIRBY, } *Quorum unus.*

Mr. Melvill was summoned before the Committee last winter, and testified, in addition to the above, that "he never knew or heard of a dissolution of the partnership in France up to the time of Richard Codman's departure from that country, in the year 1802; that the American merchants doing business in Paris at that time, were usually concerned in speculations in public funds and real estate; that they had peculiar temptations and facilities so to do, being privileged as foreigners to have and use specie in their business, (which Frenchmen were not,) possessing in a peculiar degree, from political sympathy, the confidence of the French nation, and having peculiar knowledge from experience in their own country, and a peculiar foresight, of the final results of a depreciating paper currency, and an appreciating public debt; and that Richard Codman entered largely into the speculations common and usual to his countrymen at that time and place."

Such was Mr. Melvill's testimony, after confirming every word of his former deposition as above inserted at large.

On the 3d day of June, A. D. 1802, *Edward Church, Esq.* U. S. Consul at Lisbon, furnished Mr. Vans, at Paris, with bills of

exchange, accounts current, and letters of Richard Codman under his *signature alone*, which were well known to third persons, and were acknowledged by John Codman, in writing, to relate entirely to partnership transactions. Mr. Church accompanied these papers with the following letter:—

PARIS, 15 PRAIRIAL ANDIX. (3d June, 1802.)

Mr. WM. VANS,

SIR.—Agreeable to yours of the 13th instant, I embrace the first moment of leisure to explain to you the circumstances which gave birth to the transaction which took place between Richard Codman and me, and relative to which at the time of your request, I entrusted you with the most material papers then in my possession.

In the month of January, 1795, during my residence in Lisbon, as Consul General of the United States of America for that Kingdom, arrived a ship from the port of Havre in France, (called the Thetis,) commanded by Samuel Prince of Boston, belonging to John and Richard Codman of same place, and consigned by Richard Codman, partner of said house, then residing in France, (*in his own particular name*,) to the house of Jacob Dorhman & Co. of Lisbon. This ship being loaded and ready to sail for Havre, from whence she came, intelligence was received from London, that the bills furnished for the payment of said cargo were *Noted*, and in all probability would not be paid, in consequence of which advice, Dorhman thought proper to detain the ship.

In this distress, Capt. Prince applied to me for advice and assistance, assured me that the ship and cargo were the property of John and Richard Codman, of Boston, though ostensibly in the name of Richard Codman alone, and prayed me (as he presumed I could not doubt the solidity of John Codman, of Boston,) to interfere for the honor and interest of the said house. Being myself of the same town, and knowing the captain and owners many years, I supposed I might safely venture to comply with his request, and therefore without hesitation, or other security than the reputation of the house of John and Richard Codman, I immediately advanced seven thousand pounds sterling, in order to liberate said ship, which sailed without further delay, and arrived safe at Havre—by which act of confidence and friendship I was flattered by the captain with great expectations from said house, all which terminated in the loss of above £800 sterling, in difference of exchange and interest, before the liquidation of that loan.

You ask me for a copy of the account current as it stood between Richard Codman and me, to which I answer, that the

house of Gildermaster & Co. of Lisbon, being interested in my commercial transactions to this country during the war, the books were kept in their counting-house, whence all the accounts were issued. But I have furnished you with a letter in the hand writing of John Codman, dated 23d June, 1795, and signed John and Richard Codman, which clearly proves that the business transacted by and for the ostensible account of R. Codman at Paris, was for account of John and Richard Codman of Boston.

I am totally a stranger to any formal dissolution of that house, and therefore had I given credit to Richard Codman six months ago, I should have considered John Codman, of Boston, equally responsible, because in my opinion neither of the co-partners has taken the regular steps to announce the dissolution to the world—if it be true that it was announced in Boston. It is to be presumed it was not regularly announced—that is, that it had not the consent and signature of Richard Codman; and if otherwise, the publication of the said dissolution in Paris must naturally be supposed to have been omitted for sinister purposes, for which both partners are necessarily responsible.

In all commercial countries the customs of merchants are considered as laws, to determine claims between contending parties. It is therefore to be presumed that the irregular or mock dissolution of the partnership of John and Richard Codman, can never militate against your demands, and that your just claims against Richard, must always be good against John Codman.

I do not pretend to be versed in the laws of this country, but the matter would scarcely admit of half an hour's debate in England or in the United States of America.

On all occasions where I can be useful in support of your just claims, I pray you freely to command

Your friend and fellow citizen,

EDWARD CHURCH.

It is a remarkable fact, (if any thing can be remarkable) that the reporter, in alluding to most of the documents which we have now presented, does not give the *date* of one of them! Had this been done, it would have been so manifest that there was no motive on the part of Mr. Vans to "fabricate" the copy of a letter from himself, that every man of common sense and candor would have rejected this heinous imputation upon the petitioner with disgust, as one of the Committee declared not two days before signing the Report, and after the hearing was

over, that he did. He said that "he despised this charge," or words to that effect. Yet he set his hand to it!

> "Plate sin with gold,
> And the strong lance of justice hurtless breaks.
> Arm it in rags, a pigmy straw doth pierce it."

With all these facts before him, the reporter could make up his mind to state, *in effect*, to the Legislature, that Mr. Vans produced no evidence of his having made a claim on *John Codman;* and that there was no evidence of such claim having been made, except the respondent's *admission* that a letter asserting said claim, had been addressed "to a Mr. Derby sometime after John Codman's return from France." We say *in effect*, because we perceive that the *terms* are artful and calculated to mislead.

But did John Codman deny it when it was asserted in the Derby letter? Not at all. It is not pretended that he did.

But it was of no consequence to the justice or validity of Mr. Vans' claim whether he had ever said a word about it to John Codman or not; or whether Mr. Vans even knew, up to the day of John Codman's death, that he was ever a partner of Richard. If the fact turned out to be *that they were actually partners* when Mr. Vans entrusted his money to Richard, John Codman would still have been holden.

The great aim of this part of the Report is evidently to prove indirectly, while the reporter avoids any plain declaration upon the point, that the whole affair of the partnership was an after thought with Mr. Vans, *when* he began to suspect that his reliance on Richard was too frail.

Now observe the consistency of the reporter. He tells us, (p. 6,) that "Richard C. *when John C. was in Paris*, was regarded both by the petitioner and by himself as *insolvent*."

The reporter is as consistent in this as he is in charging Mr. Vans with forging a copy of a letter to prove that he, living in Paris and Havre from 1793 to 1809, and sustaining an office under the Government of the U. S., which necessarily connected him with American merchants, knew in 1801, what "EVERY BODY KNEW IN PARIS" from the year 1794 to the year 1802!

But we cannot dismiss this topic without adverting to expressions at p. 5 of the Report:—

> "This answer was a copy written on a loose half sheet of *foreign* paper, and there was no proof that the original was ever received by John C."

We would not have the reader suppose that this sentence does justice to the liberality of the Committee. They did greatly relax from the severe rule which this paragraph appears to contain. A mere *fragment* of a letter, *asserted* to have been

written and sent by Richard to John Codman, was the only particle of evidence which was produced to show that Richard was *ever* informed in France of the dissolution of his own house! There was *no date* to it, there was no proof or explanation how a part came to be *torn off* and lost, and there was no proof that it was sent by Richard and received by John. Yet the Committee were so liberal as to admit this fragment, and the reporter, to set forth its contents without any slurs whatever. Copies of a great many letters were read on behalf of the respondent from John Codman's letter books, although "there was no proof that these were ever received." Yet the Committee were so liberal as to admit them, and the reporter to set them forth as legitimate proofs. Some letters of John Codman were read, which were marked by him "not sent," in large characters; yet the Committee admitted them, and the reporter set forth their contents as legimate proofs. If we had not stated these facts, the Committee would have appeared illiberal in rejecting Mr. Vans *entire* letter with a *date to it*, and with an appropriate answer from Richard Codman, who, we have seen under his own hand, did answer letters which were addressed to both him and John.

But then it was "on foreign paper." Wherefore we ask was this epithet "foreign" thrown in? Was it to colour suspicion? On what paper should a letter be written in a foreign country? Was there any letter or document in the case, purporting to be written in France, that was not on just such paper? Yes there were two, and but two. These were the account of John and Richard Codman, and the note of Richard to John for the balance, pretended to have been made at Paris January 1st, 1801. These were on *American* paper. The note was presented in the Court of Appeals in France, as we have before mentioned, and it was *precisely because it was on American* paper (among other causes,) that it was rejected as fraudulent.

The circumstance of the "foreign paper," is altogether in favor of the honesty and genuineness of the document. If written in France, and at the time it purports, foreign paper would naturally be used. If afterwards fabricated to be used before a Committee of the Legislature, American paper would be very likely to be used. It is submitted whether the circumstance was thrown into the Report to bear in this, or in the opposite way upon the question of forgery; whether it was intended to be thrown as a legitimate weight into Mr. Vans' side, or a factitious one into the other. Then as to "the half sheet." We will make no other reply to this little stuff than to say—it was a *whole letter!*

But the reporter says that the counsel of the respondent did

produce another letter of Mr. Vans, *to* which the letter of Richard Codman, produced as the reply to the alleged forged one, was in fact a reply; and the reporter says the Committee rejected it because the argument was closed, and for the other curious reason that the Committee had no evidence that the original of the "fabricated" copy "was ever received by John C.;" in other words they did not receive it because it was not necessary to the respondent's defence! Yet strange to tell, the reporter proceeds forthwith to state, for the information of the Legislature, the contents of this very rejected letter. If Mr. Vans had been aware that papers offered and "rejected" in that stage of the case would have been treated with such unprecedented indulgence, he would have desired to have all his evidence "declined," and would probably have offered it "after the argument was closed."

This is not all. The reporter founds upon the contents of this "declined" letter, an argument to prove Vans guilty of forgery. He says, (p. 6) that Stephen Codman,

"Offered to exhibit another letter from the petitioner to John C., (mentioning the same sum of 60,000 fr.) as that to which the letter of Richard C. was an answer"

Now it does so happen, that the very letter charged to be fabricated, and to which it is argued that Richard Codman's letter could not be an answer, *because* Richard's is a reply to one which names the sum of 60,000 fr., *does in fact name that very sum.* The reporter should have taken minutes a little more full. Vans names that sum as the value of a piece of property, which he requires of John Codman, in addition to his previous offers for a compromise; and Richard's answer says, your proposition might do, "if the *article* of 60,000fr. were left out, and the same value taken in such property as *I have.*" It is obvious that Richard did not mean 60,000fr. in money. He, in fact, meant the *Firmancourt estate,* which, as we have seen, his brother was then covering; while Richard was pretending at one time in the course of the negociation, that he had it not, and at one time that "he might *perhaps* obtain it," and at another that John "would immediately *discharge his claims* upon an adjustment" with Vans. Richard Codman's reply fits the "forged" letter far better than it does the "declined." The object, therefore, for which a "declined" letter is introduced to the House, and treated with so much more respect than any or all the evidence offered by the petitioner, *seems* to fail.

But there is more, which must be stated about this "declined" letter. It was attempted to be *smuggled* into the case, by the

respondent, after the case was finished, as a document which had already been put in and read in due course; and this attempt was detected by the petitioner's counsel, and after a sharp contest and a reference to Mr. Metcalf's notes, where no such letter was minuted, it was thrown out. The circumstances were decidedly suspicious. No jury would have seen them unmoved. *The letter* was never offered in evidence, because the attempt to smuggle it in as another letter which had already been offered and received, was *not* offering it.

Yet this identical letter—detected, disgraced, cast out like a thief creeping over the wall in the night, is reported to the Legislature as if regularly admitted, and without spot or blemish. And it is made the basis of an argument to prove Mr. Vans a villain.

The Report says, (p. 2) :—

"It appeared from the books of account, which were before the Committee, that Richard Codman was from time to time, credited and charged with one third of the profit and loss of the firm."

And, (p. 3) :—

"It did not appear by the books of J. & R. Codman, that Mr. Howe, [Jos. N. Howe,] had any dealings with either after 1797."

Again, (p. 7) :—

"It did not appear to the Committee, from any of the books and papers, that the petitioner ever had any dealings with J. Codman, or the house of J. & R. Codman."

And lastly, (p. 11) :—

After the hearing had been commenced, the Petitioner, under the Order of the House empowering the Committee to send for persons and papers, procured an order on the Respondent to produce the books of account, letter-books, and bill-book, kept by J. & R. Codman, and by John Codman, from the beginning of the copartnership to the death of J. Codman—also the correspondence of the Respondent with Babut, the agent in France. These and many other books and papers of J. & R. C. and of J. C. were produced and referred to, and offered to the inspection and examination of the Petitioner and his counsel, in the intervals between the sittings of the Committee. The books of accounts and letters, and bill-book, kept by Richard C. in France, from the year 1794 to 1802, were also called for, and were not produced. The Respondent, however, filed an affidavit, that no books kept by R. Codman in France, had ever come to his hands or knowledge, except two or three imperfect books of invoices and accounts—which he produced. No proof was offered that such books had or had not been kept, or had been lost or destroyed. Many papers of R. Codman—such as letters from the Petitioner, and from John Codman, were produced by the Respondent. No book or paper called for was withheld, which was shown to be in the Respondent's possession.

From all this it would appear that the petitioner put into the case the books which were furnished by Stephen Codman. Not a word is said of the petitioner's not only refusing to use the books, but also of his refusing to examine them, or have any thing to do with them. *The* books *called for* were *not* produced. The books kept by Richard Codman in France were withheld. Those were the very books which Mr. Vans chiefly desired to see. These would have shown whether Richard kept a *separate account for himself* of his transactions with Mr. Vans, or whether Mr. Vans' property was swallowed up in the house of J. and R. Codman. The two sets, viz. the Boston books and the Paris books, when compared, would have been decisive of the case, one way or the other. It is a rule of law, that if property delivered to a partner actually goes into a partnership concern, all the partners are answerable for it. Mr. Vans has always said, that if *all* the books kept by both partners were produced, and they did not furnish evidence to substantiate his claim, he would give it up. It was proved before the Committee, by Mr. NATHANIEL STOWERS, a very respectable teacher of book keeping, that Mr. Vans made this offer in the most public manner, at a hearing before a Committee of the Legislature, twenty years ago. When, therefore, only a part were produced, and those the least important, Mr. Vans very properly refused to offer them in evidence, or to look at them. Not one of them was opened by him or his counsel. It would have been suicidal for him to have undertaken to prove his case by such books as Stephen Codman chose to select! Would that gentleman be very likely to select such as would overthrow the building which he had been fabricating and fortifying for "thirty years?" He might well say in the language of another, "Good———what have we been fighting for?"

But where was the fairness of stating that *Mr. Vans* called for the books, and that they proved or did not prove this and that, without saying one word of the circumstances and objections which we have now stated. Is this telling "the whole truth?" Is this justice? Is this worthy of the Legislature of a great and free Commonwealth?

But, says the reporter, (p. 11):—

"No book or paper called for was withheld, which was shown to *exist.*"

Was it then incumbent on the petitioner, to show that the books and papers of an intestate go to his administrator? Was it possible for any thing less than Omniscience, to know or prove what papers Stephen Codman has, or has had and lost or destroyed? If the books legally belonged to him as adminis-

trator, it was for him to show that they had never come to his possession, or how he had disposed of them. Upon what other rule but this did Mr. Metcalf recommend in Committee to Stephen Codman to make oath that he had not and never had had possession or knowledge of Richard's books of account. Stephen Codman also said that he did not know as Richard Codman kept any books in France!

The petitioner thinks it hard, that while he is charged upon the slightest pretext, or perhaps *device*, with infamous crimes, the other party is favored by the reporter with an entire oblivion of some very remarkable incidents, which fell out during the investigation. They were incidents which struck the spectators with surprise, and although the reporter has remembered to forget them, there are fifty others who will testify to their truth.

When the books of Richard Codman, *in France*, were *first* called for and insisted on by Mr. Vans, Stephen Codman rose, and said that Richard Codman became a bankrupt, under the law of the United States, after his return from France, and that his assignee had his books. There was at *that time* no statement or "suggestion" that Richard had never kept books, or that they had never come from France, or that his administrator had never had possession or knowledge of them. Upon inquiry for the books of Richard's assignee, that person said that he had them not, and that they were never surrendered to him!

One position taken by the petitioner's counsel, was that inasmuch as Stephen Codman was administrator of Richard, as well as executor of John Codman, and as such administrator, had given a bond with sureties, in the penal sum of $20,000, to the Judge of Probate of Suffolk, to return a true inventory of Richard's goods and estate, in *three months from date*, and to administer *faithfully* upon said goods and estate; and inasmuch, also, as *twenty six years* had now elapsed, and no inventory been returned, and no administration account settled:—therefore the Committee ought to report that Mr. Vans be permitted to prosecute Stephen Codman, as administrator of Richard, whatever might be their opinion of his liability as executor of John.

Hereupon, Stephen Codman advanced to the table, pulled from his pocket a bundle of papers relating to Richard's bankruptcy, and *silently* but eagerly spread them before the Committee. He was then inquired of, by the petitioner, how it happened that Stephen Codman, if Richard *died* a bankrupt, had been able to pay from his estate $10,000 to each of his sisters, such being the reported fact. Stephen Codman replied that the report was false, that nothing was paid from Richard's es-

tate to his sisters or to any other person, that, in fact, Richard left nothing, and that this was the reason why nothing had been appraised, inventoried, and returned to the Probate Office.

This statement was rebutted by the record of the granting of administration; and if it were perfectly true, it would be no answer to any one of Richard's creditors, no justification of the gross and palpable negligence or fraud of the administrator. But we should not have alluded to this topic if the affair had ended here. The exhibition of the bankruptcy papers led the petitioner to look into the record of that matter, and he there found several interesting things.

In the first place, it appeared that the whole affair of Richard Codman's bankruptcy was got up by John Codman's family; that it took place immediately after John's decease, and in the very month when Mr. Vans, in France, was bringing the lawsuits there to a crisis. It appeared that the complainant against Richard was a brother in law of John Codman; that the witness to Richard's act of bankruptcy was John Codman, Jr. in John Codman's house; that a *majority* of the creditors was the same brother in law of John Codman, who had preferred the complaint; that the assignee (S. D. Parker, Esq.) was a student in the office of John Codman's lawyer; and that the whole expenses of the commission ($300) were paid by Stephen Codman, as John Codman's executor, and charged by him to John Codman's estate.

An explanation was asked of this voluntary payment of the expenses out of John's estate, when that estate was not in law liable for them. Stephen Codman replied *denying* the fact.— The Register of Probate for Suffolk was summoned to bring the records, by which it appeared that about three hundred dollars had been paid by said Stephen "to S. D. Parker, assignee of Richard Codman," and that said Stephen had credited himself with it, in his account with John Codman's estate. It was a curious circumstance, that the assignee's account on file in the Clerk's office of the U. S. District Court, did not show from *what source* the money to pay the expenses of the commission was derived. The whole property of Richard actually seized or surrendered consisted of "a dressing box and writing desk."

These facts induced the petitioner to believe, that the bankruptcy of Richard Codman was another fraud upon the creditors, either of the partnership or of Richard. For admitting it for argument's sake to be true, that the partnership was really dissolved in May, 1798, still Richard Codman's private creditors, to whom the Committee find that he was so greatly indebted in France, had a right to come in and investigate the part-

nership concerns, and see what interest Richard had there, and whether it had ever been fairly ascertained and taken out; whether it had been sold for a valuable consideration to his brother, or whether it had been covered by collusion between the two. Investigation of this sort could not but be anticipated, especially after the notorious affair—the non-production in the French courts of the pretended partnership account. The bankruptcy of Richard, which if bona fide and correct, would cut off all his previous creditors, wherever they were, was resorted to by John Codman's representatives, to fortify the estate and stop up the avenue on *that side.*

But the whole proceeding was a *nullity.* The bankrupt law of the U. States then in force, required that *all the evidences* of the bankrupt's property should be surrendered, and passed to the hands of his assignee. But Richard's books and papers, which are all in all in such a case, were not surrendered. And where are they? What has become of them? Surely it is the height of injustice to call upon Mr. Vans instead of Stephen Codman to tell!

Besides, Stephen Codman did bring *one* book which belonged to Richard Codman in France; at least, so Stephen Codman stated. And it did so happen, that whenever any *paper* belonging to Richard Codman, in France, became necessary or desirable to the defence, straightway it appeared. If Mr. Vans wanted one from the same magazine, *presto* all vanished like Aladdin and his companions in the magical car.

