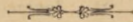


1582

# LEPROSY AND LIBEL.

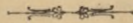


THE SUIT OF

## GEORGE L. FITCH

AGAINST

## THE SATURDAY PRESS.



HONOLULU, H. I.  
SATURDAY PRESS PRINT,  
1883.

### THE SUIT.

At the request of several citizens, and in order to preserve in a convenient shape the record therein contained, the proprietor of the Saturday Press has published the following account of the libel case of the Crown vs. Thomas G. Thrum, brought at the instance of George L. Fitch. A brief review of the circumstances of the case is all that seems necessary at this writing. All the important points at issue, in which the community has an interest, have been more or less fully brought out by the evidence, the speeches of counsels and the judge's charge.

Briefly, then, the libel suit against the proprietor of the Saturday Press was brought by Mr. Fitch ostensibly as a defense against the language of that journal. In reality, the suit was an effort to crush or at least to silence the Press for its plain, direct, unsparing and convincing exposure of the criminal mismanagement of leprosy in these islands by the Hawaiian Board of Health, of which body Mr. Gibson and Mr. Fitch were the officials chiefly responsible. The history of leprosy on these islands was fully brought out during the trial. Never in the history of medicine has the sworn evidence of reputable physicians been so full, so unanimous and so convincing in clearing away the doubts that had enveloped a debatable question. There is no medical testimony in the following pages—save the quasi-medical testimony of Mr. Fitch—which does not confirm the positions of the Saturday Press: that leprosy is dangerously contagious, that it is a distinct disease, that the strictest segregation is the only rational method of dealing with it.

This community had little concern that Mr. Fitch should call himself "Doctor," or propounded theories contradictory to the common sense and experience of the whole medical world; or that he should endeavor in any legitimate way to experiment with a view to their establishment; but, when the same shallow impudence that would openly dogmatize against the experience of ages and the united

opinion of all medical men, was allowed by a frail and corrupt administration to play with life and health in such a wholesale manner as to endanger the very being of the nation, it became altogether another affair. The Press believed that Mr. Fitch's method of dealing with the momentous question of segregation, if taken alone, as compared with the published statement of his views upon the subject, afforded sufficient warrant for the use of such language as gave rise to the suit before mentioned. The promptly rendered verdict of a jury has justified the writer of the article which provoked the suit in the view he had taken, while the hearty applause of an unprecedentedly large audience, which immediately greeted the announcement of the verdict, left no room to doubt that both "libel" and verdict were fully in accord with the sentiment of the community.

The result of the case of alleged libel against this paper has been all that was hoped for and all that it should have been. The full justification of the Saturday Press' discussion of leprosy has been established to the satisfaction of ten out of twelve jurymen. We think we will be sustained in saying that ten out of every twelve intelligent citizens uphold the Press in its every utterance on the topic which this libel suit has brought so pointedly to the consideration of the community. Doctor Fitch and his absurd pretensions would have been unworthy newspaper notice if he had not represented the executive power of a knot of men who are playing with human life in this kingdom, and whose responsibility is so much greater than that of Doctor Fitch that the temptation is to forget the infatuated theorist, who has so recently been punished, in resentment against the power that has made the unfortunate Fitch the tool of its terrible trifling with the life of a whole nation.

#### THE OPENING OF THE CASE.

The libel case against this journal, brought by Doctor Fitch, came up for trial before a foreign jury on the 13th instant, his honor Chief Justice Judd on the bench. Mr. John

Russell and Mr. F. M. Hatch for the crown, Mr. S. B. Dole for the defense. The following gentlemen were called to serve as jurymen: S. Magnin, D. McCartney, J. Spar, W. Wenner, E. Kistler, S. Selig, G. West, W. Lishman, J. B. Castle, Julius Asche, J. H. Bruns, Jr., J. C. Cluney. Before being sworn Mr. McCartney, one of the jurors, was excused, as he was a witness in the case, and Mr. C. R. Scarborough took his place in the box.