But these were not all, nor the most important results of the examination of the matter of bankruptcy.

It appeared by the demands proved under the commission, and remaining on file, that some of John Codman's nearest neighbors, being merchants of Boston, had presented and sworn to their demands as against *John and Richard Codman*, copartners; that among these were demands arising from transactions *subsequent* to the pretended dissolution; and, still more to the purpose, one of them was for *rentes*, *borrowed* in France by *Richard Codman* in 1800 and 1801, for which *Richard* accepted, in *his own name alone*, a bill of exchange payable at Rotterdam in two years. The following is a copy of this part of the bankruptcy record:—

*Office of the Commissioners of Bankruptcy, No. 1, Scollay's Buildings, Tremont Street.*

At a meeting of the Commissioners, under a commission of bankruptcy issued against Richard Codman of Boston, in the District of Massachusetts, merchant, on the second day of Au-

gust, in the year of our Lord one thousand eight hundred and three, John Skinner, Jr. of said Boston, merchant, one of the firm of John Skinner & Sons, being sworn and examined the day and year, and at the place above mentioned, upon his oath saith, that Richard Codman, the person against whom the commission of bankruptcy is awarded and issued forth, was at and before the date and suing forth of the said commission, and still is, justly and truly indebted unto this deponent and his said copartners, in the sum of seven thousand nine hundred and thirty nine dollars $\frac{82}{100}$, for the acceptance of the said Richard of three setts of Exchange, drawn by Richard Skinner, one of the said firm, upon the said Codman, in pursuance of a contract for that purpose, for a valuable consideration passing from said Richard Skinner to the said Codman, for account of the said firm; and which bills were protested for not payment, a schedule of which is hereto annexed, for which sum of $7,939 82, or any part thereof, he this deponent hath not, nor has any other person, to his knowledge or belief, received any security or satisfaction whatsoever, saving the bills aforesaid.

JOHN SKINNER, Jr.

Sworn to before

THOMAS DAWES, JR.
JOS. BLAKE,
EDWARD JONES,
} *Commissioners.*

SCHEDULE REFERRED TO AS ABOVE.

Drs. Messrs. *Jno. and Richard Codman* to John Skinner & Sons.

To a bill of exchange drawn by our Richard Skinner on *Richard Codman*, in Rotterdam, dated Paris 24 Pluviose An 9, (13 February, 1801) at two years date, and accepted by said *Richard Codman*.

| | | | |
|---|---|---|---|
| 6000 florins. | | | |
| 5000 | do. | one sett | do. |
| 4613 | do. | one sett | do. |

| | |
|---|---|
| 15,613 florins a 40 cents. | 6,245 20 |
| Damages as customary where the bill were payable, 25, | 1,561 30 |
| Interest from Feb. 13, 1801, till the 16th June or the date of the commission, | 128 36 |
| Expenses of protest, $12 6, is | 4 96 |
| | 7,939 82 |

A true copy of the original as on file in the Massachusetts District Clerk's office.

Attest. FRANCIS BASSETT, *Clerk.*

It was found on inquiry, that those creditors who had presented their accounts against Richard's estate as against John and Richard, were mostly deceased, and that those who had presented accounts against Richard Codman, as against *him alone*, were relatives or intimate friends of the family. Fortunately one survivor of the abovementioned house of John Skinner & Sons was found, residing at a short distance from the city. This was *John Skinner*, formerly of the Custom House in this city. Mr. Skinner was summoned before the Committee, sworn, and testified as follows :—

"*I was a partner of the house of John Skinner & Sons. We had a claim on John & Richard Codman, which was transferred to the account of Richard in* 1805. *The claim was on John & Richard. It was a claim for Government Stocks,* rentes *or* bons, *which my brother loaned to Richard Codman in France. I could not state exactly the time. It was somewhere along in* 1795 *or* 6 It was the only claim which our house had upon John & Richard Codman. It was paid by Stephen Codman in 1811. *My brother who loaned the money is dead.*

Cross-examined.—*Our house was established in Boston, in the year* 1795–6. *I know only from my brother's information that it was an obligation on John & Richard Codman. My brother gave it up upon Richard Codman's giving his* honorary *obligation to pay it* in full. *I do not know whether Stephen Codman paid me as executor of John Codman.* I know I got my money.

Question by the Counsel of the Respondent.—*Why did your house relinquish security on John & Richard Codman, and take it on Richard?*

Answer.—*My brother and Richard Codman were great friends. Richard Codman said that he wanted that there should be no appearance of John's having been concerned in the thing.*

Question by the same.—*Do you undertake to say upon your oath that Richard Codman said that?*

Answer.—*No, I would not undertake to say upon oath that he said it, but I would say that is my impression.*"

After this evidence was given in, Stephen Codman stated that he paid this debt as *administrator* of Richard, out of *Richard's estate.* Hereupon he was again interrogated about the non-return of inventory, and also about his asseveration that "Richard left nothing." *He denied that he had ever said so.* Whereupon the Chairman of the Committee promptly replied, "You did, Sir!" Mr. Stephen Codman then resumed his seat.

These are painful and disgusting things to state, but the truth must be brought before the disinterested and impartial people, or injustice will always triumph.

And now let us see how the reporter, (p. 8) presents this affair :—

To prove that R. C.'s speculations in the French stocks were for account of the house, the Petitioner called John Skinner, who testified that the house of John Skinner & Sons had a claim on the house of J. & R. Codman, which arose from a loan of French stocks, made at Paris in 1795 or 1796, by Richard Skinner to Richard Codman, and that a security was taken for it in the name of J. & R. Codman, which was afterwards, viz. about 1805, at R. C.'s request, given up, and one substituted in the name of R. Codman alone; and that this last was paid in 1811, by the Respondent. His (John Skinner's) impression was, that the change was made because it was wished that John Codman might not appear in the matter. All this the witness stated, as having heard it from his brother Richard S. Skinner; never having himself seen either of the papers, nor had any personal knowledge of the affair. A claim made on the assignee of the estate of R. Codman in 1803, (he having been declared a bankrupt in that year, at Boston) was also produced, in the form of an account against J. & R. Codman, and in favor of Jno. Skinner & Sons, for certain bills of exchange accepted by Richard C., and said to have arisen out of the same transaction. Nothing appeared to have been paid from the effects of Richard C. on account of this claim; and it did not appear that any demand was ever made for it on the estate of John C., who died in May of the same year. But to show that the transaction was with Richard C. alone, and that no promise of J. & R. C. had existed, the Respondent produced the original account rendered in Paris by Richard Skinner against Richard Codman alone, and a power of attorney dated May 11, 1803, from Richard Skinner to William S. Skinner, to collect the demand of Richard Codman and of his assignee, and also a note for the same sum with interest, given by R. Codman to John Skinner & Sons, dated after his (R. C.'s) bankruptcy, viz. December 17, 1803, payable half in four and half in six years, on which payment was acknowledged by Wm. S. Skinner, as received of Stephen Codman, Administrator, January 12, 1811. And it appeared by a bond of indemnity also given to said S. Codman, Administrator of R. Codman, by John Skinner & Sons, that the debt was compromised by said Administrator, at fifty per cent.

We now propose to show how a counsellor at law, of high reputation for learning, can pettyfog, though sitting in the capacity of a judge, to distribute the justice of the Commonwealth.

*First.* The word of *identity*, viz: *rentes*, which Mr. Skinner used in giving his evidence, is omitted by the reporter.

*Secondly.* The time of the loan, which was stated by Mr. Skinner *doubtingly*, as 1795 or 1796, is stated *positively* by the reporter. And the record produced at the trial and published above, which states the true time of the transaction, viz: *Feb.* 13, 101, is wholly omitted and disregarded! Now who ever heard of an honest man, who could be precise and positive as to dates, after the lapse of thirty five years; and who ever heard of a Judge, or any man of the meanest capacity, relying on memory for dates, when he had a record before him, made contemporaneously, by which exact and certain knowledge could be obtained? The Clerk of the District Court, brought the original

record of Skinner's demand before the Committee, and they all saw it. They all heard Mr. Skinner say that it was so long ago that he could by no means speak positively as to the date; and they also heard him say that this "claim for rentes, loaned to Richard Codman, was the only claim that the house of John Skinner & Sons had on John & Richard Codman." Yet strange—strange to tell, the reporter suppresses the date *of the record*, and substitutes an old man's recollections for the General Court of Massachusetts to found their measures upon!

*Thirdly.* The reporter states that Mr. Skinner testified that "the loan of stocks was made by Richard Skinner to Richard Codman, and that a security was taken for it in the name of *J. & R. Codman.*" It is difficult to adhere to epithets of courtesy here. Mr. Skinner did *not* say that "a security was taken in the name of J. & R. Codman." He did not say in whose name it was taken. He said the security was upon the house of J. & R. Codman, and the transaction was by the agency of the two Richards, but he said nothing about names. Here, however, came in the account recorded in the bankruptcy, to show in whose name the bill was accepted. This says:

"To a bill of exchange, drawn by our Richard Skinner on *Richard Codman*, and accepted by said *Richard Codman.*"

But this was not all the evidence on this point. The respondent, when it became necessary in order to screen himself as executor of John, to expose himself as administrator of Richard, produced from Richard's papers in France, an account current between him and Richard Skinner, the subject matter of which was loans of rentes, and for the balance of which account, Richard accepted the bill; and this account was "in the name of *Richard Codman alone.*" We, therefore, are bound to say, that the statement of the reporter that the "security was in the name of J. and R. Codman," is without evidence and against evidence, and *is untrue.* These omissions and variations seem to have been made on purpose to destroy the perfect identity of the nature and circumstances of Skinner's and Vans' claim.

Skinner's accrued after the pretended dissolution, so did Vans', but not so long after as Skinner's by more than three years.

Skinner's was for a loan of rentes to Richard Codman. So was Vans'.

Skinner's rentes were loaned to Richard in Paris. So were Vans'.

Skinner's negociation was wholly with Richard, and his security in the name alone of Richard. So were Vans'.

Skinner's debt has been paid by Stephen Codman. So has *not* Vans'.

We want but payment to complete the parallel; and Mr. Vans will not be particular, so "he gets his money," whether Stephen Codman pay it as "executor" or "administrator." He would not hesitate to humor Stephen with a receipt, in either of his characters, provided he, the said Vans, first touch the monies. When Bob Herries brought money to King James from old Trapboy, and dropped a hint about the bad odour of the character from whom it came, Old Jammy snuffed the gold and answered—*Non olet*—The *money* is sweet.

In stating the reason which Richard Codman gave for wishing to take up the *partnership* paper, the Committee observed that it was "that John Codman might not *appear* in the matter."

John Codman could not "appear," unless as a spirit. He had been dead six months! The language of the witness was this—Richard Codman wished the security changed, in order that John Codman "might not have the *appearance* of having been concerned in the affair," evidently meaning this, that John Codman might not have the appearance of having been a partner of Richard Codman, so as to be responsible for rentes which the latter had borrowed in France in 1801, above *three* years after the pretended dissolution of the partnership, and the notice thereof in a Boston paper; and *two* years after the rentes were borrowed of Mr. Vans.

In the beginning of the hearing, Stephen Codman read from a paper a written address to the Committee, apparently to enlist their sympathies in his favor before the petitioner should be heard. In that paper he stated that "he had been fighting this thing *for thirty years*, that he was now betwixt seventy and eighty years of age, and felt that it was about time for him to have repose from it; and he hoped the Committee when they did report, would report not only against the petitioner, but in such a *manner* as to prevent his coming again." When this term of "thirty years" came to be applied by the petitioner's counsel to the passed time, it was found that it would carry Mr. Codman back into the year of John Codman's death, and into all the litigation in France. Thus did he himself, unawares, brush away all the flimsy pretences about Babut's disobedience, &c. At this stage, Mr. Codman, who felt the pressure of the argument, jumped from his seat and cried "I did not say *thirty* years." There were twenty persons present who would have testified, and would now if called upon, testify in the language of the Chairman, "You did, Sir."

Yet all these things, which made the most powerful impression upon indifferent spectators, are entirely omitted by the reporter. While trifles light as air are dwelt upon and magnified, to destroy at once the petitioner's character, and debar him of his property!

The Committee say, p. 4:—

"It was insisted by the petitioner, that there was a house established in France by J. and R. Codman, under the firm of Richard Codman. This was denied by the respondent, who contended that Richard C. acted abroad *as agent* of J. and R. Codman."

Strange as it may seem, this statement, as respects the petitioner, is wholly erroneous. The reverse is the truth. That ground was expressly disclaimed before the Committee, when something which Vans' counsel had said was attempted to be so interpreted. It was disclaimed as absurd. If John and Richard Codman being general partners had had "houses" in the four quarters of the world, they would have been one partnership. What Mr. Vans' counsel contended was, that Richard was a partner, and that he did partnership business "in his own name alone," which business was distinctly recognized and acknowledged by John as partnership business; and this the Committee state in this same page:—

"Richard C. transacted the business of the Boston house in France, sometimes in the name of J. and R. Codman, and sometimes in his own name."

The testimony, however, was that he usually did it "in his own name alone."

There is always some sort of correspondence and proportion in the different parts of the same *mind*. If a man will state from carelessness or otherwise, what another not only did not say but expressly disclaimed, it is not strange on the other hand that he should omit what he did say. Such is the fact in the present instance. Mr. Vans' counsel took the ground, that the fact of Richard's partnership being once established, then whatever he did in the scope of the partnership, or whatever he did of any kind with the knowledge and sanction of John, bound both of the brothers.

There was abundant proof from John Codman's letters during the years 1796–7 and 8, before the pretended dissolution, that he was perfectly aware that Richard was plunging into gigantic speculations in France. And he expresses great alternate *hope* and *fear* for the result. The Committee say he complained *to* Richard; this is in some degree true, but it is not so true as that he complained *of* Richard to third persons, correspondents of the house, particularly the Barings. He urges R. strongly and repeatedly to remit money, but he complains to the Barings several times that Richard had not remitted, when he had written to him (John C.) that he had done so. It was at the very height of John's pressure upon Richard, and when

John was expressing to his confidential correspondents, the Barings, a *hope* to stand firm, notwithstanding his brother's disastrous business in France, and when also the Barings had a balance of $200,000 against the *firm*, that Richard used this property of Mr. Vans to pay bills drawn by John. John Codman wrote to his correspondents respecting the pretended dissolution, saying "the business will go on just as it did before, except *in my name*." He directed the Barings to pass Richard's *future* remittances to the *partnership* account. Richard Codman in that year remitted to the Barings about $50,000 more than he drew from them.

Mr. Vans contended upon this, that whether the firm was dissolved or not, yet if his property went into it, and if Richard kept no seperate account with Vans, then he had in law a just claim upon John. This point the reporter was pleased wholly to omit.

The reporter says, (p. 3) that

"John Codman communicated the dissolution to his correspondents *as he had occasion to address them.*"

And is *that* the way in which the law merchant requires dissolutions of partnerships to be notified?

But he comes to particulars, and tells us that *Homberg, Brothers & Co.* at Havre, acknowledged that they were informed of it "in due time." This is incorrect; they say not "in *due* time," but simply "in time." But why did not the reporter give the *date* of Hombergs' letter? It was dated *four years* after the pretended dissolution; and this expression doubtless means that they were informed in time to do something for John Codman's interest or for their own, which required such knowledge, and that they received it soon enough for the intended purpose. This letter of the Hombergs, dated four years after the pretended dissolution, was the only evidence adduced that the dissolution was communicated to a soul in France.

The Committee mention the letter of the Hon. John Lowell, to Vans, and the "dark picture," which in that letter he tells Vans, that he had drawn of his (Vans') "expences and delays of justice," "to Stephen Codman the executor." The Committee also cite Mr. Lowell's explanation of that letter in a more recent one, which was *circulated in the insurance offices in manuscript*, until a friendly hand furnished Mr. Vans with a copy. Through that channel it would diffuse its influence silently, and act most directly and powerfully upon the *Senate*, the representatives of *dollars* and *cents*, not of *souls*. The Committee, however, do not state that Mr. Lowell's letter "to the executor," though

called for, was *not* produced. That letter would explain both of Mr. Lowell's other ones. Each *now* requires explanation, which if the public should ever turn their eyes fully upon those two letters, must one day be had, or Mr. Lowell must come down from the exalted station which he occupies in public estimation.

Mr. Vans offered an account signed "J. and R. Codman," between "the owners of the ship Fame," and *John and Richard Codman*, as proof that he had had dealings with them, and was therefore by a rule of law entitled to information, by letter or other direct way, of the dissolution. No objection was made to this proof, until near the close of the hearing, when the respondent denied that Freeman & Vans were "the owners of the ship Fame." Mr. Vans after the argument, offered a couple of notes, which he and his partner had paid and taken up of J. and R. Codman; but these, although he had been surprised by the objection to the account, were not received. These notes are consigned to oblivion by the reporter, with many other documents, which were regularly before the Committee, while the letter attempted to be slipped in surreptitiously by Stephen Codman after the argument has been stated and argued upon to the House. Is this holding even scales? Is this fitting in a free State?

During the hearing, Mr. Metcalf demanded of the respondent with evident interest, "any letter to Vans?" meaning a letter informing him of the pretended dissolution. The reply was "no." At that stage the reporter thought such a letter desirable, but later the difficulty was got over by denying that Freeman and Vans were the owners of their own vessel!

The Report states that Vans proposed a speculation to Richard Codman. The Judgment says that "Codman proposed it to Vans."

The Report says, (p. 6) that Vans offered to receive in full discharge of his claims, what he himself stated to be only four shillings and sixpence upon the pound of his demand, and to take *R. Codman's* note for the residue. This is incorrect. Mr. Vans insisted that the note should be signed "by *whom* he pleased." Did this mean R. Codman?

The Report says, (p. 6) that the demands of Mr. Vans

> "Were liquidated, one at 90,000, one at 30,000, and one at 50,000 francs."

There was no evidence of this. The rentes were never purchased. They were adjudged to be repaid in *nature*, be the price more or less. Without a purchase on change at the price of the day they could not be "liquidated." The sums which

the reporter sets down, appear to be the amounts for which attachments were laid on the Thuilerie and Rouvrey estates, but Mr. Vans did not attach these for the full amount of his judgments, because the property was insufficient to pay the whole, and a duty to the government was to be paid on the amount for which he did attach. This was a good reason for not laying any more on these estates than there was a prospect of their paying.

The reporter says, (p. 7) that

"Mr. Melvill testified that John Codman while in Paris, proposed to him to advance money (for the purpose of effecting an accommodation with Vans,) on *Richard Codman's* estates."

Mr. Melvill said expressly that "he did not know whose the estates were."

The reporter says, (p. 2) that the respondent contended that Richard Codman—

"Acted abroad *as the agent* of J. and R. Codman."

If he was John Codman's agent would not his contracts bind his principal? But if he was agent of J. and R. Codman, then he was partner. We suppose that a man who is his own agent, will pass in law for principal. Every partner is by rule of *law* the agent of his copartners.

The reporter says that *Cutting* testified that

"He *supposed* R. C.'s speculations in land were for account of the house, because J. C. come to France and took possession of R. C.'s real estates."

Mr. Cutting's language is, "I always supposed and *believed* that these speculations were founded on and were for the account of the joint funds and interest of the copartnership;" and he aftewards speaks of John Codman's taking possession as "confirming" his previous belief, and not as the foundation of it, as he had "always" had it. Yet the reporter represents Mr. Cutting as testifying, that the taking possession by John Codman was the *sole* cause of his "supposing"—merely "supposing," that John and Richard were partners, and joint owners of these estates. Is this holdiug even scales? Let the bandage of justice be torn off, and her images cast down.

The reporter says, (p. 6) that the account settled between J. and R. Codman, in 1801, was "in round numbers," ($48,823 57 is particularly "round,") and was—

"Subject to be corrected by crediting Richard with the outstanding business."

Was the account so corrected? This is not "suggested."

Besides, how happened it that Richard was only "to be *credited* with the outstanding business?" This alone would show that the pretended settlement was not regarded by the author himself of this strange Report as any settlement at all. Could that be called "a *final* settlement" of a vast partnership concern, which threw upon one partner a lumping charge of $50,000 debts, and left the credits to come as best they might? If $50,000 had been the real balance against Richard at the supposed "final settlement," then he would have been to be *debited* as well as "credited" with the outstanding business! The reporter appears to have forgotten the very significant word "final," when he talks about "crediting" Richard "with *outstanding* business." Mr. Metcalf does appear here to have a slight fit of equity, but he would doubtless have conquered the weakness, if he had thought it could possibly turn in favor of Mr. Vans.