Neither side making objections to the jury-men thus empanelled, Mr. Hatch, for the prosecution, read the indictment as follows:

In the name of His Majesty, the King of the Hawaiian Islands, Oahu, to wit:

At a term of the Supreme Court of the Hawaiian Islands, began and holden at Honolulu, in the Island of Oahu, within and for the said Hawaiian Islands, and more especially with and for the said Island of Oahu, on the second day of July, in the year of our Lord, one thousand eight hundred and eighty-three, and continued by adjournment from day to day, and from time to time until the seventh day of said July.

The attorney-general of the kingdom, by William Austin Whiting, his deputy, lawfully appointed, on and in behalf of our sovereign lord the king, upon his official oath presents that, Thomas G. Thrum, a foreigner, of Honolulu, in the Island of Oahu, and within the jurisdiction of this honorable court, on the fifth day of May, in the year of our Lord, one thousand eight hundred and eighty-three, unlawfully and maliciously intending to vilify, disgrace and defame one George L. Fitch, a physician and doctor of medicine, and an officer of the Hawaiian Government, to wit, government physician for the District of Kona, in the Island of Oahu, unlawfully and maliciously did make, print and publish, and cause to be printed and published in a certain newspaper, entitled the Saturday Press, published at Honolulu aforesaid, and of public circulation within the Hawaiian Islands, and within the jurisdiction of this honorable court, a certain false, scandalous and malicious defamatory libel of and concerning one George L. Fitch aforesaid, a physician and doctor of medicine and officer of the Hawaiian Government as aforesaid, which said libel is as follows, that is to say:

When in the progress of newspaper conduct it becomes necessary to unmask a knave, to uncloak a charlatan or to expose a quack, the favorite refuge of the pilloried rogue is to call the journal which has undone him "a libelous sheet." (Meaning by said words "quack," "knave," "charlatan," and the "pilloried rogue" the said George L. Fitch.) The Press has recently been instrumental in convincing the intelligent readers of Honolulu that one of the most important

offices in the gift of the government (meaning said office of government physician for the District of Kona aforesaid) is held by a comparatively ignorant pretender (meaning the said George L. Fitch.) This action was the direct result of conflicting causes. There has long been a belief among physicians here that Dr. Fitch (meaning said George L. Fitch) is not a satisfactory practitioner; that his (meaning said George L. Fitch) theories are absurd; that his (meaning said George L. Fitch) scheme of cure is a delusion and a snare. But it has also been held by many that Dr. Fitch (meaning said George L. Fitch) has the interest of the natives at heart; that he (meaning said George L. Fitch) is kind, faithful and an indefatigable worker. Zeal and honesty of intention cover a multitude of sins. It has been for this last belief that the Press has invariably treated Dr. Fitch with courtesy. When he (meaning said George L. Fitch) could not get his recent letter published elsewhere, the Press opened its columns to him, with the understanding—which Dr. Fitch may not truthfully deny—that the right to answer and refute his arguments was reserved, and would certainly be exercised. Three weeks ago appeared a reply to Dr. Fitch, written and signed by one of the ablest non-professional medical writers in the kingdom. It was as respectful in tone as the absurdity and contradiction and gross misstatement of Dr. Fitch (meaning said George L. Fitch) made it possible for any reply to be. To the letter of Mr. Albert Smith Dr. Fitch made no reply. He (meaning said George L. Fitch) visited neither the proprietor nor the editor of this paper, and made no request for space in which to answer his (meaning said George L. Fitch) critic. But on the street and in public resorts he (meaning said George L. Fitch) has charged this paper with the crime of incompetence in criticism and the infamy of libel. His (meaning said George L. Fitch) slander is a public reproach. It provokes retaliation in kind. It shall receive early attention. (Meaning and intending thereby to injure the fame, reputation, and good name of said George L. Fitch) to the manifest great injury and damage of the fame, reputation, and good name of the said George L. Fitch, and tending directly to bring him into disgrace, odium, contempt, scandal and ridicule. And so the attorney-general aforesaid, by his deputy aforesaid, upon his official oath aforesaid, doth say and present that the said Thomas G. Thrum, at the time and place aforesaid, in manner and form aforesaid, is guilty of the offense of libel against the peace and dignity of our sovereign lord the king, and contrary to the form of the statute in such case made and provided.

WALTER MURRAY GIBSON, Attorney-General,

(By his deputy,) WILLIAM AUSTIN WHITING.