It is stated, (p. 10) that

"The date of the day and year in the other note is not in figures, but written at length in words, and appears unaltered."

This is incorrect. The date of "the day" in *this* "other note," as well as in the *other* "other note," *is* in figures and *not* in words, as any person may see by calling and examining both notes. This is a very small matter, but its object is great. It is to insinuate that the reason why Mr. Vans did not "fraudulently alter" both notes was, that it would have made a perilous hole to cut out "words."

The Committee in the passage quoted heretofore, touching the transaction with Skinner's house, state that it was testified that security was taken "in the name of *J. and R. Codman*," for the rentes loaned by Richard Skinner to Richard Codman. Now supposing this true, (and the Report intimates no doubt upon the subject,) what follows? Why that John and Richard Codman were still partners in Feb. 1801, by the Committee's own statement!

There is an apparent inconsistency between the following sentences in the Report, which has attracted the attention of many readers.

"In 1794, Richard Codman went to France, and resided at Paris *until* 1802. *The partnership however still continued*, and Richard transacted in France such business as arose there out of the voyages which originated in America." p. 2.

"The copartnership between John and Richard Codman, was sufficiently and *bona fide* dissolved in 1798." p. 11.

We remark here, that besides the apparent contradiction, the reporter puts the defence of the respondent on different ground from what the respondent put it. The counsel of the respondent contended that "the partnership *never* existe- out of America;" in other words, that it was a territorial partnership, bounded by oceans and degrees of latitude and longitude, and to be determined by astronomical observation. John Codman took the same strange ground, (*without intimating why!*) in the letters which he wrote to *some* persons announcing the pretended dissolution. This was entirely inconsistent with another reason, which he gave in like letters to most of his correspondents, viz: that a war between the U. S. and France, of which there was a prospect, might jeopardize his vessels and cargoes at sea and in Europe, by reason of his *partner* being in France. For it is a law of nations, that a citizen of a billigerent country who remains with the enemy after a few months which are allowed to wind up their affairs and remove, shall be treated as an enemy. If then John Codman thought that his vessels and cargoes would be in danger in *Europe* and on the seas in case of a war, it proves that he *knew* very well that the partnership extended beyond *America*, and that he had a partner in *France*, which is "out of America." He therefore contradicted himself when he made the assertion that the partnership "never existed out of America." But the inconsistency and absurdity of these representations are charitably covered by the reporter, under the indefinite representation that "Richard C. transacted in France such business as arose there out of the voyages which originated in America."

Here, again, we must admire the good keeping and excellent proportion of the different faculties of that mind, which concocted this Report. A wretched legal absurdity (that there were two partnerships between two and the same men, because one was in Europe and the other in America,) is created by the reporter, and imputed to one who never uttered such a word nor entertained such a thought, while on the other hand, a most palpable absurdity asserted by John Codman thirty years ago, and reasserted by Stephen before the Committee, is consigned to forgetfulness. The one appears to be stated because it may do Vans hurt; the other to be suppressed because it might do him good. We mean to impute this to one member of the Committee. Undoubtedly the others are blameable for surrendering their eyes to one man, and affixing their signatures to such a Report; but they had no notes, and they referred the whole matter to him who had notes, and professed both as a French scholar and as a lawyer, to understand perfectly the judgments.

The Committee speak lightly of what they are pleased to term Mr. Vans' "*exparte* affidavits." "*Half* letters" without date, letters, "not sent," and "suggestions," are freely received, and pass current with them if they come from the right side—of course the side which is not guilty of being poor, though it may have made others so, and grown rich on the spoil, and sent the rightful proprietors "to public houses of charity." We *have* heard of poverty being a strong temptation to stealing, but we never heard it asserted that poverty and theft were the same thing.

The depositions taken in France were taken with the usual formalities, and after all legal notifications. They merit no such slighting expressions. The evidence generally on the other side was less formal and authentic. Mr. Vans has had no authority to take *depositions* in this country. It would have been of no avail with this reporter, if he had had twenty depositions to every point. Mr. Joseph N. Howes evidence was not *ex parte;* and though direct, positive and unimpeached, it was treated with no respect. Mr. Hall too is dismissed with the modest remark, that he had been (or it was *believed* he had,) "in one of the public houses of charity or punishment." This is a new method of disposing of a perfectly good and legal witness. Just as though in this country there were no difference between *poverty* and *crime*. This would indeed be comfortable doctrine for one party. It were to be wished that they believed it, and then we should never have heard of *forgeries*.

Mr. Vans stated in his petition "that John *and* Richard Codman, copartners and merchants at Paris, became indebted there to the petitioner by final judgments, which condemned them to deliver the petitioner forty-five thousand five hundred and thirteen francs rentes per year of the public debt of France;" and he concluded by praying for "a trial by jury."

The petition was drawn by Mr. Vans without the help of counsel, and was certainly not worded with the precision of a special pleader, but it was intelligible enough. It asked for permission to substantiate in court his demands against a *partnership* concern, and if there had been twenty partners, and but one of them named, all would nevertheless have been included.

When it was discovered that Stephen Codman had paid Skinners' house $5000, and when Stephen Codman thereupon said that he paid it out of *Richard's* estate, the counsel for the petitioner contended, that the Committee ought under these circumstances to report, that the petitioner have leave to prosecute the representatives of Richard Codman, whatever might be their opinion of the justice of the claim on those of John.

The Committee said no—Richard is " not comprehended in the petition!"

Now the Report says, (p. 6) :—

" The petitioner and certain assignees of part of his demands, sued Richard C. on his two notes (above mentioned,) for the delivery of inscriptions, and for the proceeds of the two houses sold by Richard C. After some delay, the petitioner, and his divorced wife, and his said assignees, recovered three Judgments against Richard C. in June and July 1802—which were liquidated one at 90,000, one at 30,000, and one at 50,000 francs."

Here then is a Committee which finds one partner comprehended in the petition, and the other not. They find that John Codman is " comprehended," but no claim against him; and they find Richard " not comprehended," *because* (we presume,) there is a claim against him! Stephen Codman, the *legal representative* of *both* brothers, was present, the heirs of both brothers were the same, and the counsel of Stephen Codman announced himself as appearing " for all concerned."—Yet Mr. Vans was not permitted to prosecute Stephen Codman even as the administrator of Richard, though by his own confession, though by his own astounding admissions, it appeared that he had broken his Probate bond, and violated his duty as administrator—defrauded every creditor, except one, of Richard Codman, by paying a large sum of money to that one, to the exclusion of every other. This was a palpable violation of the law. It was a deliberate and wilful one. Stephen Codman also appeared to have paid over monies from Richard's property to Richard's heirs at law. Nay, he kept a part himself, for he was one of the heirs. Thus was the popular report of $10,000 having been realized by his sisters from Richard's estates corroborated.

In truth, it was impossible for a man who had taken a trust upon himself under the laws of the Commonwealth, to stand in a more culpable light before the Legislature, than did Stephen Codman, by his own confession. But we must not be allowed to prosecute him, because " Richard was not comprehended in the petition." This will be thought incredible.

We may be mistaken, but we *believe* that it was with a secret reference to this point, (a point *entirely* suppressed in the Report,) that the writer of the Report stated that " the Committee did not deem" " large sums of money" " suggested" by Stephen Codman to have been paid to Vans by Richard, " to be comprehended" in the petition. If Richard's *money* were " comprehended," Richard's *administrator* might be so too!

But where was the fairness of leaving out this great point of the case? Stephen Codman, by fraudulent conduct as admin-

istrator, which had been concealed twenty-six years, was *now* discovered and confessed to have done that which rendered him liable to suits for every cent of Richard's debts! But yet he is protected by the limitation law. Why was not this stated to the House and to the public? We answer, because it might arouse indignation, which would blow away the web of sophistry, which was prepared to catch the weak and ignorant. The public have not yet to learn that there may be deception in *suppressing truth*, as well as in *asserting falsehood*. The reporter admitted that there was good ground to prosecute Stephen as administrator of Richard, but said it could not be under *that* petition. Why not? Because the poor old man was to be sent by hook or by crook wholly out of court, and "in such a manner that he could never come again."

The Committee, (p. 7) represent Richard Codman as writing to Mr. Vans, "Sept. 1st, 1800," (*two* years nearly after the pretended dissolution,) that he, Richard, could not "in prudence, considering his CONNEXION with his brother," pay over certain monies, viz: the proceeds of the sale of Mr. Vans' houses. And the Committee say that the petitioner alleged that this expression referred to a secret continuance of the partnership, and the respondent that it referred to Richard's obligations to John, for the large amount due from Richard to the house on the dissolution, and still unpaid. In the first place, the petitioner did *not* contend that there ever was a *secret* partnership. It was known to France and Europe. Secondly, at this time, (Sept. 1st, 1800,) no account between the partners had been settled, no sum was known to be due from R. to J. and no obligations *existed*. But supposing it were so, would that explain rationally the word "connexion?" The reporter states frequently, that "the counsel for the petitioner did not contend" thus and so, and lays hold of advantages accordingly. But he did not think proper to state, that the counsel for the respondent did not contend for the construction which the Committee very kindly give to this word, until after assuming that this word was not "connexion," but connexion*s*, and then he contended that it might mean any sort of relation between the brothers.

It was denied at the hearing last winter, by the respondent, that any articles of copartnership ever existed betwen John and Richard Codman. If that was the case, then Richard had a right by law to one half of the profits, and Richard's creditors had a right to take his share. It is stated by the reporter that Richard was entitled to only "one third;" and an account is exhibited, made up in 1801, apparently upon that principle. Therefore one of two things results—either there were articles

by which it was agreed originally that R. should have but one *third*, or he and his creditors had a right to come in and claim *half;* and no subsequent arrangement between the two brothers could affect the rights of the creditors of either. If there were articles let them be produced. If there were none, then half of the copartnership monies, effects and credits ought to be accounted for to Richard's creditors.

The Committee say, (p. 5) that the testimony of THOMAS MELVILL, Esq. a member of the House, as to the general reputation in Paris of Richard's being a partner, applied to the period before May, 1798.

Mr. Melvill testified positively, that Richard was reputed to be a partner of John until he (Richard) left France, in 1802.

The Committee say that John Codman communicated the dissolution to his correspondents "as he had occasion to address them." Then the partnership *did* continue, by the Committee's showing, after the dissolution; because the law is that it continues with respect to those having dealings with the house until a *direct, express* and particular *notice*.

The Committee state, (p. 9) that Richard Codman charged Mr. Vans with the £100 bill of exchange, accepted (the reporter *improperly* says "endorsed,") by John Codman, and paid *by him;* but they do not also state that John Codman charged Mr. Vans with *the same* bill, and that both brothers demanded payment of it nearly simultaneously—showing most clearly their own idea that they had a *common interest* in it.

The Committee state, (p. 6) that John Lowell, Esq. wrote to Mr. Vans in 1804,

"That much had not ought to be expected *from the property in France*, after paying expenses."

The words in italics are not found in Mr. Lowell's letter.

The Report says, (p. 11):—

"That if the petitioner *had* ever had any claim on the estate of John Codman, it *has* been fairly and sufficiently released."

The release, if good, will defeat Mr. Vans' demand in a court of law; why then should the representatives of John Codman, if they themselves believe the release to have been "fairly" obtained, and to be "sufficient," hesitate to present it before such a court? If the release is valid, a judicial trial will at any time be *safe* for them; if it be not valid, then such a trial *ought* not to be safe for them. Either way the Legislature would do no injustice in granting a trial.

The following principles have been recognized by the courts of law in Massachusetts :—

If an undue advantage be taken of a man's necessity, he may in some cases be relieved by a court of law, as against an unconscionable bargain, on *repayment of the money.*

The very evidence adduced by Stephen Codman to prove the release, proved that the occasion of Mr. Vans' asking and accepting the money was, his extreme destitution and the deep distress of his family.

The release or the receipt which Mr. Vans gave to Stephen Codman, and the late Mrs. Catharine Codman, is good for $500 and interest thereon from the date, to be deducted from Mr. Vans' demand by a jury in assessing damages, or to be recovered back in a separate action. This is all that release is good for, as regards the party giving it. In respect to the party holding it, it shows that they acknowledged that they owed the debt by paying a part of it. Payment of *part* of a debt has always been held in law to be a *new promise* to pay the *whole.*

The courts of Massachusetts have decided generally the principle alluded to in the preceding proposition, viz : that an *unconscionable* contract may be relieved against in a court of law, and that the court will render such damages as may appear reasonable, without being bound by the *terms* of the contract.

If ever there was an "unconscionable" contract, it was to give $500,000 for $500.

There is a third principle of law, more directly applicable to the question before us.

A contract is void for fraud and deceit.

The release sets forth as the basis of the contract, a statement made by Catharine Codman, widow, and Stephen Codman, executor, that John and Richard Codman were *not* partners at the time of Mr. Vans' loans and deposits. Now if this fact is *false*, the release falls because the foundation fails.

The rumor has been put in circulation, and industriously propogated by Mr. Vans' enemies, that he is *intemperate.* We have evidence that the writer of the Report condescended to give currency to this calumny, among the representatives and senators, before and during the hearing. We have seen Mr. Vans at all hours of day and evening, and never observed the slightest indication of intemperance. Mr. Vans' neighbors say the same. But what if it were really true ; would it be any reason why he should not have his own ? His family have the more need of it. If a man sue for a debt, is it a reply to say that he will spend it for spirituous liquor ? That may be a reason why he should be restrained from *spending* it, but it is no reason why the debtor should not *pay* it. Is it a reason why he

should be put under guardianship, but it is no reason why the debtor should not be an honest man. Indeed it appeared that Mr. Metcalf himself was not quite satisfied with this sort of defence; and therefore he went further, and affirmed to his colleagues and to members of the other branch, that "Vans had no pretence of a claim." These things were constantly said by him before the investigation began, and in all stages of its progress. What a lamentable mockery of justice, for the gentleman to be in the meantime sitting in the judgment seat, and affecting all the forms of impartial investigation!

There is another groundless, and indeed horrible calumny, viz: that Mr. Vans' claim is the price of his wife's prostitution with his own consent, to the profligate pleasures of Richard Codman. This story has been propagated with industry and success, and is now propagated by men who ought to blush while they repeat it.

It must have been painful to the heirs, administrator and brother of Richard Codman, to impute to him after death such deep profligacy. But to all who understand this snbject, the effort is vain and futile. The judgments show that the largest part of the claim was for *two houses* situated in Paris, sold by Mr. Vans' order, and the proceeds deposited in the Codmans' house. The notes express *rentes* "loaned." If the consideration had been pandering and prostitution, the notes would have expressed "value received."

It is true, we suppose, that Richard Codman had an intrigue with Mr. Vans' wife, but it was during his absence in the United States, and as soon as he returned and discovered it, he separated and obtained a divorce. The affair was an instance of the blackest treachery on the part of Codman. It was the credit and business of the house of John and Richard Codman that gave Richard access to Mr. Vans' table and domestic circle, for by that credit Richard figured as a first rate merchant at Paris. The Committee tell us that *he* had no capital. There is sufficient evidence in John Codman's letters that *he* knew Richard to be unprincipled, but appreciated highly his talents and address.

John Codman endeavored to compromise Mr. Vans' claim for $80,000. Does this look as if he thought it originated in pandering and prostitution?

But let us grant, for argument's sake, that this story is true. Ought it not to be proved? And how can it be established except by verdict of a jury? If it be so established, it will be a complete and triumphant defence against Mr. Vans' claim. It is well settled law that an immoral or illegal consideration is *void*, and our courts will not sustain any action upon it. If a

*foreign* slave trader should sue here for the price of slaves, he could not recover. If a keeper of a brothel, though licensed as such at Paris or Amsterdam, should come here to collect debts arising from that business, our courts would not help him; and this has been often declared from the Supreme Bench.

If then this story be true, it constitutes the strongest possible reason why the representatives of John and Richard Codman should wish to meet Mr. Vans in a judical court. They could then defeat forever his claim, and cover him with confusion and ignominy. Thus would be easily and cheaply effected that great object, for which all these flimsy charges of forgery have been got up with such *ingenuity*, and these slanders propagated.

But who cannot see that if a man has done great injustice to his fellow man, he has a strong interest in imputing to the injured the vices and crimes which should naturally and deservedly produce the same effects. The good feelings of the community require to be reconciled to a spectacle of great suffering and extraordinary vicissitude, by the idea that the ill desert of the sufferer and not the iniquity of oppressors, has reduced him to misery.

Mr. Vans' domestic peace was violated under such circumstances, as if known would touch every feeling heart, and excite in his behalf a generous indignation. And yet that shocking outrage is alleged by the guilty party to justify another!

Nothing but a strong and clear consciousness of the justice of his cause, could have sustained Mr. Vans under the accumulated weight of such extraordinary and monstrous injuries. All impartial men will see in his firm sustaining of himself for "thirty years" against such adversaries, a powerful proof of perfect sincerity. It is not in human nature to maintain a lie so long, and through so much. Let then his adversaries meet him in a court of law. If *they* believe what they endeavor to make *others* believe, they have no reason to fear him there. They ought rather to rejoice to meet him, and to show to a jury of the country that he is a forger, a pander, and also a drunkard, if they think that that will be a defence and do them any good. These accusations are strong reasons why a trial by jury should be granted—because each implies that some debt is due; because each, except the last, will, if true, be a complete defence against paying; and because each, if not true, is a most enormous aggravation of the original wrong.

Many more things in this amazing Report might be commented on. Indeed, a volume might be composed, if all topics which suggest themselves were to be touched. We however close this part of the subject with a single remark—that if the

careful perusal of this Report does not convince the citizens of Massachusetts, that whatever Mr. Vans' claims may be, a Committee of the Legislature is not a fit tribunal to try them, but that they ought to send him to a tribunal which has instruments prepared for extracting truth—then we shall despair of convincing the people of any truth—then shall we despair of this experiment at self-government. Certain we are that there is not another government in the world, where Mr. Vans would have been kept languishing so long, for mere permission—*not* to take the property of others, as has been alleged, but to show that others have taken his.

# THE CONSTITUTIONAL QUESTION.

We have pointed out several strange and unaccountable omissions in the Report of the Committee, but the most material and the most unaccountable remains to be noticed.

The Committee did decide that in their opinion the Legislature possessed the *power* to grant the prayer of the petitioner. This was repeatedly declared by the Committee in open session. The reporter was understood to dissent at first, but before the hearing was through he also did acknowledge that the doctrine of *non obstante*, or the DISPENSING POWER, was in the Constitution of Massachusetts. The question was fairly before the Committee; it was discussed during a session of several hours, and it was considered by the House, and has been considered by every House as the principal question in the case. Yet in the Report no allusion is made to it!

If the Committee had reported that in their opinion there was no constitutional impediment, many members, who were doubtful upon that subject, and fearful of doing wrong, would have cheerfully voted to give Mr. Vans a judicial trial. Without having had opportunities to go carefully into details, they suspected from circumstances and from common report that Mr. Vans had been grievously wronged,—shamefully dealt with by the respondent and his brothers, whom he represents. The House felt, as every conscientious and honorable body of that kind must feel, that it would be impossible for their numerous assembly to enter into a minute investigation of a vast number and variety of facts, and of nice points of law applicable thereto. They knew that none but a legal trial could be either just or quieting to the parties. They knew also that for these very reasons, as well as because the same branch ought not to make and interpret the law, the People of Massachusetts prohibited to the legislature the exercise of the judicial powers, as they did to the *judiciary* the exercise of the *legislative*.

Believing that the above is a correct view of the disposition and feelings of the representatives in regard to this claim, and that they wanted nothing in order to pass a bill but to be satisfied that they should not thereby break the Constitution—we must think that it was not from *forgetfulness* that the reporter omitted to mention that part of the decision of the Committee, which removed the constitutional barrier.

But it may be said that the Committee were not bound, because they sat and listened during a day to an argument on the constitutional question, and gave an opinion upon it, to report the opinion or notice the argument. They might not think the question, though within their jurisdiction, important, or the argument worthy of notice.