A true bill, found this 7th day of July, A. D. 1883. A. Francis Judd, Chief Justice of the Supreme Court presiding at the term.

The trial of the case was then proceeded with, the first witness called by the prosecu-

tion, Albert C. Smith, stated that T. G. Thrum was publisher of the Saturday Press on date of May 5th, containing article of alleged libel, which appears above in the indictment. [Paper offered in evidence by prosecution.]

Doctor Fitch was then placed on the stand and testified in substance as follows:

After stating the various positions held by him as a government officer, he said also that he held a license to practice medicine in the kingdom. Also had a license to practice in California, dated 1870. Had a diploma from Bellevue College, New York, was appointed government physician, October 26, 1881, by Hon. H. A. P. Carter, also superintendent leper hospital at Honolulu, and appointed as medical superintendent at Kalawao. Saw the article published in the Saturday Press, May 5th. Referred to him. No other Doctor Fitch in this country to his knowledge. Remembered the malpractice case in which Doctor Rodgers and himself were sued by Mr. Hinckley. Remembered his testimony relating to receiving his education. Said received diploma at Bellevue Hospital. Did not remember all. Entered Bellevue College, October, 1869; did not remember the day of the month, was there  $4\frac{1}{2}$  months before receiving diploma. Attended the regular course of lectures at that college.

Never studied at Philadelphia. Commenced the study of medicine March 29, 1865, in Eldorado County, California, with Dr. M. F. Clayton, was there 13 months and money gave out, then went to San Jose and San Francisco, there continued to study. Was night clerk in hotel there some time. Studied with Dr. W. Lyndorf at that place, then worked at dentistry. Studied at San Leandro, in 1867, under Doctor Coleman. Clayton was a county practitioner, and also practiced dentistry. In June, 1869, was at the Toland Medical College, San Francisco. Have not practiced dentistry since 1870. Took no special instructions in dentistry. About 5 months is the time used as a regular course in a medical college. All colleges have the same term (positively). Had not studied leprosy espe-

cially before coming here, nothing more than a general knowledge. Never attended a case of leprosy before he came here. But helped to cut off the leg of a leper, in order to get him in his coffin, in the city and county hospital, San Francisco. Leprosy is not thoroughly curable, can make it disappear but is convinced that it is not thoroughly curable. Never wrote otherwise; think leprosy is a recurrent disease.

Never told any patients could cure leprosy, except in the way mentioned. Told them, could make spots disappear. Theory of leprosy is that it is the last stage or form of syphilis; came to that conclusion by examining case after case by the hundreds. Doctor Enders, of Maui, did advocate the fourth stage theory, but, do not think he does now. No text book writers support that view. Does not regard syphilis as basis of all the diseases of Hawaiians. There are many skin diseases. [Here the witness being asked to enumerate them said: "Land of love! I can't go through them all; believe almost all that flesh is heir to may be found here"]. Do not believe leprosy to be contagious under ordinary circumstances; think the disease incubates in 25 or 26 days. H. V. Carter, one of the best authorities does not know the length of time but believes it to be very short.

There are fully 1,600 cases of leprosy in the kingdom. Practically all natives have syphilis. [Here followed details of cases intended to show that leprosy was not contagious in certain cases. Husbands having the disease and wives not, and vice versa.] In most cases leprosy is not contagious. The proportion of natives who take leprosy is very small; 600 of the 1,200 may have leprosy for all he knew. Lepers in the kingdom, June 27th of this year, were 750 at Kalawao and about 200 at Kakaako. The outside estimate of those who may or may not be contagious is about 300. There are not many cases of confirmed lepers at large. Did not know of a single case. There are many cases that may become lepers if not treated. Could not tell where syphilis ends and leprosy begins. The

confirmed cases are easily distinguishable. Early stages are difficult to distinguish. Regards segregation as emphatically necessary. There are a great many cases at large which would lock up if had the power. Is not, however, interfered with by the board of health. Is not a policeman, is a doctor, and pass judgment upon patients brought before him. [Witness had previously read a commission from the board of health empowering him a special agent of the board of health to segregate lepers.] In small-pox and scarlatina a comparatively few cases are contagious, nothing like the number that are so in this disorder.