If William Baylies, and the respectable committee of which he was chairman, in 1831, on the petition of the City of Boston for authority to undertake, in its corporate capacity, to construct a railroad, had dwelt upon the expediency and said nothing about the constitutionality of the grant, it would have been thought a strange report and a strange committee. If the committee of Ways and Means, or special committee on the memorial of the Bank of the U. S. for a re-charter, had said nothing in their report respecting the power of Congress over the subject, when the alleged want of power was the great objection urged by the opposers, it would not have been thought by the Bank or by Congress that such committee had done half their duty. How does the case of Mr. Vans differ from these, except that absurdity or perversity, in respect to a humble private man, may remain unnoticed, or if noticed, unpunished, while the same thing would be brought to a severe reckoning, if it affected the interest and awakened the attention of large or powerful numbers.

Whether the argument was worthy of the notice of the Committee, we propose now to give the reader an opportunity to judge.

The dispensing power is the power of exempting an individual from the operation of a law or rule, to which without a dispensation he would be subject.

The head of a family requires as a general thing that a minor or servant should work during certain hours, and rise and rest at fixed times; but if the same head should see fit, under particular circumstances, to excuse one son or one servant from working the usual hours, or from working a whole day or half a day, or should see fit to excuse him from punishment if he should quit his work without leave, but for some justifiable or unavoidable cause, can any man of common sense question the right or propriety of the father or master's so doing? To suppose the contrary is to suppose that human things are not subject to unforeseen changes, that human creatures possess the prescience of the Deity, and that human wisdom equals the divine. A schoolmaster has a rule as to the attendance of pupils, but the power to permit a pupil to be absent for an hour or day, for particular reasons, is unquestionable. Every private association which meets for pleasure or improvement, finds it necessary

to adopt certain general regulations for its government, but the same association may at any time dispense with any of those regulations. There is not a debating or a benevolent society, which does not find it necessary to its purposes to resort occasionally to the use of this power. There is no motion in legislative halls which strikes the ear with such frequency and familiarity as that " the rule be dispensed with."

The same principle belongs to states. It is inherent in every government. The power of dispensing with laws, and with the execution of laws, must reside somewhere, in every civil society. Writers on government agree in this. Grotius, Bacon, and Montesquieu, treat it as one of the essential attributes, and indeed the most grateful prerogative of sovereign power.

The dispensing power is included in the repealing power, and the repealing power in the legislative, which is the master power in every state. Let the number twelve represent the legislative power, and six the repealing power, then *one* will represent the dispensing power, which is a part of six, and six of twelve.

Suspending and dispensing, are used indiscriminately in the English statutes, and in the Constitution of this State; yet some tendency towards a distinction may be observed. Suspending, is more frequently used to signify the stopping for *a time* the operation of a law in regard to all, or a large part of the persons, who are subject to it. Thus the *habeas corpus* act is commonly said to be suspended, which, from the nature of the thing, (it being authorized only in civil troubles, affecting the whole country,) must bear on every individual alike; though the English statutes in one instance, use the word dispensing, in this connexion. Dispensing, is properly used to denote the exemption of an individual from the operation of a law, which remains in force in respect to the rest of the citizens, and also in respect to the citizen obtaining the dispensation, except in the particular case for which it is granted.

The people of Massachusetts, in framing their government, did not think proper to leave this power, as we think they might have done, to be possessed and used by their representatives, as a necessary and implied part of the law-making and law-abrogating power. They deemed it of sufficient importance to make a distinct declaration and an express grant of it to the government, which they erected. One portion of it they gave to the Governor and Council, viz: the dispensing with the execution of criminal laws, or " the pardoning of offences." It is in virtue of this original grant, by the people, in Chapter 2, Section 1, Article 8, of the Constitution, that the Governor, with advice of Council, can save the life of a person convicted of a capital crime. For extenuating or exculpating circumstances,

made apparent to him in particular cases, but which, a jury by strict rules of law could not take into consideration, except by way of recommendation to mercy, he may pardon the highest offence, or commute the punishment from the taking of life, to perpetual or limited imprisonment. This is the dispensing power of the *executive* of Massachusetts, and of every executive in the United States.

To their representatives in General Court, the people gave a dispensing power more extensive in its application, but not more important in its nature. They gave it in the following words, which constitute the 20th section of the Bill of Rights, viz :—

"*The power of suspending laws or the execution of laws, ought never to be exercised* but by the legislature, *or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.*"

If a stranger of common sense, and acquainted with the rudiments of the English language, should read this article, and should be told that the meaning of it is, that the legislature shall *not* have authority to suspend or dispense with laws, he would think this a very poor and barren jest. He would be perfectly incredulous, until a serious and practical instance were adduced, that such an extravagant construction could be within the possible range of human vagaries.

By such a method of interpretation, a contract to labor six months, on every day, *but independent* and *training days*, would mean, unquestionably, that on those days, the party hired was to labor particularly hard! A treaty with an Indian tribe, by which they relinquish their land, all *but a certain tract* reserved and guaranteed to their own use, means, most manifestly, that that tract is to be immediately surveyed, and distributed among the good citizens of the United States!

Strange as it may seem, it is not more strange than true, that this incredible confusion of ideas, and amazing perversion of language, constitute, and have constituted for twenty years, the only bar betwixt Mr. Vans and that trial by a jury of his country, which he has been so long imploring.

Under such circumstances, we have thought it necessary to look into the legislative precedents of this Commonwealth, and particularly into those occurring in tranquil times, and so early after the adoption of the constitution that many of the most distinguished men who formed it, were still alive, and employed in the administration of it.

In the year 1786, the Legislature enacted that the Court of

Sessions, at the term *next after the last Tuesday in June*, might license as retailers and innholders those persons whom the *Selectmen of the several towns should have previously approved.* This was the general law. It was found however in practice, that the Selectmen did not always exercise with impartialtty the power of giving or withholding their approval. This was more particularly the case after the country came to be divided into two great political parties. It was no inconsiderable advantage to the predominant party in a town to have the principal, perhaps the only inkeeper, an active and confidential partizan of their own. The consequence was that the Selectmen did frequently refuse their certificate to applicants, against whom there was no other objection than their political opinions. Here then was a tyranny which no existing law could restrain—a wrong for which the statute book afforded no remedy. Nor was there any authority in the State which could give relief, unless it were the supreme Legislature. Accordingly applications were made there, from time to time, for acts dispensing in favor of individuals with the general law. These applications were uniformly granted upon proof that the parties making them had been aggrieved, and sometimes also when they had merely failed, from accident or other cause, to ask of the Court of Sessions their licenses at the time prescribed. The following is a specimen of this class of dispensing acts.

*Resolve on the petition of David Nichols, authorizing two Justices of the Peace to license him as a retailer.*

June 17, 1790.

On the petition of David Nichols of Dudley, praying that he may be licensed as a retailer in the town of Dudley:

*Resolved*, That two Justices of the Peace, for the County of Worcester, *Quorum unus*, be, and they hereby are authorized, to license the said David Nichols as a retailer in the town of Dudley, until the term next ensuing for granting licenses in said town, he the said David complying with the requisitions of the law which respects licensing retailers—*any law or resolve to the contrary notwithstanding.*

During the same year, *six* similar dispensations were granted in favor of individuals, and they continued to be granted until the year 1807, when the Legislature passed another law, remedying the evil which the experience of a long series of particular cases had pointed out. In that year they enacted that the Court of Sessions should license at *any time, without a certificate* from the Selectmen, *they unreasonably withholding it.* The whole number of dispensing acts of this class, passed under the present Constitution, is estimated at upwards of *one hundred.*

It is well known as the common and general law of the Commonwealth, that after a final judgment of a court from which no appeal lies, or from which no appeal is taken within the time prescribed by law, there can be no further litigation in the case, but execution must go forth until such judgment be satisfied and discharged. An appeal from a judgment must be claimed, and security to appear and prosecute, and for the costs entered by the appellant at the term of the court at which the judgment appealed from is rendered.

This law has often been dispensed with, both in respect to the time of claiming an appeal and entering recognizance to prosecute the same, and also for the purpose of re-opening the whole case by review or new trial. The following are specimens of dispensing acts of this class.

*On the petition of James Rowell.*

June 25, 1790.

On the petition of James Rowell, praying relief from a verdict and judgment against him, rendered in the Court of General Sessions of the Peace, held at Ipswich on the second Tuesday of *April*:

*Resolved*, That said James Rowell may at the *next* Court of General Sessions of the Peace, to be holden for that County, *claim an appeal* from the said judgment against him; and the Justices of the said Court of General Sessions next to be holden as aforesaid, shall and may hear and enter the said claim, and are hereby authorized and directed to allow said appeal in the same manner, as if the same had been entered and allowed at the Session of said Court in which said judgment was rendered; and all proceedings upon the said judgment shall be stayed, and the same considered as in other cases of an appeal; and the Justices of the Supreme Judicial Court are hereby authorized and *directed* to allow the entry of such appeal, at the next term of said Court in that County. And thereupon to proceed in the same form as if the said appeal had been regularly brought before them—*any law or usage to the contrary notwithstanding.*

Then follow provisos requiring the usual recognizance, with surety or sureties to appear and prosecute at the next term of the S. J. Court, held in and for that county.

*Resolve on the petition of Obed Hussey.*

June 3, 1790.

Whereas payments *are supposed* to have been made towards the bond, on which the suit set forth in the petition of Obed Hussey was brought, which payments were not shewn to the Court when chancering the bond: Therefore,

*Resolved*, That *notwithstanding judgment* on *said bond was rendered on default*, the said Obed Hussey be and is hereby empowered to bring his writ of *review* of said suit for a new chancery of the same bond, to the Supreme

Judicial Court, next to be holden at Boston on the last Tuesday of August next, against *Nehemiah Rand*, administrator of William Tufts, deceased; and the said Supreme Judicial Court are hereby empowered to chancer said bond in the same manner as if the said Obed Hussey was in the *ordinary course of law* entitled to a writ of review of the suit aforesaid.

Of this class of dispensing acts *ten* were passed in the same year. This fact is the more striking and material, because, two years before, viz., in 1788, the Legislature had passed a general law upon the subject, authorizing the Supreme Judicial Court and Court of Common Pleas to grant reviews within three years in all cases where judgment had been rendered by reason of accident, mistake, or some unforeseen cause, on *discontinuance, nonsuit, want of plea, or of preparation of counsel, report of referees or default*, " to the hindrance and subversion of justice." This law *deputed* to the Judicial Courts a portion of that dispensing power, which the Constitution gave to the General Court, agreeably to that clause of the article above quoted, which provides that the dispensing power may be exercised by others than the Legislature, provided it be derived from the Legislature, and be exercised " in such particular cases only as the legislature shall expressly provide for."

In the law above mentioned, the particular cases in which the Judicial Courts might grant reviews, are carefully enumerated; but the law did not meet all the exigencies of the people, and individuals continued to come to the Legislature for dispensations, which it was not in the power of the Judicial Courts to grant.

It may be observed, once for all, that the fact of cases for dispensation being presented to the Legislature, is evidence that counsel, " learned in the law," were of opinion that the general laws could afford no remedy; and the fact of the Legislature's entertaining the petitions, and granting relief, is evidence that they were of the same opinion with the petitioners and their counsel. But even if the General Court have authorized another court to act upon a class of subjects, it does not follow that the General Court itself may not act upon any subject belonging to that class, if it think proper. All power strictly *judicial*, is denied to the Legislature by the Constitution; that is, all power of determining the *rights* which are in dispute between parties; but the Legislature may direct, and always have directed what tribunals should take jurisdiction, how many judges should try, how juries should be drawn and impanelled, at *what time*, and in what *form* an action should be prosecuted, and in what cases appeals allowed. In short, the Legislature has complete and acknowledged power over the TIME and the *mode* of pursuing wrong doers, while the Judicial Courts have,

by the Constitution, exclusive power to decide whether *wrong have been done.* It is often said that the Legislature cannot take away "vested rights." There is a great deal of deception lurking under this term. We readily grant that the Legislature cannot constitutionally take away *any* right, without giving an equivalent; and, therefore, they cannot take away "a vested right." But does it follow that the Legislature cannot take measures to *let in light* upon transactions, so that it may be known whether they be right or wrong? Are "vested rights" and vested *wrongs* the same thing?

In 1791 another general law was passed in relation to reviews, which provided that the Supreme Judicial Court and the Court of Common Pleas should grant reviews within three years after judgment, in all cases where they should think it *reasonable* so to do. This law evidently gave the Judicial Courts the same dispensing power in regard to the disturbing of final judgments of courts, that the Legislature itself had, and has, with the exception that it is limited to *three years.* But many new trials have been granted by the Legislature since the passage of the last mentioned statute, either because more than three years had elapsed after the rendering of judgment, or for some other reason. Thus in 1792, *John Lucas,* and *Edward Tuckerman,* of Boston, were authorized to bring a writ of review in an action in which judgment had been rendered by the Supreme Court in Suffolk, at the *preceding* term. In 1808, *Lemuel Parker* was authorized to bring a like writ in an action in which judgment was rendered by the same court in Middlesex, at the April term, in the year 1803. In 1814, a new trial was granted to *Buckminster Wood,* in an action in Suffolk, which had been tried by the same court at the *preceding* term. The journals of the Legislature are full of dispensing acts of this class. The whole number under the Constitution is estimated at *two hundred.*

By the common and general law of Massachusetts, none but the *owners* of land can sell and convey it. Suppose that a person deceased has left a large real estate, and but little personal property. The real estate goes to the widow and heirs —they become the owners as soon as the deceased breathes his last. To pay just debts then, there will be nothing but the personal property of the deceased. If, therefore, this general law were enforced, and no exception made to it in particular cases, just debts and legacies could not be fully paid in thousands of cases, although the property were abundant for every purpose. Again—a minor, or a person *non compos mentis,* may be suffering for the necessaries of life, while he has a fortune locked up in lands. Again—a woman with a family of children may be sent to the poor house, because there is none who has the right to

sell her husband's land, he having absconded with a paramour, and carried off all his money.

In all such cases, and in many others, applications were made for a number of years after the adoption of the Constitution, to the Legislature, for acts, dispensing with the rigid rule of the general law, and allowing real estate to be sold and conveyed by persons *not* the owners of it, such as executors, administrators, guardians, and married women. In 1784, the Legislature, guided by their *experience* of the principal causes of these applications, passed a general law, imparting to the Supreme Judicial Court, and Court of Common Pleas, and subsequently to the Probate Court, power to dispense with the law regulating the conveyance of land in certain defined cases, embracing those above enumerated, and some others. But even since the passage of that, and supplementary general laws, it has been found necessary for the Legislature to grant dispensations in a vast number of cases, which the dispensing or licensing power of the Judicial Courts did not reach, and which, in fact, none but a discretionary and absolute power could reach. Dispensing acts of this class have been passed, in large numbers, every year since the foundation of the government. Thus, in the year 1794, upon the petition of *John Codman* and *Samuel Dexter Jr.*, executors of the last will and testament of Chambers Russell, Joseph Blake and others, administrators of Gideon Baty, *deceased*, were authorized to convey to said Codman and Dexter, land and buildings in Concord, said Blake and others "not being empowered by law" to make the conveyance. In 1799, on petition of *John Codman*, Edward Gray was authorized to give said Codman a deed of land lying on Atkinson street, in Boston, belonging to *Susanna Loring*, a *lunatic*. In 1806, *Catherine Codman*, widow of John Codman, was authorized by the Legislature to convey to *Stephen Codman*, a lot of land on Long Wharf, "belonging to the heirs of said John Codman, viz., *Catherine M. Codman*, *George Codman*, *William A. Codman*, *Francis Codman*, *Elizabeth Codman*, and *Mary Ann Codman*, minor children of said John Codman."

There are several other dispensing acts in which *Stephen Codman* was a party. The last of these was passed in 1818. *Fourteen* of this kind of dispensations were passed, in the year 1790. The whole number under our Constitution may be estimated at *one thousand*. They are resorted to for the benefit of the creditors and families of deceased persons, and for the benefit of bona fide purchasers of land, when, by the general law, there is no power in any person to give a valid title. Suppose, for example, that the deceased agreed in his life time to sell a neighbor a piece of land, and being in haste for a part, or all of the pur-

chase money, he received it, promising to give a deed at the first opportunity, but, before executing the deed, died, and the land descended to his heirs. By none of the general laws of the Commonwealth could such a purchaser obtain a legal title or possession of the land. This has been the nature of many of the cases in which the legislature has interfered, and granted to individuals a privilege of taking or passing real estate, which the general laws denied to them.

The most numerous, and, for our purpose, the most important species of dispensations, are those where individuals have been relieved against the hard consequences of general laws, resulting from LAPSE OF TIME.

By the general law in relation to the public lands of this State, purchasers were required, within a certain number of years, to establish settlers upon each township, in the proportion of one to every square mile. If they failed to do this, a *forfeiture* of the land took place. The records of the Legislature abound in cases where purchasers petitioned for further time to perform this condition, and thereby avoid the forfeiture of their land. Thus, in 1813, *John Lowell* and *Calvin Sanger*, petitioned for an extension of time to perform settling duties on two townships of land in Maine. The prayer of the petitioners was granted. In 1814, *Robert Hallowell* and *John Lowell* petitioned for further time to perform settling duties on two other townships. The prayer was granted. They were exempted from the operation of the general law, by which their lands would have been forfeited; in other words, the general law, which remained in force in respect to all other purchasers, was suspended or dispensed with in favor of those individuals. The whole number of this class of dispensations is at least *one hundred and fifty.*

It is a general law of the Commonwealth, that all demands against the same, shall be presented within two years from the time they accrued; but this law has been dispensed with in favor of individual claimants, more than *two hundred times*, and debts of the State paid, though they had been standing from *two* to *fifty* years.

By a general law, passed in 1784, judges of Probate were authorized to grant commissions for examining the claims against insolvent estates of deceased persons, to run *six* months, and such further time as such judges should think proper, not exceeding *eighteen months.* And if any creditor neglected to bring forward his claim within those periods, he was forever barred from recovering the same. This law has been often dispensed with or suspended. The following is a specimen of this class of dispensing acts.

*Resolve on the Petition of Samuel Lawrence.*

June 17, 1790.

On the petition of Samuel Lawrence, praying that the Judge of Probate in the County of Middlesex, may be enabled to allow a further time for the commissioners to receive and examine the claims against the estate of Joseph Boynton, late of Pepperell, in said county deceased.

*Resolved*, For reasons set forth in said petition, that the Judge of Probate in said County, be, and he hereby is authorized to appoint Commissioners to examine the claims exhibited, or which may be exhibited, against the estate of said deceased, and allow them to sit the term of three months from the first day of October next, for receiving and examining the same—*any law to the contrary notwithstanding.*

So the Judge of Probate of the same county was authorized to allow a further time to *Ephraim Warren*, to exhibit his claims against the estate of Jonathan Putnam. So the Judge of Probate of Hampshire, was authorized to grant administration on the estate of *Martin Dewey*, the law concluding in these words —"*any act or law of limitation to the contrary notwithstanding.*" *Five* of this kind of dispensing acts were passed in the same year,—1790. In 1800, the like was allowed on petition of William Stodard, against the estate of Samuel Merrill, the resolve concluding in these words—"*though the time allowed by law has elapsed.*"

The same indulgence was granted twice in 1808, to creditors of the estate of *Thomas Powars*, and to the creditors of the estate of Gen. *Henry Knox*, in 1810. Hon. *John Coffin Jones*, obtained a dispensation of this law in his favor, twice, viz., once in 1809, and again in 1813. One of the resolves in his favor authorizes him to bring forward his claim against the estate of James Scobie, and states the following reason for the grant:—

"Because by accident and *mistake*, said Jones has *neglected* to present his claim for allowance, and the *time allowed by law for exhibiting claims against said estate has expired.*"

In 1817, a resolve was passed in favor of Jonathan D. Weston, authorizing the Judge of Probate

To allow him *six* months more to bring forward his claim against the estate of John L. B. Green, deceased,—"*any law to the contrary notwithstanding.*"

In 1809, the law limiting suits against executors and administrators was dispensed with, in favor of Samuel Parker, although he alleges no ground for the indulgence except his *ignorance* of the law.

In February, 1813, the following resolve was passed.

*Resolve authorizing Moses Holden to prosecute the Administrator or Heirs of Hannah Ranger.*

15th February, 1813.

On the petition of Moses Holden, of Barre, in the County of Worcester, praying that the operation of the several statutes of limitation in suits against Executors and Administrators as well as against Heirs and Devisees, may be suspended as it respects certain claims which the said Holden has against the estate of one Hannah Ranger, deceased, for whom the said Holden had formerly been surety, and for whose default he has been obliged to pay, and has paid, a large sum of money.

*Resolved*, for reasons set forth in said petition, that the said Moses Holden be, and hereby is authorized and empowered to commence and prosecute against the Executor or Administrator, or against the Heirs or Devisees of the said Hannah Ranger, all such actions, suits or claims as he has or may have against the estate of the said Hannah, in the same way and manner, as he might or could have done, if the same had been commenced within the time prescribed by law, and that any Court within this Commonwealth, proper to hear and determine the said actions, suits or claims, may proceed to hear and determine the same, and render the same judgment therein as the said Court might or could have done, if the said actions, suits or claims had been commenced within the time prescribed by law, *any thing in any act or law of this Commonwealth to the contrary notwithstanding.*

*Provided, however*, that the said actions, suits or claims shall be commenced within one year from the passing of this resolve.

*And be it further resolved*, That the operation of the several statutes of limitation of this Commonwealth, so far as they may come within the purview of this resolve, be, and the same hereby are suspended, and the same shall not operate as a bar to the several actions, suits and claims abovementioned.

The number of this class of dispensing acts passed since the Constitution was adopted, may be stated at *one hundred and fifty.*

Besides the above, there are several entire classes of dispensing and suspending acts, and a large collection of miscellaneous ones, which it would occupy too much space to notice. We estimate the whole number of these acts, since the adoption of the Constitution, at *seven thousand.*

Now suppose that in the year 1832, the Legislature had passed the following :—

AN ACT

*To empower William Vans to prosecute his claims against the executor of John Codman, deceased.*

*BE it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same*, That William Vans, of Boston, in the County of Suffolk, be, and he hereby is authorized and empowered, to prosecute his claims, in the Judicial Courts, against the Executor and the estate of John Codman, late of said Boston, deceased, as fully as if the acts limiting the time within which suits may be prosecuted against executors and administrators never existed; and the said acts are hereby suspended for this purpose, *any laws, decisions, precedents, customs, or usages, to the contrary notwithstanding.*

Would there have been any thing new, extraordinary, or unreasonable in such an act? *Four hundred* out of *four hundred* and *fifty* Representatives thought not, and they passed it, and sent it to the Senate. In that body, it was referred to a committee of three, who reported against it. The only legal ground stated by the committee in support of their opinion, is as follows:—

"It has been decided by the Supreme Judicial Court, in a case very similar to the one under consideration, founded on a resolve for the suspension of the same statute, [Holden vs. James, administrator, 11 Mass. Rep., 396,] *that the Legislature have not authority under the Constitution, to suspend the operation of a general law in favor of an individual.*"

The Committee then state that

"*Since this decision, (in March, 1819,) the Legislature have not passed any act or resolve to suspend the operation of a general law for the benefit of an individual,*"

and conclude by some general remarks upon the bad policy and danger of a suspending power lodged in the Legislature, remarks which would be equally applicable to *any* power lodged in that, or any other body of fallible men. This report was presented to the Senate, and the bill was rejected, *eighteen* Senators voting in favor of its passage, and *twenty* against it.

It is manifest that this dispensation in favor of Mr. Vans, would have passed in the Senate by a large majority, if many of the Senators had not believed that the report of the Committee, and the decision on which the report was based, were correct; and that they could not pass the bill without a violation of the Constitution, which would be a greater evil than the violation of justice in a given case. If it had been shown to the Senate that the decision referred to is erroneous, and is itself a violation of the Constitution, they would undoubtedly have passed the bill—or rather their predecessors would have passed it many years ago.

We think it can be shown to the satisfaction of every intelligent and candid person, that the decision of the Supreme Court is erroneous—is a violation of the Constitution—of the essential rights of the people; and is, in every view, one of the greatest calamities that ever befel the State.

Holden vs. James.

*Vol.* 11 *of Massachusetts Reports, p.* 336.

The facts of this case were as follows:

*Amos Ranger*, of Barre, died in December, 1805. Adminis-

tration of his estate was granted to *Hannah Ranger*, his widow, on the *4th of February following*, and, at her special request, one *Jonas Eaton, Jr.*, was appointed co-administrator with her. *Moses Holden* was a *surety* in their bond for administering faithfully. On the 28th of October, *same year*, Hannah Ranger also died, leaving an only child and heir, *Charlotte Ranger*. On the 2d of December, *same year*, *Eleazer James* was appointed administrator of the estate of *Hannah Ranger*, and *guardian* of her child. On the 2d of February, 1808, it appeared that the administrators, owed the estate of *Amos Ranger* $12,369 69, which the Judge of Probate ordered to be paid to *James*, *two thirds* as guardian of the child, and *one third* as administrator of Hannah Ranger. *Eaton* neglected to pay, and in 1809 *James* commenced a suit against him, and against his, and the late *Mrs. Ranger's* sureties, for the recovery of this money. Pending the suit Eaton also died, and in *September*, 1810, judgment was rendered against the *sureties*, and execution was issued against them in favor of said *Charlotte*, for the sum of $8,597 06. On the 6th of November, 1810, *Holden* paid his part of the execution, viz., $4,298 68. *Eaton's* estate proved insolvent, commissioners were appointed to receive and examine claims, and reported on the 3d *July* and 14th *August*, 1811; and on the 3d December *following*, the administrators of Eaton settled their administration account at the Probate office, and a dividend of 24 *cents* 9 *mills* was decreed to be paid to *Eaton's* creditors who had exhibited their claims. *Holden*, after deducting from his claim a debt, which he owed *Eaton*, and after receiving his dividend, found himself $2,533 84 out of pocket, in consequence of standing as surety to Hannah Ranger and Eaton, in their administration bond. This sum, the estate of Hannah Ranger, in the hands of James, was liable in law before the *four years* was out, and, upon every principle of equity, continued liable, to pay, for it was "at her special request" that Eaton was associated with her in the administration of her husband's estate. Mr. Holden had done a disinterested and meritorious act of kindness in becoming surety for them in the bond. But before it could be known how much he would realize towards indemnifying him from *Eaton's* estate, and how much he ought to come back for upon *Hannah Ranger's* estate, he was barred by the statute; for administration on this estate having been taken by James, on the 2d of December, 1806, the *four years* expired on the 1st of December, 1810, *one year* before the dividend was decreed to be paid to Mr. *Holden* as a creditor of *Eaton's* estate. *James*, as administrator of *Hannah Ranger*, was found, on the 6th August, 1811, to owe her estate a balance of $3,887 52, which was ordered to pay to *Charlotte Ranger*, the child and

heir; but James had still sufficient of this money in his hands to pay *Holden*, when the action which we are about to mention, was commenced. Upon the petition of Mr. Holden, the resolve which we have already inserted at large, was passed, and an action instituted by Holden against James, within a year, as prescribed by said resolve. There was no dispute about the facts, but the question was raised, for the first time since the foundation of the government, whether the Legislature had *power* to pass a law dispensing with a general law, in favor of an individual. The cause was argued at Worcester, in September, 1814, by Lincoln & Lee for the plaintiff, and by Bigelow for the defendant; and the opinion of the Court was given at the March term following, in Suffolk.

Before we proceed to discuss this opinion, it is necessary to consider a little the nature of that law which it was the intention of the Legislature to have dispensed with, in favor of Mr. Holden, if they had not so totally mistaken their powers.

No limitation law was ever made, or can be made, consistently with the immutable laws of right and justice, to exonerate a man from paying his just debts. The foundation of statutes of limitation, is the presumption that a party, having it in his power to make a demand would not permit the time limited to pass, without requesting and obtaining payment—that in fact he has been paid, and that the evidence of payment, by death of witnesses and destruction of old and obsolete papers, has been lost. That this is the true doctrine, is sufficiently evinced by the fact that, notwithstanding that the time limited may have run out, yet, if the debtor acknowledge, either directly or by clear implication, that the debt is *still unpaid*, this takes the case out of the statute, which will not be a bar until the expiration of six years more, after such acknowledgement. The courts have usually leaned against the statute, and have given the most liberal construction to supposed acknowledgments by debtors. Lord Mansfield was particularly distinguished for the earnest and uniform manner in which he set his face against the perversion of the statute to screen dishonesty. He even went so far as to say that the common clause in a will, directing the payment of "all just debts," ought, in a court of law, to take a demand out of the statute limitations, and that if a case of that kind were presented, he would so decide.

There is a short, and we think infallible test of the morality of getting rid of just debts, by pleading the statute of limitation. If a man be asked to pay a debt which is due, but outlawed, he must do one of three things—he must confess, deny, or stand mute. If he confess, then is he *ipso facto* deprived of the defence; if he deny, he *lies;* if he stand mute, he in *effect* deny and this case is the same with the last. Therefore, a just c

cannot be avoided under the statute, without the aid of a lie. The question then, is simply of the morality of lying.

There is another thing which shows that the foundation of limitation laws, which we have stated, is the true one. All the limitation laws of all civilized nations, make exceptions in favor of persons who are under any disability to prosecute a demand. Thus the English statutes barring claims for debts, or to lands, do uniformly except minors, persons in prison, persons beyond seas—i. e. in a foreign country—and married women. In respect to all these, the English statutes, although one provision as to real estate, runs sixty years, do not commence until such disability is removed. For example, the six years which bar a note, not witnessed, an account, &c., do not begin to run against the minor, until he is of age; against the imprisoned, until he is free; against a person abroad, until he returns; nor against a married woman until she is a widow, or divorced. The ordinary statutes of Massachusetts, in relation to the limitation of personal and real actions, carefully make the same exceptions. So also do they in every other State of the Union. Other States have chosen very different periods for their limitations, but they all save, in all cases, the rights of those who have no power to save their own rights. The Roman laws, and the laws of all Europe, do the like.

In England, executors and administrators stand on the same footing in respect to limitations, as all other citizens. So they did in Massachusetts before our present Constitution was adopted, and for many years after. So they do now, in every other State of the United States. Why should they not?

It has been said, that they undertake a legal and necessary duty on behalf of others, which ought not to be made more protracted and troublesome than can be helped. True: but are they not well paid for labor and responsibility? Was there ever any difficulty in procuring suitable persons to take that trust? How did we get along for one hundred and seventy years after the settlement of Massachusetts? How have they managed to get along in England ten hundred years? How do they get along in that great and refined community now? and how do they get along in New York, Pennsylvania, and other populous and commercial states, without such a law? Moreover, why should not guardians, trustees, and all persons acting for others, have a like privilege? And why is not the same reasoning good in favor of a further reduction to three, two, or even one year after the grant of administration, or probate of will?

But the most remarkable feature of this law is yet to be noted. It makes no exception in favor of persons unable to prosecute within the time limited. It rolls with the same unva-

rying and Juggernaut fatality over women, children, and those under a physical disability to escape it, as over its voluntary victims.

*Massachusetts has the honor of being the first civilized state, since the creation of the world, which ever passed such a law;* and she also has the honor of being the *last*—if we except Maine, who in fact inherits the evil from Massachusetts, and will no doubt extirpate it whenever her attention shall be drawn to it.

Such being the unprecedented character of this law, we are apt to believe an account of its origin, which we have heard stated, as coming from an aged gentleman of Boston, who was cotemporary with the passage of the law. He states that it was enacted for the express purpose of cutting off a class of the very persons who, in all other statutes (having a *longer* time to run,) are excepted, viz., "*persons beyond seas.*" But these might also be minors, or married women, or in prison; so the dishonest individuals who were to be benefitted by this law, could not be perfectly secure without sacrificing *all* those defenceless classes whom it had been the practice every where to protect.

The old gentleman represented that by this fine legislative trick, the estates of some persons in Massachusetts, who died in possession of great ostensible wealth, but owed all, or more than all, to foreign creditors, were retained in toto by their heirs. This statement seems incredible; yet there stands the statute, plainly departing from that universal principle of justice which Massachusetts had scrupulously observed on occasions where it was less her duty to observe it. If the motive which instigated the act was, as is thus represented, it could have been known to but few. The majority could never have been drawn into such a foul conspiracy. In our House of Representatives it required at that time but about one *thirteenth* of the whole number to constitute a *quorum* for doing business; and at present, it requires but one *tenth*. This is an anomaly in the constitution of a legislative body, fraught with the utmost danger. Among other illustrations which are recollected of the badness of the former *town* government of Boston, is this: The *watchmen* rallied at a town meeting, and having waited quietly until other business was despatched, and most of the voters had retired, came forward, and voted an addition of several thousand dollars to their own pay. Any one who will take pains to look carefully into the legislation of this Commonwealth, will find a vast many laws, which were evidently passed by the same sort of management, for the benefit of a few, at the expense of the many.

This law at first limited demands to *three* years. About three years afterwards, the time was enlarged, not only with respect to future administrators, but also in respect to those previously appointed under it; so that in effect, this statute was *suspen*

for *one* year, in respect to the individuals claiming debts against administrators of the latter class.

The enlarging act commences with the following preamble:

"Whereas in the above act it is provided," &c., [mentioning the provision in question.]

"And whereas from the *shortness of the said limited term*, and from the *want of a general knowledge thereof*, many inconveniences may accrue to citizens of this Commonwealth,"—

therefore the time is extended to four years, as it now stands.

It is very strange that it should not have occurred to any one, that the same evil would result "from the want of general knowledge" under the new enactment as under the old. Every body knows of the ordinary limitation of *six* years, but very few plain and unprofessional men know to this day of the limitation of which we are speaking. We could state many instances in proof of this.

There is another general objection to this law, which is, that by another law of this state, no suit can be commenced against an executor or administrator, for one year after his taking that trust, so that in fact the time is reduced to just half the ordinary limitation.

This then is the law which the Legislature took the liberty of suspending—which liberty, the Supreme Judicial Court decided to be wholly unwarrantable, and a usurpation of power not granted by the Constitution. The circumstance that the Legislature had always possessed this power, and passed these dispensing laws, availed nothing. It availed nothing that *eighty* of these acts were passed in 1790, the year from which many of the precedents quoted are taken, when the Governor, *John Hancock*, the Lieut. Governor, *Samuel Adams*, several of the Council, *one third* of the Senate, and a *large number* of the House, including *Judge Parsons*, and other eminent jurists, were the *same* men who framed the Constitution. It availed nothing that one of the judges who sat on the bench in the case of Holden and James, was a member of the House, which passed that resolve, and made no opposition to it. It availed nothing that a great branch of the legislative power, enjoyed and used for noble purposes without interruption or question for nearly forty years, was to be suddenly lopped off, without discussion or notice on the part of the Legislature. It mattered not that every complete government in the world has this power residing somewhere, and that if it be denied to our Legislature it resides nowhere in this, but is gone to the receptacle of things lost upon earth, and has left the government a mutilated and lame thing, incapable of fulfilling the duties of a government. It mattered not that the executive was, and is, in the frequent

and undisputed exercise of an important dispensing power, given to him no more clearly, and not half as largely as similar power is given to the Legislature. It mattered not that the Constitution had spoken, and had been interpreted by Sargent, Dana, Sedgwick, Sewall, Strong, Sullivan, Lincoln, and Parsons, for forty years. It mattered not that these great lawyers were among those who framed it. The decree had gone forth from some *mysterious quarter*, that the dispensing power was to be *silently* made away with, though it should cripple the government, and destroy its power of answering the purposes of its creation.

Mr. Metcalf related in the committee last winter, this anecdote. When the resolve on the petition of Holden was passed, the Speaker of the House tossed it, in a contemptuous manner, upon the Clerk's desk, with this observation—"Just as good as so much brown paper, and no better." How came it to be known to the Speaker, who, in the multitude of bills which pass in a formal manner through his hands, seldom examines special acts and resolves, or even general acts, with much thought, that this act was *to be no better than brown paper?* It will be said he had investigated it, and made up his mind that it was unconstitutional? Why was this never thought of before, by *Parsons*, and other great men? And why was it not suggested to the committee who reported it, or to some member of the House? Why not draw the attention of the House to it, and elicit discussion upon it? But is it probable that the insignificant act so fixed the attention of the Speaker, without attracting at all that of Stephen Codman? The petition of Holden was before the Committee nearly *nine months*; Vans' case was there the whole time with it. Stephen Codman doubtless knew all about the business. We think it probable that his friends in the House, and the friends and connexions of the heirs of John Codman in and out of the House, knew of it. Among those friends and connexions were eminent lawyers, particularly the *Hon. Charles Jackson*, who was abundantly able, with reason and principle on his side, to have put it down, before the House. The present Governor of the Commonwealth was chairman of the Standing Committee on New Trials, who reported it. That Committee was usually composed of the best lawyers. Judge Strong, now of the Common Pleas Bench, was a member of that Committee at the same time. Mr. Otis, of Boston, and other eminent lawyers, were in the Senate. The resolve passed in one day through both branches, and on the third day after, Mr. Lincoln reported it, was "approved" by Governor Strong. No member, not even the friends and family connexions of the Codmans made any objection to it. There is something mysterious in silence, where so much must have been *thought*,—in *indifference*, where so much

must have been *felt*. Stephen Codman well knew that if Holden's case was passed, Vans' must one day be so too, for they were alike, except that Vans is the stronger, he having been the whole four years, "beyond seas."

The fundamental error of the opinion of the Court, lies in the following passage.

By the twentieth article of the declaration of rights, in the constitution of this Commonwealth, it is declared, that "the power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for." Many of the articles in that declaration of rights were adopted from the *Magna Charter* of *England*, and from the bill of rights, passed in the reign of *William* and *Mary* (1). The bill of rights contains an enumeration of the oppressive acts of *James* 2d tending to subvert and extirpate the protestant religion, and the laws and liberties of the kingdom: and the first of them is the "assuming and exercising a power of dispensing with, and suspending the laws, and the execution of the laws, without consent of parliament." The first article in the claim or declaration of rights contained in the statute is, that the exercise of such power, by regal authority, without consent of parliament, is illegal. In the tenth section of the same statute it is further declared and enacted, that "no dispensation by *non obstante* of or to any statute, or any part thereof should be allowed; but the same should be held void and of no effect: except a dispensation be allowed of in such statute." There is an implied reservation of authority in the parliament to exercise the power here mentioned: because according to the theory of the *English* constitution, "that absolute despotic power, which must in all governments reside somewhere," is entrusted to the parliament (2).

The principles of our government are widely different in this particular. Here the sovereign and absolute power resides in the people; and the legislature can only exercise what is delegated to them according to the constitution. It is obvious that the exercise of the power in question would be equally oppressive to the subject, and subversive of his right to protection, "according to standing laws," whether exercised by one man, or by a number of men. It cannot be supposed that the people when *adopting* this general principle from the *English* bill of rights, and *inserted* it in our constitution, intended to bestow, by implication, on the general court one of the most odious and oppressive prerogatives of the ancient kings of *England*. It is manifestly contrary to the first principles of civil liberty and natural justice, and to the spirit of our constitution and laws, that any one citizen should enjoy privileges and advantages, which are denied to all others under like circumstances: or that any one should be subjected to losses, damages, suits or actions, from which all others under like circumstances are exempted.

There is no doubt that the legislature may suspend a law, or the execution or operation of a law, whenever they shall think it expedient. But in such case, the law thus suspended will have no effect or operation whatever, during the time for which it is so suspended.

It is well known that James II., that odious tyrant, endeavored to usurp all the powers of Parliament, and prostrate the liberties and the religion of England. Of all the forms in which this design manifested itself, the most palpable and alarming was the dispensing with the laws against Popery. Parlia-

(1) *Stat.* 1 *W. & M. St.* 2, *c.* 2. (2) 1 *Black. Comm.* 160.

ment, in order to exclude from office persons deemed to be dangerous, had passed, in the preceding reign, certain acts, called "the corporation and test acts." These laws required all officers, civil and military, to take the oaths of allegiance and supremacy, to make a declaration against transubstantion, and to receive within a certain time the sacrament of the Lord's Supper according to the rites of the Church of England. James admitted officers, particularly military, and dispensed with the oaths and other qualifications, thus filling the army with creatures of his own, enemies of the Parliament and people; and the English *supreme judicial court* sustained him. This usurpation was the most direct and obvious cause of the dethronement of James, and the extinguishment of the Stuart dynasty.