Have not read the law regarding leprosy and its segregation. There are some persons would not segregate, even if they had the leprosy. In old persons it has passed the contagious period. Thinks the line may be drawn firmly and distinctly. Thinks letter to Doctor Emerson agrees with present position. Have never said that leprosy was contagious in eating, drinking and sleeping. Said what he did about syphilis. [Mr. Dole then read from the board of health report of March, 1882, page 61: "But licentiousness alone is not to blame for the spread of this disorder. Passing the tobacco pipe from mouth to mouth is a not uncommon cause, and I fully believe the custom of numbers eating poi out of the same dish with their fingers also come in under the same head." Witness said: Meant by this syphilis and not leprosy.]

Persons discharged from hospital last June had passed contagious period. No doctors approved of their discharge except myself. No other doctors were present. Thought Sumner a safe man to allow out. Dr. Trousseau said Sumner would be a leper all his life. Sam Kamoahakau was also safe when he left. Did not have a sore finger when he left the hospital. No other doctors saw them. Does not remember asking Doctor Stangenwald about Sumner.

As to syphilis preparing the community for leprosy—the fourth stage of syphilis, partaking of the nature of the late second and early tertiary stages—the time has not yet come for the

disease to have run its course. It is a question of centuries, not of years.

Dr. Rogers is assistant in dispensary; took charge when was gone. Had not closed dispensary twice; had not advertised it closed. [Objection to prove allegation sustained by the court.]

In treating leprosy, he had made many symptoms disappear. [Objection to naming a lady witness until put upon the stand sustained by the court.]

The noon recess was then taken until 1:30 P. M.

#### AFTERNOON PROCEEDINGS.

On the reassembling of the court, at 1:30 P. M., Dr. Fitch again took the stand and continued his testimony as follows: Mr. Dole, cross-examining, witness said he had served eye cases in practice here, five of cataract, one middle cataract, one rigid. Some of the cases treated had been successful, others not. Did not use the ophthalmoscope. Knew the catoptric test; did not use it. Mr. Grunwald had a cataract. I do not know of any cases of leprosy at large that ought to be locked up. If there are any, don't know where they are. Of the one thousand and six hundred lepers estimated to be on the islands, one hundred and fifty have died, four hundred and fifty have been arrested, and about seven hundred and fifty segregated. I know of a great many cases in town, but they are all light. Sam, the native released, had not passed the age which I considered dangerous. I recommended his discharge, because the disease had nearly disappeared from him. In the majority of cases, leprosy is neither infectious nor contagious. [Mr. Dole quoted from Dr. Fitch's report to the board of health.] The witness then qualified by saying, in "a majority of cases." Asked that Doctor Rodgers be appointed. Recommended that a resident physician at Kalawao be appointed. When I asked Mr. Gibson to appoint Dr. Rodgers to position as assistant, Mr. Gibson objected, saying, "that man is personally repulsive to me." My request was at last granted. Afterwards, had disagreement with Dr. Rodgers; found he had

applied for position as resident physician at Kalawao. Did not object to Rodgers on professional grounds. The lepers at the settlement objected. I have not visited the other portions of the Island of Oahu, being told I would receive an order when desired to go. I was not the directing manager. Did not consult Dr. Rodgers regarding lepers discharged. The board of health signed the papers letting the cured lepers go. By Mr. Hatch: The attendance at the dispensary varied, the average during six months being about thirty-five per day. At the time of the discharging of the lepers cured, there were present his majesty, Messrs. Gibson, Moanauli, Cleghorn and Widemann. The order was signed by Messrs. Gibson, Moanauli, Cleghorn and Widemann. I also signed it. Cross-examined by Mr. Dole. Largest number of patients at dispensary on any one day, was 323. I prescribed for all. I was all used up, and went home and slept for thirteen hours. Was at the dispensary on the day mentioned for six hours, and attended all; did not have time enough, and work was not done properly.

Major Charles T. Gulick was called, but not arriving, the defense, to save the time of the jurymen present, admitted the authenticity of the license. The prosecution then rested.

Mr. Dole, for the defense, moved judgment, arguing that the prosecution had failed in showing any malice in the publication which would be necessary to show to cause libel.