In framing their Bill of Rights at the accession of William and Mary, Parliament took good care to prohibit this power;—to whom? Not, certainly, to themselves, but to the *King*. If, therefore, the reasoning of the court had been to show that this absolute dispensing power could not have been intended to be conferred upon the *Executive* of this Commonwealth, the analogy would have been good, though out of place, because the plain letter of the Constitution has determined what dispensing power the Executive of Massachusetts shall have, and what the Legislature. But what shall we say, when, in utter disregard of this plain letter, the Court undertake to determine the powers of the Legislature by reasoning from an analogy *which does not exist*, but is merely forced, and entirely false and fictitious. To resort to any such uncertain light where the Constitution speaks plainly and authoritatively is bad enough; but to form conclusions as to what the people of this state meant to confer upon their Legislature of three branches, from that which the people of England meant to confer upon their King, after the experience they had just had of the abuses and usurpations of James, is the most extravagant and preposterous perversion of the forms of reasoning that was ever beheld. It seems as if the very spirit of the absurd and obstinate Stuarts was in it. Is it indeed true, that the dispensing power "is equally oppressive to the subject and subversive of his rights," whether in such hands as James' or in the hands of the Legislature of Massachusetts? We cannot illustrate this method of reasoning better, than by comparing it to some burlesque problems in arithmetic, which boys sometimes propose for fun, as—"If a great pumpkin cost two pence, what will a large basket of apples come to? If an inhabitant of the Moon should say to himself, "our lunar astronomers tell us that that large and bright orb called the Earth, is constituted much as the Moon is, and appears to us, pretty much as this Moon does to the inhabitant of

the Earth—if the Earth have inhabitants. And why should it not have them, seeing that the Moon has them?" This would be reasoning from analogy, and would be reasoning correctly: but if instead of concluding thus, the *lunatic* had concluded that because the Moon *is* inhabited, therefore the Earth *is not* inhabited, what sense or reason would there be in it?

We cannot express the astonishment that we feel, when we read that the Supreme Judicial Court have treated provisions of our Constitution, expressly confering power upon the *Legislature*, as if they were superceded by provisions of the *English* Bill of Rights *denying* the same power to the *King!*

The Court admit that Parliament possess the dispensing power. How then, by any just rule of interpretation, can they deny that our Legislature has the same power, since the provisions are the *same* in this respect in the English and in our own Bill of Rights. The words of the former are—"the exercising the power of dispensing with and suspending laws, and the execution of laws, *without the consent of Parliament*, is illegal." The words of the latter are—"the power of suspending laws, or the execution of laws, ought not to be exercised *but by the Legislature.*" Is it not a palpable absurdity to say that the former confers upon Parliament the dispensing power, and that the latter prohibits it to the General Court?

It is of great use where a question is raised as to the import of language in one part of an instrument, to apply for explanation to another, where similar language is employed. The twenty-ninth section of the Bill of Rights says, that "No person shall be subjected to the law martial *but by authority of the Legislature.*" The twelfth section says that "No person shall be put out of the protection of law, exiled, or deprived of his life, liberty or estate, *but by the judgment of his peers.*" These provisions need no comment, but they are a conclusive comment upon the one relating to the dispensing power.

Look at one more provision. The twenty-third section of the Bill of Rights is as follows:

"No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid or levied, under any pretext whatever, *without the consent of the People, or their representatives in the Legislature.*"

Apply to this the same rule of interpretation (if it can be called *rule*) as the court apply to the article on the suspending power, and to what result do we arrive? We arrive at this,—that the Legislature of this Commonwealth have no power to lay taxes, or to raise a cent of revenue in any shape; that every tax bill has been unconstitutional, and that the Judges, when they received their pay for giving this opinion, and for all their

services, were, and are receiving it illegally. There was no law for raising that money—it was a violation of the Constitution—it was usurpation and plunder, and they ought to refund!

Again—this opinion says, that to admit this dispensing power in the Legislature would be to deprive a party of protection "in the enjoyment of his life, liberty and property, according to *standing laws*," and in this phraseology, which occurs in the *tenth* article of the Bill of Rights, the Court find something implied, which, in their view, seems to *nullify* the twentieth section.

This clause is stated simply as a reasonable foundation for inferring the duty of the citizen to *contribute* to the support of government. But the term "standing laws," has never received a judicial interpretation in any decision. It is not even defined in this. It is not technical, and does not occur at all, as we are aware of, in the jurisprudence of England, or of the other States. It means *any* law. The same term is used in the Constitution in relation to the salaries of judges. But who has ever heard that the Legislature could not *alter* them. They have been frequently altered. They were altered nearly every year for a long time. In several instances the salary of *one* Judge of the Supreme Court was altered, those of the others remaining unaltered. The salary of a Judge of the Common Pleas for a particular circuit was altered. Were not those acts, though made in favor of *one* Judge of either court, as much "standing laws" as any others, or as the general laws regulating the matter of salaries? If they were not, then is the Commonwealth entitled to recover the money back.

The Constitution says that militia officers shall be elected according to "standing laws." But it has been found that the general provisions of the law for regulating the elections of those officers would not meet all emergencies, but that the militia would become disorganized and disbanded under their operation. The Legislature therefore have provided that where there are no officers, (which is a common case—gentlemen refusing to serve,) the selectmen of the town shall hold elections of company officers. Is not this a standing law? In other words, is it not law?—neither more nor less than law. The present Chief Justice of Massachusetts applies the term "standing laws" to those laws of the United States which direct certain appropriations from the proceeds of public lands for making roads in a *few* of the States. If he had said *laws*, he would have expressed just as much in respect to their force and virtue. The word *standing* meant to refer to their date and duration, not to the *extent* of their application, nor their power to bind.

The framers of the Constitution meant by the use of the epi-

thet "standing," to indicate a predilection in their minds for uniformity, and consistency of legislation. This is all that they did mean. They use the epithets "fixed," "permanent," &c. in the same way. In our opinion these adjectives are stronger than the other; but no one ever thought of attaching to them any such tremendous and overruling force.

Throughout the opinion not a word is said of *general* laws; yet surely that is the term which the Convention would have used, if they had intended any such thing by "standing laws," as is imputed to them. The court confines itself in the *text* to the precise words, "standing laws;" yet in the marginal note, which the profession in their practice look to *first*, and often *alone*, for the substance of what is decided, we find "general law" substituted for "standing law" of the text. What authority was there for treating "general laws" and "standing laws" as convertible terms? The marginal note is *false*, even if the doctrine of the case is *true*.

Again—the opinion says that

"*Here* the sovereign and absolute power resides in the people;"

and that

"It is manifestly contrary to the first principle of civil liberty and natural justice, and to the spirit of our constitution and laws, that any one citizen should enjoy privileges and advantages which are denied to all others under like circumstances."

Here are good *words*, which become bad, if they wheedle the people out of an invaluable right.

What did all those acts and classes of acts which we have mentioned, confer, but exclusive privileges? Does not every act of incorporation confer exclusive privileges? That is the whole object of it. It would not be desired—it would not create a corporation,—if this were not the case. If a law to incorporate a few men as "a starch manufactory" were to include all the inhabitants of the State, what sort of a corporation would that be? Did not the Charles River Bridge act confer "exclusive privileges"?—and in all the contest which has occurred, has this ever been questioned? The dispute has been, as to the *extent*, not at all as to the *existence* of an "exclusive privilege." If the principle contained in this opinion about exclusive privileges were applied to the case of that Bridge, it would put a period to it at once. Every rail road act *excludes* all other persons for a time, or forever, from the same route; so does every bridge and turnpike act. And where would be the wisdom of including every body in the provisions of an incorporation? Where would have been the use or sense of incorporating every body as "freemasons," when the Grand Lodge was incorporated?—or as "republicans," when the Republican In-

stitution was incorporated? Yet the doctrine which is thus laid down in relation to "exclusive privileges," is in fact all that this decision has to rest upon. Observe the metamorphosis which it undergoes. Its first form is *no "exclusive privileges"* —a form very fascinating to the ignorant and vulgar, because they think it means something against aristocracy. Its second form is *no suspending of "standing laws."* Its third, to which it arrives in a marvellous manner, is *no suspending of a* "GENERAL LAW."

But the opinion says that the Legislature *may* suspend a law, but they must do it in respect to *every inhabitant* of the Commonwealth, and not in respect to one, or any number less than the whole. Then a law suspending the *ten foot* building act in respect to South Boston, and those suspending the same act in favor of *Samuel Sprague, Deacon Field*, and others, are unconstitutional, and these gentlemen and a large part of South Boston, have incurred heavy penalties for many years, which they are still liable to pay!

But taking the doctrine as stated to be true, let us apply it. Suppose the Legislature being thus hedged in and straightened for power to do justice and extend protection to the citizens, should resort to this reasoning: "We cannot suspend the law "in respect to Vans, but we *can* suspend it in respect to the "whole Commonwealth! There can be no doubt of that, for "the Supreme Court *has said we might*. Now, then, let us sus- "pend this law for *twenty-four hours* in respect to the whole "Commonwealth. In that time we can let Mr. Vans in—let "him commence his action, and then let the portcullis fall "again." Is not this a fair consequence of the opinion? It shows the absurdity of attempting to deny a *less* power, when the *greater* is conceded. A man might as well refuse to pay *one* dollar to an honest creditor who requests it, and at the same time tell him, "I will pay you the dollar which I owe, but I cannot and I will not do it, without I at the same time pay one dollar to five other men, whom I do not owe, and who do not want it." Surely the creditor would have no cause to object, if the other party pleased to exhibit in this manner his justice and profound wisdom.

It is remarkable that this decision is unsupported by any adjudged case whatever. No reference is given to any. No analegy is attempted to be established between this and any which ever occurred in Europe or America. We apprehend that none can be found nearer than Constantinople, or possibly in the archives of the Holy Alliance. It is as great a stretch of arbitrary power, though disguised under soothing and imposing language, as ever a monarch assumed. Arbitrary power is never so dangerous as when it *cruises* under the colors of law, justice, and

liberty. Napoleon, under the *tri-color* of the republic, established a despotism, which the French would not have borne under the lilly flag of the Bourbons.

We have quoted, on a preceding page, what the Committee of the Senate stated, in 1832, as to the *practice* of the Legislature since the decision in *Holden's case*. It is our duty now, to show that their report is wholly erroneous in this respect. The Legislature have passed a great many dispensing laws *since* that decision was pronounced, which we proceed to prove by quoting from laws and records of this Commonwealth. We trust that the accomplished Chairman of that learned Committee has too much goodness and candor to permit so mischievous an error to stand without correction.

*Resolve for the relief of John Robbins and Samuel Baxter.*

February 22d, 1822.

Whereas it appears by the books in the Secretary's office of this Commonwealth, that certain small balances, appear to the credit of John Robbins and Samuel Baxter, for military services, in the fourteenth regiment, during the revolutionary war; and whereas it is represented that said Robbins and Baxter died more than twenty years ago, leaving heirs, but no administration was ever granted on their estates: Therefore,

*Resolved*, That upon the application to the Secretary and Treasurer of the Commonwealth, of the heirs, or next of kin of said Robbins and Baxter, or either of them, or any person duly authorized by them, producing the certificate of the Judge of Probate for the County of Barnstable, that they are so heirs, or next a kin, that no administration has ever been granted on the estates of said Robbins and Baxter, or either of them, and that they died more than twenty years ago; and complying with all the requisites set forth in a resolve on the subject, passed on the eighth day of February, in the year of our Lord one thousand eight hundred and twenty, the said balances shall be paid unto such heirs or their agents, lawfully authorized to receive the same, in the same manner as is provided in said resolve, and as the same would have been payable to an executor or administrator of such soldiers, duly appointed, *any thing in said resolve, limiting the time within which such application should be made to the Secretary and Treasurer, to the contrary notwithstanding.*

This resolve dispensed with *two* general laws at once, viz., the general probate law, and the law limiting demands against the Commonwealth.

The following case belongs to a class which we have mentioned before, but it is a little peculiar in this respect, that it sets forth substantially, that the Supreme Judicial Court had been applied to, and were of opinion that the petitioner could not be relieved *but by* a dispensation. "But by," do we say? We forgot ourselves. We forgot that this language means that he could *not* be relieved by a dispensation.

*Resolve on the petition of Malbone Briggs.*

February 24, 1830.

Whereas said Briggs, October 17, 1817, entered into recognizance to the Commonwealth for the sum of two hundred dollars, as surety for his late son Malbone Briggs, Jr. deceased, and judgment was entered at the November term of the Supreme Judicial Court for the County of Bristol, 1828, for the full penalty of said recognizance, and costs, and said petitioner has applied to the *Justices of said Court for relief, and doubts have arisen as to the power of said Justices to grant the relief prayed for*; therefore,

*Resolved*, For reasons set forth in said petition, that the Justices of said Court be, and hereby are authorized to revise said judgment, and to enter final judgment on said recognizance, according to the circumstances of the case, and to remit the whole, or any part of the penalty thereof, upon such terms and conditions as to them shall seem reasonable and just, *any law or usage to the contrary notwithstanding.*

The above bears a near relation to a class of dispensing acts which we have not mentioned, and with which it would be easy to fill a large volume. We mean acts remitting *penalties* and *forfeitures*. The whole number of these, since the Constitution, is about fifteen hundred. They occur now at every session. We will merely indicate the heads under which we should arrange some of them.

*Dispensing with* fines upon towns for not sending representatives.

*Dispensing*, in favor of sureties, with the penalties of recognizances, for the appearance of persons indicted, and absconding.

No session of the Legislature occurs, without passing a number of "healing acts." These are acts dispensing in favor of individuals, with the legal consequences of neglect or violation of law. Like the preceding class, they bear a strong analogy to the pardoning power of the executive. The difference is, that the governor can dispense with the execution of laws in *criminal* cases only, and that *after* conviction and judgment. The Legislature can dispense with the execution of the law in all cases, and in *any stage* of the proceedings, or before any proceeding or process is commenced. The statute books are filled with such dispensations. The following are some of the heads under which we should place these dispensing acts. The whole number since the Constitution, is probably more than *one thousand.*

*Acts dispensing* with the consequences of *selectmen's* neglect to take the oaths prescribed by the Constitution, and making good the records and doings of towns, the law, prescribing the oaths to the contrary notwithstanding.

Similar acts respecting *town clerks, assessors, coroners, auctioneers*, and other officers omitting the oaths and other formalities.

*Acts dispensing* with the consequences of neglect to give such notice of the sale of real estate, as the law prescribes, confirming the *title*, and allowing executors, administrators, guardians, &c., to perpetuate the evidence of the same, in the Probate office, after the *time limited* for perpetuating it *has expired.*

*Acts dispensing* with the legal consequences of marriages performed by persons not authorized by law to marry.

This is a numerous class. If they are unconstitutional, it will be unfortunate indeed for the issue. All the marriages by Methodist ministers were once illegal, and the parties went to the General Court to have them confirmed. The following specimen is now given, on account of its date.

*Resolve on the petition of Walter Balfour.*

March 1, 1830.

On the representation of Walter Balfour, setting forth, that being considered the ordained and stated teacher of a Baptist Church in the town of Charlestown, according to their views of scripture on the subject of ordination, he believing himself legally authorized so to do, did join several persons in the banns of matrimony some years ago, and doubts having arisen whether such marriages were legally solemnized, therefore—

*Resolved*, That all marriages solemnized in this Commonwealth by the said Walter Balfour, while he was teacher of said church in Charlestown, be, and they are hereby made valid in law, as if the said Walter Balfour had been, at the time of solemnizing the same, a stated ordained minister of the gospel within this Commonwealth.

*Resolved, also*, That the issue of each and all such marriages, solemnized as aforesaid, be, and they hereby are made capable in law, of inheriting, *in the same manner as though each and every of such marriages were originally solemnized according to law.*

*Resolve authorizing John Richards to export kegs and firkins of lard.*

June 16th, 1817.

On the petition of John Richards, Esquire, praying for leave to export from this Commonwealth, three hundred and fifty firkins, and one hundred and thirty kegs of lard, which he imported into this Commonwealth, for the purpose of re-shipping the same to the Island of Cuba, under *the belief that he might lawfully do so* in the same casks in which it was imported; Therefore,

*Resolved*, For the reasons set forth in said petition, that the said John Richards be, and he hereby is fully authorized and empowered to export the said lard from this Commonwealth to any foreign port or place, according to the laws of the United States, without inspection; *any law of this Commonwealth to the contrary notwithstanding.*

By this, the general inspection law of the Commonwealth was suspended in favor of Mr. Richards.

In the following interesting case, we give the petition first, and after it the resolve.

*To the Honorable Senate and House of Representatives, in General Court assembled.*

The petition of Joseph Nixon, of Waltham, in the county of Middlesex, humbly shews, That in the year *eighteen hundred and eleven*, at the April term, a judgment was rendered and execution issued from the Circuit Court of Common Pleas for the county of Suffolk, in favor of John Henry, of Montreal, in the province of Lower Canada, for the sum of *seventy-nine dollars*, with *nine dollars and eight cents* costs; upon which execution he was committed to gaol in Cambridge, in said county, and has remained in gaol upon said execution from that time to the *present*.—

That at the time said judgment was obtained, he was absent on a journey to Canada,—that previous to the said suit's being commenced, he lodged his account with the attorney, who commenced the action upon which said judgment was rendered, and that the September term following, he recovered judgment at the Court of Common Pleas holden at Concord, in the county of Middlesex, for *one hundred and thirteen dollars and thirty cents*, with *thirteen dollars and fifty cents* cost, against the said John Henry, as will appear by record of said court.

Your petitioner further represents, that he has repeatedly applied to said attorney for an offset of the demands, and also *petitioned the Supreme Judicial Court* for relief, but without success, having been referred by the latter for *legislative provision*.

Your petitioner therefore humbly asks the Legislature to take his case into their wise consideration, and grant him such relief as shall appear to them to appertain to justice and equity, and relieve him from a vexatious suit, and long confinement, at a distance from his family and friends. And as in duty bound will ever pray.

JOSEPH NIXON.

Cambridge, Dec. 2, 1816.

*Resolve on the petition of Joseph Nixon, discharging him from an execution, after a confinement of five years.*

December 5th, 1816.

Upon the petition of Joseph Nixon, of Waltham, in the county of Middlesex, stating that he has been confined in gaol in Cambridge, in said county, for five years last past, upon an execution in favor of John Henry, of Montreal, in Lower Canada, for seventy-nine dollars, with nine dollars and eight cents cost; and that he has an unsatisfied execution against said Henry, subsequently obtained, for one hundred and thirteen dollars and thirty cents, and thirteen dollars and fifty cents costs:

*Resolved*, For reasons set forth in said petition, that the said Joseph Nixon be discharged from the operation of the execution of the above named John Henry, by making an offset of said execution, against the amount of the execution which the said Nixon holds against the said Henry:—And that the Sheriff of the County of Middlesex be authorized and empowered to discharge said Nixon from confinement upon said execution, and to endorse the amount upon the execution of the said Nixon against the said Henry.

Here was an unfortunate man betrayed by one, whom he employed to act in his place, and take care of his rights during his

absence from the country. The person so employed, instead of obtaining judgment in his favor at the *same term* that he obtained it for Henry, (for it is evident from the bills of cost that both actions were entered at the same term,) and offsetting the one against the other, continued Nixon's action, and took judgment and execution in Henry's, and then unjustly and treacherously imprisoned the man who had employed him, and confided in him.

This was horrible. A citizen of a free country confined upwards of five years in a jail, by his own debtor, an unprincipled foreign adventurer, who was immediately off to Canada; and whether off or on, would have proved irresponsible for the injury he did. And yet, according to the opinion in Holden and James, the Commonwealth had no power under the Constitution, to protect their citizen—the general law should have continued its course—and in granting relief, the Legislature broke the Constitution, and usurped a power "equally oppressive, and equally subversive of the rights of the people," as if it had been a dispensation by James II., to admit the enemies of the liberties of England into all the offices created for the defence of those liberties!

There can be no mistake about this case: the man was in *by law*, or the Supreme Judicial Court would have let him out. But when applied to, they told him that the Legislature *alone* could open his prison doors. Did not this decision of the Court —their referring the petitioner to the Legislature—amount, in principle, to a reversal of their judgment in the case of Holden and James? The Court "referred him for legislative provision." What provision? Was it for a *repeal* of the law authorizing imprisonment for debt? Was it for a suspension of that law in relation to every debtor in the Commonwealth? No, neither. It was for "a suspension of a general law in favor of an individual," and nothing else. It can be brought under no other class of legislative acts. There was a "general law," which confined the man, or *he* would not have been *in* prison; it was an act "suspending this law in favor of an individual," or every other prisoner for debt would have been *out*.