Mr. Russell, for the prosecution, stated that full malice had been shown by the wilful publication, and quoted from chapter 32, sections 3 and 4, of the penal code.

The court, after reading the authorities presented by Mr. Dole, and listening to the arguments on both sides, overruled Mr. Dole's motion, which decision was excepted to, and the defense proceeded with their case.

Dr. Trosseau stated that he was a practicing physician; had been here twenty years; was familiar with leprosy; was familiar with syphilis; said no affinity existed between the two. Leprosy is as old as the world; syphilis is a comparatively new disease. The leprosy of

to-day, in bible lands, is identical with that mentioned in bible times. The date of the first epidemic of syphilis is rather obscure. Leprosy is reported to have been introduced into Europe after the return of the Crusaders. The first epidemic of syphilis occurred in Italy, about the time of the discovery of America. Anti-syphilitic treatment has failed in leprosy; is bad treatment for leprosy proper. Iodide of potash is good for reducing tubercles. Believed leprosy to be contagious, fully as much, if not more so than syphilis. When first came here doubted the contagious qualities of leprosy, but observations caused him to change opinions. Easy to define the two diseases. Held the same position that Dr. Fitch now holds as special superintendent for several days, but not at the same salary. [Laughter.] Had sent, during that time, some 700 lepers to Kalawao and found his diagnosis of the cases had been quite correct, other physicians having examined the cases afterwards. Was, and is, a member of the examining board who send lepers to Molokai. Was not present at the hospital when the nine lepers were discharged. Dr. McKibbin, another member of the board, was in England. Had known Sumner for the last twelve years; had seen him since his return and consider him in a bad condition, affected with leprosy. A week before Sumner was discharged visited Kakaako at request of Fitch, an unofficial visit; Fitch spoke of Sumner and about letting him go. Witness expressed surprise, as he considered him as bad a leper as ever. Consider anti-syphilitic treatment good to decide doubtful cases. When had doubts regarding people being leprosy, sent them to the branch hospital at Kakaako, to give the public the benefit of the doubt. In syphilis, by the treatment there, they get better in three months, in leprosy, not. Doctors McKibbin, Brodie and witness generally agreed on leprosy cases. Leprosy is contagious by absorption or inoculation. Leprosy may be contracted by the contact of the abraded portions of a person's body. It may also be contracted by imbibition by the lips in using a pipe, by the mouth in eating poi, or by sexual

intercourse. Would regard anything but segregation as dangerous. Very little leprosy now in Europe; it is thought that the disease is being eradicated there by segregation; leprosy is worse in the extremes of heat and cold. Doctor Gross, of Philadelphia, corresponded with witness for years on the subject of syphilis and leprosy. Doctor Gross had never seen a case of leprosy. Witness showed one of Doctor Gross' letters on the subject of leprosy to his fellow physicians of this city and was authorized to answer that there was no connection between syphilis and leprosy, and that on these islands it was deemed contagious. Did not consider Sumner a safe man to be at large. Thought the idea the day that he was at the branch hospital was simply to view the worst cases. When Fitch mentioned letting Sumner go, he said: "Surely, Fitch, you would not do that." Was acquainted with eye practice, but did not pretend to be an oculist. Eye operations are regarded as very difficult. Cataract is not one of the most difficult operations.

By Mr. Russell: Indiscretion of the patient may injure the effect of the operation. Have visited the branch hospital five or six times for the purpose of sending people (lepers) to Molokai. Told Fitch that he removed the syphilis but stuck on the leprosy. Whenever witness had doubt regarding a subject, he sent him to Kakaako, giving the public the benefit of the doubt. He thought at one time that Sumner was going to die. When witness last saw Sumner, he was well in health but still a leper. Certain drugs have the reputation of curing leprosy. Witness had been among lepers here twelve years, and had read nearly everything written on leprosy, and have yet no knowledge of a well authenticated case of a cured leper. Had on arrival in this country the same idea that Doctor Fitch has, that he could cure leprosy. Had, however, never published his opinion. Do not believe the contagious character of the disease, can be destroyed by medical treatment. Leprosy takes a long period to incubate, probably six or seven years, the proof being that no young

children have it, although suckled by leprous mothers, the disease appearing after a lapse of about this number of years.