We presume that the *John Henry* mentioned above, is the celebrated person who figured in the political scenes of 1809–10. He appears to have found an *attorney* worthy of himself. What enormous and persevering villainy and oppression does the case exhibit! There was no relief but in the *dispensing* power of the Legislature, and there, at last, the aggrieved individual found it. Who will say that it is not a necessary, and a blessed power in a Commonwealth—or that it has not been used by the Legislature since 1815? A Government which either *could* not or *would*

not give relief to a subject situated like Nixon, ought not to exist, and could not exist long in any enlightened and humane community. Those who would deprive the government of needful powers, are more dangerous enemies, to the People, than those who openly favor despotism.

# APPENDIX.

[*The Report which follows, was discussed, in the House of Representatives, and a motion being made to refer it to the next session, the question was taken, and carried in the affirmative, by a fair majority. This was considered as indicating a sentiment in the House highly favorable to Mr. Vans, seeing that such a severe report had been made, bearing the signature of every member of the Committee. Subsequently, a motion was made by Mr. Cushing, of Newburyport, to re-consider said vote. On this motion, Mr. Metcalf stated to the House, (as we are informed, and his friends, and the friends of the Messrs. Codman made use of the same arguments,) that that disposition of the subject conveyed a censure, and was calculated to fix a stigma upon the said Metcalf, Vans having charged him in a handbill, with altering the report, at the printers; that no alteration had in fact been made by him; that it was true, a passage had been expunged at the printers, but it was one of no importance, and the committee had marked it to be left out, before the report went to the printers. Mr. Metcalf attempted no defence or explanation of the report, but rested the whole case upon this—whether the House would suffer a vote to remain, which would give countenance and effect to Mr. Vans' charges against him. There was a magnanimity and patriotism in this method of legislation, which can never be sufficiently admired! Mr. Metcalf might have resorted to an* indictment *or an* action *against Mr. Vans, if the handbill* was *false. But he did not choose to do either. He chose to mix up the alleged private injury to him, and make it an ingredient in the decision of a great public question of right and justice. Mr. Metcalf knew that before* the House *Mr. Vans could not contradict his statements, nor prove them false. Whether this consideration had any influence in determining him to make his complaint there, rather than before a tribunal, where he could be confronted and put to the proof, is a question, which others are as competent as we are to settle.*

*Thus, at the very last hour of the session, when many members who voted to refer to the next Legislature, had gone from the city, supposing the subject disposed of for the session, it was again taken up, the former vote reconsidered, and the report accepted.*

*Of these two votes, the* first, *in the eye of reason, must be regarded as of the highest authority. For that was upon the merits of the* report, *after Mr. Vans had been heard, after full notice and after a deliberate discussion. The* second *was upon the merits of* Theron Metcalf, *Esq., upon which Mr. Vans had* not *been heard; upon which there had been no discussion, and no notice to the petitioner that they were to be obtruded upon the House. It was a backhanded blow, which neither truth nor wisdom could ward off. It was a stratagem which does no honor to those who contrived it. If it had not been resorted to, this Report would have remained as the House had ordered,* INDEFINITELY POSTPONED.]

# CASE OF WILLIAM VANS.

*The Honorable Senate, and*
*House of Representatives, in General Court assembled:*

William Vans, native of Massachusetts, respectfully represents to your Honorable Body—That John and Richard Codman, Copartners and Merchants at Paris, in the empire of France, became indebted *there*, to your Petitioner, by final judgments, which condemned them to *deliver* your Petitioner forty five thousand five hundred and thirteen francs rents per year, of the public debt of France, that amounted, in the year 1833, to upwards of 500,000 dollars. On obtaining these judgments, your Petitioner came to America, in the year 1809, and demanded of the Executor and Heirs payment. They refused; pretending the debt of your Petitioner *barred* by the Statute, because your Petitioner *had* not commenced a *suit* at law against the Executor within four years after the death of the Testator. Therefore, by advice of Counsel, learned in the *law*, your Petitioner requested your Honorable Body to *suspend* the law limiting suits; the Constitution gives you the power to *do*, and grant your Petitioner a trial by jury. These Petitions were referred to Committees on the Judiciary, *who* reported, William Vans have leave to withdraw his Petition. These Reports were repeated until 1827, when the Petition was referred to a Special Committee, *who* reported, the facts stated in the Petition of William Vans, were all substantiated, and asked of the House what further order shall be taken thereon—the *vote* stood 91 in favor, and 107 against any legislative interference. These Petitions were repeated from 1827, year after year, until 1832, when the Committee of the House reported a *Bill* authorizing your Petitioner a trial by jury, that was accepted almost unanimously by 450 members,—then sent to the Senate for concurrence, *who* decided, by a *vote* of 22 out 40 Senators, against the Bill—the Chairman of the Committee giving a meaning to the Constitution *not* written in the Bill of Rights. In consequence of this decision, your Petitioner comes again to your Honorable Body, and asks a trial by jury—the 12th Article guarantees to him—that declares, *no* subject shall be put out of the laws, or deprived of his *life, liberty* or *estate*, without a trial by *jury*. This, then, is my birth-right, *no* power but God can take from me. That I ask you Representatives to grant, and as in duty bound, your Petitioner will ever pray.

WILLIAM VANS.

*Boston, 3d January*, 1833.

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HOUSE OF REPRESENTATIVES, Jan. 26, 1833.

Referred to Messrs. J. Lucas, of Plymouth, Barrett, of Concord, Metcalf, of Dedham, Houghton, of Barre, and Loring, of Hingham.

L. S. CUSHING, *Clerk.*

# REPORT.

## Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March 21, 1833.

The Committee to whom was referred the Petition of William Vans, praying that the Law, limiting the time within which Suits can now be brought against Executors and Administrators, may be suspended for his benefit, have attended to the service assigned them, and after a very long and laborious examination of evidence, and an attentive hearing of counsel for the Petitioner and for the Respondent, now present to the House, the following

## REPORT:

In the year 1791, John Codman (deceased) was a merchant in Boston, of large property and extensive business. In May of that year, he took his younger brother, Richard Codman, then without property, into copartnership with him, under the firm of John and Richard Codman. The Respondent denied that there were any written articles of copartnership—and the Committee have found no evidence that any such ever existed, or that there was any agreement between the copartners, limiting the duration of the connection. The formation of it was announced to the correspondents of John Codman, by a printed circular, in which nothing was said of its terms or continuance. It appeared from the books and accounts of the firm, which were before the Committee, that Richard Codman was, from time to time, credited and charged with one third of the profit and loss of the concern.

In 1794, Richard Codman went to France, and resided at Paris until 1802. The copartnership, however, still continued, and Richard C. transacted, in France, such business as arose there out of the voyages which originated in America.

It was insisted by the Petitioner, that there was a house established in France, by J. & R. Codman, under the firm of Richard Codman. This was denied by the Respondent, who contended, that Richard C. acted abroad as the agent of J. & R. Codman. The Committee found no evidence of a separate establishment in France, under the name of Richard Codman, in which John Codman had any interest—but it appeared that Richard C. transacted the business of the Boston house in France, sometimes in the name of J. & R. Codman, and sometimes in his own name. On this point, it was proved that he wrote from Havre, orders to the master of the Thetis, a ship belonging to the firm, signed J. & R. Codman; and afterwards wrote further instructions respecting the same voyage, and gave the master a credit on London, in his own name. The bills, thus drawn by him, being protested, Mr. Church, the American Consul at Lisbon, advanced the amount, on receiving information from the master that the cargo was on account of J. & R. Codman, though purchased on the order of Richard Codman alone. This advance was afterwards sanctioned by John Codman, and the amount repaid by Richard C. by new bills drawn in his own name,

and made chargeable to J. & R. Codman. It appeared also, that on another occasion, Richard C., in Paris, drew a bill on London, signed J. & R. Codman—and it was testified by Mr. Melville, (a member of this House) that it was generally understood in Paris, that Richard C. was a partner with John C. All these things, however, though much insisted on by the Petitioner, seemed to the Committee to be of little importance, because they took place before May, 1798, up to which time it was admitted by the Respondent that J. & R. Codman were copartners, and that the acts of Richard in France, done in the course of partnership business were binding on John.

In May 1798, the house of John and Richard Codman appears to have been indebted to Messrs. Baring, their bankers in London, in the sum of more than forty-nine thousand pounds sterling. This debt had accumulated chiefly by bills drawn on those bankers to pay for cargoes to be sent to America. The proceeds of the outward cargoes, which should have gone to replace those funds, appear to have been kept back in a manner which caused John C. to make many complaints to his brother Richard. At the same time, the embarrassment of the political relations between the United States and France excited great apprehension in the mind of John C. concerning the safety of the partnership in France. Assigning this latter reason to his brother Richard, and to their correspondents, John Codman published in the Columbian Centinel of the 16th of May 1798, and in the Commercial Gazette of the 2d of May 1798, a notice of the dissolution of the copartnership, signed by himself, and in the usual form. He also wrote letters to his foreign correspondents, announcing the fact, as he had occasion to address them, and received answers, (several of which were exhibited to the Committee) acknowledging the notice. It appeared by a letter from Messrs. Homberg, of Havre, (who were stated to have been the only commercial correspondents of the house, in France) that they were advised of the dissolution in due time. And a letter from R. Codman to J. Codman was produced before the Committee, of which the last leaf only remained, in which, after speaking of various matters of business, he said—"I observe you have dissolved our partnership. I think the step in the present situation of affairs prudent, and then proceeded immediately to other remarks concerning the price of merchandize, &c. It did not appear at what time this was written or received; but two letters were produced from John to Richard, giving him notice of the dissolution of the partnership—one of the 1st and one of the 2d of June 1798—in the first of which, reference is made to a still earlier letter announcing the same fact.

Immediately on the announcing of the dissolution, John C. ceased to use the name of the firm, and transacted all business in his own name—making corresponding changes in his bank account, books of account, letters, and receipts. The Committee see no reason to doubt but that the dissolution was perfectly well known in Boston. Joseph N. Howe, a ropemaker, testified that he furnished cordage to John C. several years after 1798, and was often at his store, and knew nothing of the dissolution, but continued to deal with John C. or J. & R. C. to 1803, and he believed to 1806; but he had not examined his books or papers, to fix dates in his mind, and evidently had no accurate recollection of them; and it did not appear from the books of J. & R. Codman, or the books of John Codman, that Mr. Howe had any dealings with either, after 1797. James Dalton, who was John C.'s clerk from 1801 to May 1803, (when John C. died,) testified that no business was done, nor bills paid, in the name of J. & R. Codman; and that Mr. Howe had no dealings at the store after he went there. Mr. Dalton also testified, that he never heard of the Petitioner until after John C.'s death.

In 1798, the petitioner, who was then in Paris, and who appears, by the correspondence laid before the Committee, to have been on terms of intimacy with Richard Codman, proposed to him a speculation on their joint

account, in tobacco, to be purchased by the petitioner, in the United States, by bills on Caspar Vooght of Hamburg, on the credit of R. Codman, and to be shipped to France; and as a further security for funds, the petitioner proposed, in a memorandum of the projected transaction, under his own hand, and produced by the Respondent, that he (the Petitioner) should have liberty to draw on John Codman of Boston, for four thousand pounds, if he could not negotiate his bills on Hamburgh.

In January, 1799, the petitioner left Paris for the United States, by the way of Holland, with the following letters from Richard Codman, viz: a letter of credit, authorizing him to draw on Caspar Vooght for £4,000, and a further letter authorizing him, in case of need, to draw on John Codman for $20,000, on giving up to him the letter of credit on Vooght—also a letter to John Codman, explaining the transaction, and directing him to draw on Vooght to reimburse himself for any bills he might accept for the Petitioner—also, letters of introduction to Richard C.'s correspondents in the southern cities of the United States.

In the memorandum above named, this adventure was stated to be one half for account of R. Codman; and it was not contended, before the Committee, that John Codman had any interest in it.

The Petitioner, while at Hague, on his way to the United States, proposed by letter to Richard C. a purchase of gin, to be paid for by bills on John Codman. He also, in Hamburgh, drew a bill on Richard C. in favor of Caspar Vooght, of which he gave notice to Richard C., by letter dated April 5, 1799.

The Petitioner arrived in the United States in the summer of 1799, and had a communication with John Codman, respecting the proposed adventure. John C. refused the credit given on him by Richard C., and advised the Petitioner to abandon the enterprize. The Petitioner gave up to John C. all his letters of credit, and John C. agreed to endorse his bill on Vooght for a hundred pounds, to meet his expenses and enable him to return to France. This bill was accordingly drawn on Vooght, (of Hamburgh,) payable in London, and chargeable to Richard C., indorsed by John C., and by a memorandum on the back thereof, the Messrs. Baring were requested by John C., in case of need, to take up the bill for the honor of the indorser, and to forward it with protest to Richard C. This bill was afterwards protested, and charged by Richard C., in account with the petitioner.

The petitioner remained in the United States fourteen months, and returned to France in the summer of 1800. A correspondence immediately began at Paris between him and Richard C., respecting certain *inscriptions*, or certificates of stock in the French funds, which it appears that the petitioner had lent to Richard C., on his leaving France for the United States, as above mentioned. At the same time, two houses belonging to the petitioner, had been put into Richard's C.'s hands to be sold, and as security for the bills, the petitioner might draw on Richard C.'s letters of credit. The proceeds of these houses, Richard C. afterwards, at the petitioner's request, undertook to invest in the French funds, but neglected so to do. The certificates of stock were—one, for 8,415, the other for 5,000 livres yearly rents—these sums expressing, not the principal, but the interest payable yearly. After some altercation between the parties, Richard C. gave to the petitioner two promissory notes or engagements, one in French and one in English, of which the following are a translation and a copy.

"100,000 Capital,
or 5,000 rente provisoire,

"For value received in silver money, I promise to deliver to William Vans, or to his order, in three months from this date, an inscription commonly called *rente provisoire* of the public debt of France, of one hundred thousand francs capital, or 5,000 rentes per annum: it being well understood

that it is an inscription rente provisoire, and not money, let the price of said rent at the time of delivery be more or less.

Paris, thirteenth Vendemaire, year nine, (4 October, 1800.)

(Signed) RICHARD CODMAN."

"8,415 } "Borrowed and received of William Vans, an inscription tiers
108,000 } consolide of the public debt of France, of the sum of eight thou-
capital. } sand four hundred and fifteen francs rente per annum, which inscription standing in the name of Madame Vans, and which has been transferred to another for my account, I promise to return to William Vans, or to his order, the same inscription of 8,415 rentes tier consolide, in one month from this date, with the rentes then due.

Paris, 8 Vendemaire, year 9, (30 Sept. 1800.)

RICHARD CODMAN."

These notes appear to have been given on the days of their respective dates, and the contrary was not suggested by either party, before the Committee.

Payment of these notes was demanded by the Petitioner immediately on their becoming due, and much correspondence ensued between him and Richard C. Nothing appears in this correspondence to warrant the belief that the Petitioner considered John as having any concern in the transaction. The debt is spoken of, throughout, as the debt of Richard Codman.

In October, 1800, John Codman arrived in France. The object of his visit seems to have been to settle his partnership accounts with Richard C., who had retained large amounts of the common property, and had failed to make the expected remittances to meet the debt due to Messrs. Baring,— and had also written few and unsatisfactory letters to John C. After John C.'s arrival in Paris, much correspondence and negociation passed between the Petitioner and Richard C., respecting these debts, and John C. also endeavored, on behalf of Richard C., to effect a settlement of them with the Petitioner. A great number of letters were produced on both sides, but the Committee do not deem it necessary to report them in detail. Several offers of compromise were made and rejected between the Petitioner and Richard C., and John C., in a letter dated Paris, 31st January, 1801, enclosed to the Petitioner a statement of a compromise to which he should recommend to Richard C. to agree, (though he had not consulted him on the subject,) and recommended to the Petitioner, for the credit of both, (the Petitioner and Richard C.,) to terminate their disputes. This letter, and an alleged answer to it from the Petitioner, dated Pluviose, but without any day of the month, were much relied on by the Petitioner, as tending to show that John C. was liable with Richard C. on the notes. The Respondent denied that the alleged answer was ever sent to John C., but contended that it was a fabrication. The supposed answer acknowledged the receipt of John C.'s letter of 31st January, and of the statement enclosed, and proceeded to state that the phraseology of the letter proved John C.'s interest, and that he (the Petitioner) could prove them (J. and R. Codman) copartners. This answer was a copy written on a loose half sheet of foreign paper, and there was no proof that the original was ever received by, or sent to John C. The Respondent produced an original answer from the Petitioner, to the same letter of January 31st, dated the following day, also acknowledging the receipt of the letter, and of the statement enclosed, but in nothing else corresponding at all with the alleged copy produced by the Petitioner. On the contrary, the original answer reproaches John C. for persisting in his demand on Richard C., to the injury of his (Richard's) creditors, and does not intimate that the Petitioner had any claim on John C., or that the matter of the incriptions was a partnership transaction. No answer from John C. to the letter, of which the paper exhibited by the Petitioner was alleged to be a copy, was produced by him; but he produced,

as an answer to it, a letter from Richard C., appearing to be dated 17 Pluvoise, (February 5th,) saying that he could not accept the offer made by the Petitioner, and referring to a sum of 60,000 francs, mentioned in a letter from the Petitioner of *that date.* The Respondent, after the argument of the Petitioner's counsel was closed, offered to exhibit another letter from the Petitioner to John C., (mentioning the same sum of 60,000) as that to which the letter of Richard C. was an answer; but the Committee declined receiving it, in that stage of the hearing, as they did not find there was in the case any satisfactory ground to believe that the alleged letter of the Petitioner was ever sent to John Codman. No other evidence was given to the Committee of any claim made on John C., or on the partnership, by the Petitioner, while John C. was in France. It was admitted, however, by the Respondent, that some time after John C.'s return to the United States, the Petitioner made a claim on him by a letter to a Mr. Derby. But it appeared by the correspondence, that Richard C., when John C. was in Paris, was regarded by the Petitioner, and by himself, as insolvent, and during that period, the Petitioner offered, in one letter, to receive of Richard C., in full discharge, property which he (the Petitioner) stated to be not more than four shillings in the pound of the amount of his demand—and on R. C.'s giving notes for the balance, payable at a distant day,—and in other letters, to receive a part in hand, and to give a long credit for the balance, on the above mentioned notes of Richard C. He also, in several letters, declared his willingness to receive "his proportion of R. Codman's active property," and take his notes for the balance. At this time, there was no question about the solvency and wealth of John C.

On the 1st of Jan. 1801, John C. settled at Paris, his brother Richard's account with the copartnership, some of the items of which, it was admitted by the Respondent, were put down in round numbers, as they had not been exactly ascertained. It resulted in a balance of $48,328 57; for which, Richard C. gave his note of that date, and relinquished all claim to the partnership property,—John C. undertaking to pay the balance due to Messrs. Baring. As Richard C. had put in no part of the partnership stock, the balance due from him to the firm was, in effect, wholly due to John C., subject to be corrected by credits of his share of the profits of the outstanding business. This account, so settled, and the note, were produced by the Respondent.

While the negotiation with the Petitioner, as above mentioned, was going on, viz. on the 31st of January and 6th February, 1801, John C. took from Richard C., two other notes, representing the balance aforesaid; one for 110,000 francs, and one for 149,300 francs, and received mortgages to secure them on Richard C.'s real estate in France; and the Petitioner, and certain assignees of part of his demands, sued Richard C. on his two notes, (above mentioned) for the delivery of inscriptions, and for the proceeds of the two houses sold by Richard C. After some delay, the Petitioner, and his divorced wife, and his said assignees, recovered three judgments against Richard C. in June and July, 1802, which were liquidated, one at 90,000, one at 30,000, and one at 50,000 francs.

John C. left France for the United States, by way of London, in February, 1801.

The Petitioner, in support of his petition, produced the two aforesaid notes of R. Codman, and read certain letters, making part of the correspondence above named. He also produced the affidavit of James Swan, and his former partner, M. Dallard, and of Nathl. Cutting, that they had no *knowledge* in France of the dissolution of the house of J. & R. Codman. Mr. Melville also testified to the same point. Mr. Swan's affidavit stated that his former house had known J. & R. Codman as a house established at Boston, and had dealings with them in 1792 and 1793—that in 1794, he

(Swan) had paid money to R. Codman for account of J. & R. Codman, and took Richard Codman's receipt on account of his brother John—that in 1796 he had business with J. & R. Codman at Boston. M. Dallard stated that he had an open account with R. Codman, at Paris, and supposed J. & R. to be partners, and knew of no dissolution. Mr. Cutting stated that he had no business with J. & R. C., but was in France from 1795 to 1801, and that J. & R. C. were reputed to be partners. He supposed R. C.'s speculations in land were for account of the house, because J. C. came to France and took possession of R. C.'s real estates—that R. C. speculated in inscriptions—that he knew of no dissolution of the house. All these were ex parte affidavits.