William Sumner, one of the nine "cured and discharged lepers," a half-white, apparently about seventy years of age, was the next witness. He showed many of the symptoms popularly believed to indicate leprosy. Witness said he thought board of health ordered his release. Had been allowed to go free for a certain time. Was now living with his daughter on makai side of Hotel street, opposite Hawaiian Hotel. First few days after being released, lived on Fisherman's Point, then went to live with daughter. [Witness here sat down on the floor, and taking off the shoe and stocking from his right foot, showed to the jury three sores—one on ankle, one on sole of the foot and one on great toe.] Said was about sixty years old. Went to Molokai about six years ago, partly through own desire. At first was worse, then better, then very much worse; then got medicines from Dr. Fitch and improved. [Juror Magnin asked when sores broke out. Witness answered, just after he was released from the hospital.]

Miss Agnes Aylet, for some time past a teacher in a school for native children on Fort street, was the next witness. She testified that she had been treated by Dr. Fitch for over a year for leprosy.

Doctor Brodie was the next witness. He said he had been in Honolulu about three years, and had practiced all the time. Had not paid a great deal of attention to leprosy, but had treated several cases, about five in all, some of which had been under continuous treatment for over two years. Said leprosy and syphilis were entirely different diseases. It was not difficult, as a rule, to distinguish between them. When not complicated with other diseases, there was no trouble about telling the difference between them. Medical treatment for syphilis was not often good for leprosy; sometimes did harm. Never saw any medical authority supporting the theory that the two diseases were identical. Diplomas sometimes fix standing, sometimes do not.

With young men diplomas do in a measure, give a certain standing. After thirteen years of practice the reputation is made by success and treatment. [Referring to the fact that Fitch had practiced that long.] Have not been associated with Dr. Fitch in any cases. All authorities agree that leprosy cannot be cured, and that leprosy is contagious. The period of incubation in syphilis is from twenty-six days to three months; in leprosy, from one to ten years, or even longer. The two diseases do not select or prefer the same parts of the body. Iodide of potassium is used in syphilis, the average dose is from five to ten grains; ten grains is a large dose. Could not prescribe for from two hundred to three hundred patients in one day. Would not attempt it. Have had practice in eye diseases. Saw Grunwald before he was operated upon by Fitch; made ophthalmic examinations of his eye several times and treated him for several weeks. He then had atrophy of optic nerve. Had no cataract. No operation could have benefited him. Would not operate upon the eye for cataract without using the ophthalmoscope. Had seen a leper in London before coming here. Doctor Johnathan Hutchinson, senior surgeon of the London Hospital, was treating this leper. Doctor Hutchinson considered the case hopeless.

On cross-examination Dr. Brodie said that he had performed no operation on Grunwald's eye. Doctor Pontoppiden examined Grunwald's eye a few days after he did. Doctor Pontoppiden was a Dane, a specialist, an oculist, and stood well in his profession; he was the author of several articles and medical journals which he (Doctor Brodie) had read.

Doctor Hagan was the next witness. Said he had studied in Starling Medical College, in Ohio, and in the College of Physicians and Surgeons in New York. Had been one year in Honolulu. Had seen Doctor Fitch perform four operations, for cataract, three of which were failures. One may have been a success. Had not known of the case since the operation. Would not himself at-

tempt to perform an operation without the use of the ophthalmoscope. Fitch admitted that he had no experience in eye operations, but said he wanted to become a practiced operator. I assisted at the operation on Grunwald's eye; but did not examine the eye before the operation. At Fitch's request I held the eye open, and he removed the lens. The fact that he could not see afterwards showed that the disease was amarois and not cataract. In cataract, the successful operations were about ninety per cent. Fitch had told him that leprosy and syphilis were the same disease. Fitch classed leprosy sometimes as second, sometimes as third, and sometimes fourth stage of syphilis. Apparently he debated the question in his own mind. In his dispensary practice Fitch seemed to think that syphilis covered everything. He (Doctor Hagan) thought, from the history of the disease on these islands, from the history of the cases he had studied, and from the testimony of natives with whom he had talked, that leprosy is contagious. It is contagious, and so far as evidence goes, it is incurable. Syphilis, on the other hand, is one of the most satisfactory diseases with which a physician has to deal; it can almost certainly be cured in all its stages. It is just the reverse with leprosy. As to the contagion of leprosy in all its stages or in all cases, witness would not dare to answer. Should say that if a physician did not know how to make a test for albumen in urine, a part of his education had been neglected. It was a question whether the average physician had a right to make eye operations. In cases where the services of a specialist could not be secured, it was of course necessary that general practitioners should attempt such cases, but they ought to make the most careful study possible, before attempting an operation, and should make strict examinations of the eye with the ophthalmoscope. Witness said it was impossible to do justice to the number of cases treated in daily practice at the dispensary by Doctor Fitch, as they were hastily and imperfectly examined; and it was impossible in so short a time to make a thorough examination of so many

patients, or decide as to the nature of their diseases.

Mr. Henry Grunwald,—in answer to Mr. Dole—said:

I am blind of both eyes; lost sight of one some years before I lost sight of other. More than a year ago I consulted Doctor Brodie; also Doctor Pontoppidan; they both told me mine was a hopeless case; that my disease was one of the optic nerve. Afterwards showed my eyes to Doctor Fitch. He told me I had cataract, and thought he could cure it. After he operated I could see a little more light. He told me I would probably be able to see in three months after operation. He performed a second time by running a needle into the eye. I have not been able to see. I think Doctor Brodie and Doctor Pontoppidan told me my case was hopeless because I told them I was a poor man and had no money. During recess, Doctor Fitch put some money into my hand.

No cross examination.

Court adjourned to next day.

#### SATURDAY MORNING.

On Saturday morning Doctor Emerson was the first witness called. He testified as follows: Am in regular practice here. Received my education in Boston and New York. The course of study at the Harvard medical school was three years when I attended; it is now four. The course at the College of Physicians and Surgeons, New York, is three years. [In answer to Judge Judd:] When I was in New York the course at Bellevue was three years. Have practiced here between four and five years. Have given special attention to leprosy. Consider it (not in etymological sense) contagious; by inoculation, assuredly so. It is contagious in about the same degree as syphilis and under similar conditions. Any absorbing surface may take in the virus of syphilis or of leprosy. There are necessarily cases in which ignorance of the cause of contagion is inevitable; but do not consider the operation of any natural law mysterious. Hawaiians generally, because of their habits, are more liable to leprosy than whites. As a rule, Hawaiians lack proper fear of leprosy, though many have

pronounced fear of it. There is no identity between leprosy and syphilis. Know of lepers at large here; saw one this morning. Cannot say how many are at large, but, from the fact that I frequently meet them, should say there are a considerable number. I cannot say if they do or do not report at the dispensary. The face of the leper I saw this morning was new to me. Am not sure that I have seen more than two unmistakable lepers in the last sixty days. From my knowledge of medical colleges I should say that one reputable school would give credit for the time spent at another reputable school: that is, if college "A" were a school in first class standing, it would give credit for time passed at college "B," always provided that college "B" was of equally good standing. Bellevue Hospital is one of the best medical colleges in the United States. In any first class college it is absolutely necessary that students should be examined in everything contained in the curriculum. As a rule, it is necessary that previous study should have been in a regular medical school, in order to be credited on the regular course of another regular school. I doubt if Bellevue would grant a diploma for an irregular course of study. In the Boston medical school, the term is eight months; ordinarily, from three to five months is a term; but pupils are supposed to study outside of regular terms. There are two terms in each year, a summer and a winter term; but it is not necessary that a student should attend the summer term if he is prepared to pass the examination of the winter term. I do not know of a reputable college that would grant a diploma for less than a three years course.