Mr. Melville stated, that he was in France from 1795 to 1811, and had known the Petitioner and R. Codman there—had no other business with J. & R. C. than that of buying (some time before 1798) of R. C. a bill of exchange drawn by him on London in the name of J. & R. Codman—that John C. was generally reputed to be a partner with Richard C.—that John C. while in Paris proposed to him to make certain advances on the estates of Richard C., and stated to him (Melville) that he had made to the Petitioner offers of settlement with him on behalf of Richard C.—that the business, done by R. C. in Paris, was generally done in his own name—that he had no knowledge of any notice of dissolution in France—that speculation in the French funds and lands was carried on chiefly by foreiguers, Americans and others, they having greater advantages, &c.

The Petitioner also produced an affidavit, in his own hand writing, signed William Hall, and sworn to before Benj. Parsons, Esq., in which Hall stated, that he was the wharfinger of John C., and that after his (J. C.'s) return from France, he expressed great anxiety lest he should be implicated as copartner in R. C.'s debts to the Petitioner, and feared that the notice of the dissolution was not sufficient to exonerate him, &c., and that J. C. spoke of the Petitioner as a man with whom he had done much business, and that he had always found him a man of strict honor, &c. It did not appear to the Committee, from any of the books and papers, that the Petitioner had ever had any dealings with J. Codman, or the house of J. & R. Codman. An account in favor of that house against the owners of the ship Fame, for cordage, was produced, but no evidence was given that the Petitioner was interested in that ship, though it was alleged that she belonged to the former house of Freeman & Vans.

To discredit William Hall's affidavit, (which was taken in Boston, in June 1825, and without notice to the adverse party,) the Respondent produced letters of John C. to Richard C., written from London before his return to the U. States, in which he spoke with great contempt and harshness of the character and conduct of the Petitioner—and also a letter written by the Petitioner to C. R. Codman, in 1825, with a postscript also written by the Petitioner, but signed by Hall, requiring C. R. Codman to produce J. Codman's books, &c.

James Dalton testified that Hall had formerly been a reputable man, and in the confidence of J. Codman, but had of late years depreciated and fallen into bad habits, and believed he had been in one of the public houses of charity or punishment.

The Petitioner also produced a letter written to him by John Lowell, Esq. as the agent of the Respondent, dated at Paris in the year 1804, in which he stated that he had written to the executor of J. Codman, (the Respondent) advising a liberal compromise with the Petitioner, and had given him (the Respondent) a dark picture of the Petitioner's delays of justice, and saying that much was not to be expected from the property in France, after paying all expenses. Also a letter from Mr. Lowell to C. R. Codman, dated Boston, March 10, 1824, explaining his said letter to the petitioner, and denying the construction given to it by the Petitioner, in his publications.

A letter from R. Codman to the Petitioner was also produced, dated Sept. 1, 1800, in which, in answer to a complaint made by the Petitioner, that R. C. had not invested the proceeds of the houses in inscriptions—he stated that having taken the houses as security against the Petitioner's drafts, he could not with prudence, considering his connection with his brother, put the money out of his hands. This was alleged by the Petitioner to refer to a secret continuance of the partnership—and by the Respondent, to refer to Richard C.'s obligations to John C. for the large amount due from him (R. C.) to the house, on its dissolution, and still unpaid.

To prove that R. C.'s speculations in the French stocks were for account of the house, the Petitioner called John Skinner, who testified that the house of John Skinner & Sons had a claim on the house of J. & R. Codman, which arose from a loan of French stocks, made at Paris in 1795 or 1796, by Richard Skinner to Richard Codman, and that a security was taken for it in the name of J. & R. Codman, which was afterwards, viz. about 1805, at R. C.'s request, given up, and one substituted in the name of R. Codman alone; and that this last was paid in 1811, by the Respondent. His (John Skinner's) impression was, that the change was made because it was wished that John Codman might not appear in the matter. All this the witness stated, as having heard it from his brother Richard S. Skinner; never having himself seen either of the papers, nor had any personal knowledge of the affair. A claim made on the assignee of the estate of R. Codman in 1803, (he having been declared a bankrupt in that year, at Boston) was also produced, in the form of an account against J. & R. Codman, and in favor of Jno. Skinner & Sons, for certain bills of exchange accepted by Richard C., and said to have arisen out of the same transaction. Nothing appeared to have been paid from the effects of Richard C. on account of this claim; and it did not appear that any demand was ever made for it on the estate of John C., who died in May of the same year. But to show that the transaction was with Richard C. alone, and that no promise of J. & R. C. had existed, the Respondent produced the original account rendered in Paris by Richard Skinner against Richard Codman alone, and a power of attorney dated May 11, 1803, from Richard Skinner to William S. Skinner, to collect the demand of Richard Codman and of his assignee, and also a note for the same sum with interest, given by R. Codman to John Skinner & Sons, dated after his (R. C.'s) bankruptcy, viz. December 17, 1803, payable half in four and half in six years, on which payment was acknowledged by Wm. S. Skinner, as received of Stephen Codman, Administrator, January 12, 1811. And it appeared by a bond of indemnity also given to said S. Codman, Administrator of R. Codman, by John Skinner & Sons, that the debt was compromised by said Administrator, at fifty per cent.

John Codman (as has been before mentioned) died in May, 1803, and the Respondent was appointed his executor. Richard Codman died in May, 1806, and the Respondent was appointed administrator of his estate.

The Petitioner relied for proof of his claim on the estate of John Codman, on the two notes of R. Codman, which have been hereinbefore set forth, contending that on the evidence, John C. was liable on them as a partner with Richard C. But as his petition was wholly founded on an alleged judgment of a court in France against John and Richard C. as copartners, the Committee required him to produce said judgment. A translation, and also the original exemplification of a judgment of the Court of Appeals at Paris, was then produced and read.

As this statement of a French judgment against J. & R. Codman, has been made by the Petitioner in repeated petitions to the Legislature, as well as in numerous publications, the Committee have most carefully examined the document, and deem it to be their duty to state the substance of it with exactness. The record is very long and minute, containing the state-

ment of facts, the pleadings of counsel, and the reasons, as well as the decisions of the two courts before which the cause was tried. It is, however, merely a judgment rendered in favor of the Petitioner and certain persons to whom he made assignments, and against John Codman, in a suit in which the Petitioner and his assignees, on the one side, by attachments founded on the before mentioned judgments against Richard Codman, and John Codman on the other side, by virtue of the above named mortgages made to him by Richard Codman, claimed against each other certain real estates of said Richard Codman. No question arose in the suit respecting any debt or liability of John C. to the Petitioner. On the contrary, it was founded and proceeded entirely on the ground that John Codman and the Petitioner were each creditors of Richard C., and contending with each other for his property. The judgment of the lower court against John C., is simply that his demand shall be stricken from the list of claims on Richard C.'s property —and on the appeal, that the former decision is affirmed with costs of suit, and the ordinary fine of sixty francs against John Codman, for a groundless appeal.

The record begins by stating that J. & R. Codman were partners in a house established at Boston, which continued until May, 1798, when notice of dissolution was published there by John C. That RichardC. in 1794 removed to Paris, and there established a private banking house. It then proceeds to state the arrangements between Richard C. and the Petitioner, as above named, viz: the projected speculation in tobacco, the loan of stock, and the sale of the two houses, the giving of the two notes, the arrival of John C. in Paris, the note and mortgages given to him by Richard C., the suits and judgments of the Petitioner and his divorced wife and assignees against Richard C., and the attachments made on Richard C.'s estates by virtue of those judgments, and that a controversy then arose between John Codman and the said judgment creditors as to the validity of the mortgages made to John C.,—that on the 15th June, 1803, an interlocutory judgment was rendered, calliug on John C. to produce, within thirty days, the account between him and Richard C., out of which his (J. C.'s) demand arose. Said account not having been produced, the court proceeded to render judgment against the claim of John Codman, as being without any valuable consideration, and fraudulent, as against the creditors of Richard Codman.

It will be observed that John Codman had died at Boston, in May, 1803. before the interlocutory order was made for the production of the account,

The record goes on to state that on the 10th Dec. 1803, an appeal was taken to the court of appeals at Paris. (It does not appear by whose order or direction this was taken—the Respondent denying any participation or interference in it—one Babut, who had been employed in the life-time of John C., appears to have continued to act as agent.) The arguments of counsel are inserted at great length, and the court, adopting the reasons of the lower court, dismissed the appeal, and ordered the judgment to be affirmed and executed—condemned John Codman to the ordinary fine of sixty francs, and ordered him to pay costs to all the other parties.

It will be perceived by this statement that the allegation contained in the Petition referred to the Committee, that the Petitioner has a judgment of a French court against John Codman, or against John and Richard Codman, for any debt due to him, is utterly unfounded.

It was not denied by the Respondent that the Petitioner once had large demands and judgments against Richard C. alone, before his bankruptcy—but it was suggested that large amounts of property had been realized on them by the Petitioner in France. The Committee did not deem it necessary to inquire into that matter, as it is not comprehended in the Petition.

It was alleged by the Respondent, that the date of R. Codman's note of the 8 Vendemaire, year 9, had been fraudulently altered, so as to carry it back two years. To show this, he produced a copy of one of the notes, and a translation of the other, in the Petitioner's hand writing, enclosed in a letter to Rufus G. Amory, Esq., dated October 27, 1809—and the explanatory words, "or September, 1797," are added. The other note is truly translated, as dated in the year 9, adding the words, "say Sept. 1800." According to the French calendar, the 8 Vendemaire, year 7, would be Sept, 29th, 1798, and not 1797, as explained in the Petitioner's copy. Sept. 1797 would be before, and Sept. 1798 after the date of the dissolution of the house of J. & R. Codman. On recurring to the original of that note, the date of the day of the month and of the year are in figures, and the figure representing the year has maninfestly been scratched and blotted; and the date of the year, in the certificate of the stamp duty written on the margin, has been taken out with a sharp instrument.

Henry Codman testified that he attended the hearing on the Petitioner's petition before the Legislature, in the winter of 1811-12—that the original note for 8,415 francs rent was then claimed by the Petitioner, and supposed to be dated in the year seven, and that there was no blot on the figure—that in a subsequent hearing in January 1814, he found it was dated in the year nine, and that the figure had been written over or erased, but there was then no blot upon it—that the Petitioner was then charged with having altered the date, and an angry discussion ensued—that the blot, which now appears on the figure representing the year, has been made since that time. The blot now entirely defaces the figure, and a hole has been worn through the paper.

The Committee are satisfied that this date has been intentionally altered and defaced, and that the date of the stamp has been intentionally cut out.

The date of the day and year, in the other note, is not in figures, but written at length in words, and appears unaltered. The certificate of stamp is also printed in the latter, but in that of the former it is in manuscript.

The Respondent claimed the benefit of protection by the Statute of Limitations respecting Executors and Administrators, and required that the Petitioner should show why he had not made his claim within the limited time. To this the Petitioner answered, that he had been detained in France by the legal proceedings above mentioned—but he offered no evidence of any thing, done on the part of the heirs or representatives of John Codman, to prevent his making his claim in season, on the Executor, (the Respondent) except the prosecution of the appeal after John C.'s decease. It appeared, however, by certificates of the fact, produced by the Petitioner to the French tribunal, that he knew of the death of John Codman, in December 1804.

The Respondent also produced a release, given by the Petitioner, of all demands on the estate of John Codman and of Richard Codman, dated 14th of April, 1818, for the consideration of five hundred dollars, paid by the widow of John Codman, and of one dollar paid by the Respondent, executor of the will of John C., and administrator of the estate of Richard C., particularly specifying the claim now set up by the Petitioner. The deposition of Rufus G. Amory, Esq. was also produced, stating that the release was fairly obtained, and voluntarily given by the Petitioner. No evidence was offered by the Petitioner that the release was given under any circumstances which would invalidate it.

The Committee have thus stated what seems to them to be all the material evidence adduced by both parties; though much has been omitted, which they deem entirely immaterial. The hearing was exceedingly protracted, and the cause argued at large by counsel on both sides.

After the hearing had been commenced, the Petitioner, under the Order

of the House empowering the Committee to send for persons and papers, procured an order on the Respondent to produce the books of account, letter-books, and bill-book, kept by J. & R. Codman, and by John Codman, from the beginning of the copartnership to the death of J. Codman—also the correspondence of the Respondent with Babut, the agent in France. These and many other books and papers of J. & R. C. and of J. C. were produced and referred to, and offered to the inspection and examination of the Petitioner and his counsel, in the intervals between the sittings of the Committee. The books of accounts and letters, and bill-book, kept by Richard C. in France, from the year 1794 to 1802, were also called for, and were not produced. The Respondent, however, filed an affidavit, that no books kept by R. Codman in France, had ever come to his hands or knowledge, except two or three imperfect books of invoices and accounts—which he produced. No proof was offered that such books had or had not been kept, or had been lost or destroyed. Many papers of R. Codman—such as letters from the Petitioner, and from John Codman, were produced by the Respondent. No book or paper called for was withheld, which was shown to be in the Respondent's possession.

Upon the whole matter, the Committee are clearly of opinion—

1st. That the Petitioner has no judgment whatever against John & Richard Cohman, as he has set forth in his petition—and never had any judgment for any debt against John Codman, but for costs of suit only.

2d. That the transactions which took place in Dec. 1798, between the Petitioner and Richard Codman, out of which arose the two notes of Richard Codman, produced by the Petitioner, were private transactions between them, and not partnership dealings; and that neither of the parties, in entering into them, made or intended to make any contract binding on the firm of John and Richard Codman.

3d. That the partnership between John and Richard Codman was sufficiently and bona fide dissolved in May, 1798, and that there is probable evidence that the Petitioner had knowledge of the dissolution in December, 1798, before he entrusted his property to Richard Codman; and that he had certain means of knowing it, by his residence in the United States, before he accepted Richard Codman's notes for that property in September, 1800—and that his conduct and correspondence in Paris, while John Codman was there, are inconsistent with the supposition that he had, or believed he had, any just claim on the partnership.

4th. That if the Petitioner had ever had any claim on the estate of John Codman, it has been fairly and sufficiently released.

The Committee therefore distinctly declare their unanimous opinion, that William Vans, the Petitioner, has no claim, in law or justice, against the estate of John Codman,—and they recommend that he have leave to withdraw his petition.

JOSEPH LUCAS,
JOS. BARRETT,
THERON METCALF,
NATH. HOUGHTON,
THOMAS LORING.

## POSTSCRIPT BY WILLIAM VANS.

THE foregoing Report, made by Theron Metcalf, is answered *in this book*, by D. L. Child, Counsellor at Law, and Attorney to William Vans, before a Committee of the General Court, *on* his Petition, in the year 1833. The report says, in page 7th, Freeman & Vans were *never* owners of the ship Fame—*nor* did any business with John Codman. This assertion, made by Theron Metcalf, Esq., *is false*. The books of John Codman, and John and Richard Codman, from 1787 to the year 1800, will show. Therefore, as Theron Metcalf has reported to the Legislature Vans had *no* claim *on* John Codman, was a liar and forger, William Vans now places before the public a short history of his life.

On the 22d day of February, 1763, William Vans was born, at Salem, county of Essex, and state of Massachusetts. My grandfather was a merchant, in Boston—married the daughter of the Reverend Dr. Pemberton, Minister of the Old South Church *there*. My father went to Salem. Lived there, doing business as a merchant, and well known to John Coffin Jones and William Gray, Esq., *who* said to me some years since—Your father did a world of business, and was an honest man. In the year 1776, my father placed me in the counting house of John Coffin Jones, *with* whom I lived *five* years—then returned to Salem. Peace with England being made in the year 1783, my father said—If you choose to be my partner, go to London, and bring as many goods as you choose. I went to London, and returned to Salem with large quantities of merchandize. In the year 1785, being 22 years of age, Elias H. Derby requested me to go supercargo of his ship Grand Turk, to India, this being the first American ship to the Isle of France, Malacca, and Canton; *found* there ship Hope, ship Empress, of China, ship Canton, and a *sloop* from Hudson. These vessels all arrived at Canton that season. The Turk was fortunate in her voyage, and returned to Salem with a full cargo of India and China goods, that gave three cap-

itals for the one carried from Salem. Soon after my return I went into copartnership with Jonathan Freeman, at Boston, and fitted our brig Cadet, for *India*, this being the first American vessel to Bencoolen, Moco, Paddang, and other ports on the Island of Summatra, where I bought cassia, cinnamon, gum Benjamin, pepper, and other goods. Opened a trade with that Island, which has been so beneficial to the United States, and particularly to the town of Salem. In the year 1789, the Cadet arrived at Boston from India, and in the same year I left it for London. Arrived there. *Did* business as a merchant until October, 1793—then returned to Boston. During the time I remained in London, Freeman and Vans sent their ship Fame to India, commanded by *Standfast Smith*, who returned from India in 1793 to the port of Ostend, with a full cargo of cotton and sugar. In December, 1793, Freeman and Vans bought at Salem, of E. H. Derby, William Gray, and others, large quantities of coffee, cotton, and other goods. Shipped them on board the Fabius, Captain Stoddard; the custom house books at Salem will show—and on the 1st day of January, 1794, this ship sailed from Salem, bound to Hamburg. Arrived there: sold the cargo, and bought the ship Mercury: loaded her for France—arrived there—sold the cargo to the French government—remained in France, *doing* business—and between September 1794, and June 1795, Freeman and Vans were *sole* owners of the following vessels and cargoes, in different ports. *First.* Ship Mercury, of 300 tons, Benjamin Glover, of Nantucket, captain; Ship David, of 500 tons, Benjamin Berry, of Brewster, Cape Cod, captain; ship Harmony, with wine, at Hamburg; ship Margaretta, with cotton, at Havre; brig Sally Ann, with wine, *lost*, going to Hamburg; schooner Lucy, with brandy and wine; schooner Lafayette, taken by the Fnglish, and 20,000 dollars awarded by the commission acting under Mr. Jay's treaty, for damages of capture; ship Mary, and cargo, lost off the port of Cadiz; brig Enterprise, lost on the Banks, in February, 1795—M. Freeman, my co-partner, lost in her. William Vans also esnt the ship Narcissus from Russia to Boston, with a cargo of iron, hemp, and duck—custom house books will show—in 1794.

Freeman and Vans were part owners of ship Jefferson, on the northwest coast, and a copper bottom ship in Brest. The business done by Freeman and Vans from the month of April, 1794, to September, 1795, with P. Godeffroy, a merchant of Hamburg, amounted to two millions two hundred thousand Marc Banco to their credit—equal to 650,000 dollars; and with M. Shopenhowe, a merchant of Hamburg, about 100,000 dollars. Also with bankers in London, 300,000 dollars; and with Coffyn, consul at Dunkirk—Homberg, & Co., of Havre—Dobre, consul at Nantz—Chantereigne, consul at Cherbong—Diot, consul at Morlaix—Fenwick & Co., at Bordeaux—and many other houses in different ports.

Yet the Codman family, with the Hon. John Lowell, and the Amorys, said William Vans was *too poor*, low and contemptible for their notice—*but* took care to request the Hon. Daniel Webster to have (Vans) indicted for a libel. This he has not done, *knowing well*, truth was *no* lie. In the year 1794, being in France, I received from President Washington a commission to be consul there. I held, until my return to America. *This, then, is the man* Theron Metcalf, Esq., calls, in his Report, *liar*, *cheat* and *forger*, which, Mr. Child, Counsellor at Law, has answered in this book. The public will judge if the slander in this Report is true. Therefore, as page 2d of the Report says, "Richard Codman went to France in 1794, and resided at Paris *until* 1802"—*the copartnership*, however, *still continued.* This fact is confirmed by Mr. Cutting, consul at Havre, in page 36, of this Review: also the deposition of M. Melvill, in page 38—notwithstanding. Theron Metcalf, Esq., says, in the last page of his Report—the copartnership of J. & R. Codman was bona fide dissolved in May, 1798. This, John Lowell, Esq., and Theron Metcalf, notoriously known in Dedham, both lawyers, know to be false. To prove this fact, I have petitioned the Legislature to grant me a trial by jury. *This book proves* they have the power to *do*—as they have done to the executor of the will of John Codman—and why *not* grant it to me? And as in duty bound your petitioner will ever pray.

WILLIAM VANS.