Leprosy is contagious under the same limitations as syphilis. Syphilis is less contagious in its late stages than in its earlier stages. In leprosy, the degree of contagiousness is different in different external manifestations. When leprosy is manifested by macula spots, or by anaesthesia only, it is not so contagious as when it takes the tubercular form, as manifested by mucous patches or ulcers. It is difficult to say when leprosy is or is

not contagious, because there are great gaps in our knowledge. In considering the [hypothetical] cases, "A," "B" and "C," "A," is the anæsthetic form, "B," the tubercular form, with ulcers and patches, and "C," the form in which ulcers have disappeared, and spontaneous amputation has been followed by apparently healed fingers, toes or limbs. I do not think that a leper could continue in the state "C" for ten years. It is certainly improbable. If any leper had undergone great improvement for over five years, it would certainly be a remarkable case; but I should not believe he was cured until I had watched him to the end of his life. A leper continuing in the condition "C" for five years would be indeed a *rara avis*. In the condition "C," a leper would be less dangerous than if he were in the condition "B." In either of the conditions "A" or "C," a leper would be less dangerous than if in the condition "B;" but the tubercular form of leprosy when in the condition "C" is continually breaking out again. I have heard about a pamphlet announcing the cure of lepers in Norway, but have not seen the pamphlet. Have heard of reported cures in India, but think those cures were afterwards denied. Had charge of the leper settlement at Molokai, I should say for the greater part of eighteen months off and on; of the forty or less natives (not lepers) at the settlement, only two developed leprosy while I had charge. I developed no formula for the cure of leprosy. My efforts were tentative. I tried to find out what would do good in each case; sometimes a remedy that would relieve one case would do nothing for another. It is difficult to state the exact period of the incubation of leprosy. My personal belief is, that the period is quite long; I should say that five years was an average period and considerably under the maximum. I do not know of a case of continuous improvement for five years—treated or untreated. Sometimes macula spots disappear of themselves; sometimes spontaneous amputations heal of themselves; both may take place while the disease remains in the body.

David McCartney, the next witness, stated

that he had been an apothecary for about ten years. Was not a graduate of pharmacy, but had been under the tuition of a man of large experience. Knew Doctor Fitch. Had put up prescriptions for him frequently in private practice. Had put up various combinations. Most of them contained iodide of potassium. Could not recall a single instance in which a prescription for internal use has not contained iodide of potash. Had heard Doctor Fitch talk about leprosy. Had heard him say he could and would cure leprosy. Heard him say this shortly after he came to Honolulu from Kauai. His exact words were: "I can cure it and I will cure it." Fitch had him test urine for the presence of acid and albumen. He brought urine to the store frequently; once he brought a vial to be tested for acid; said he had either forgotten or did not know how to use litmus paper, a very simple test, one with which every doctor should be familiar. Did not remember of ever having tested urine for any other doctor.

On cross-examination, the witness said he might have dispensed a prescription of Doctor Fitch's within the last week which did not contain iodide of potash. If he did, he had no recollection of it.

A. C. Smith testified: I was born on these islands and have always lived here. Have not been educated at a medical college, but have read medicine for over twenty years. Have had a great interest in leprosy, and have read everything I could find on the subject. Have studied leprosy generally, and in special cases. Have seen and treated it in the outer districts. Have been associated with regular physicians in the treatment of diseases; I know Doctor Fitch. Have talked with him about leprosy, syphilis and cataract. Began to have conversations with him soon after he came from Kauai. Fitch said leprosy and syphilis were one and the same disease. He said he could cure it. He did not explain that cure meant temporary improvement. Fitch said that Doctor Daniellson, of Norway, claimed to be able to cure leprosy, and held that incipient stages could be cured always. Fitch

said that he knew more about leprosy than any other man in the world. Fitch told me that he believed in segregating every case of syphilis. Fitch has rarely spoken to me about anything else than syphilis, leprosy and one or two cases of cataract. It was difficult to get him to talk of any other subject than leprosy and syphilis. I have been two or three times to the dispensary. The method of examination was almost always based on the supposition that every one who came there was either syphilitic or leprosy. On no occasion did he do much more than look at the tongue. If the tongue was fissured, he said it was diagnostic of syphilis. His prescriptions generally contained iodide of potassium, according to what Doctor Fitch said; some of the medicines contained bi-chloride of mercury. He had seven prescriptions; the bottles used were filled by referring to numbers; the bottles were sent to the druggist who filled them according to the numbers. When I was present both rooms were full. Fitch took half a minute, a minute or two minutes to each case. I do not remember having seen Fitch examine the chest or feel the pulse of a single patient. He generally asked each patient if she or he had had syphilis before. I discussed with Fitch his peculiar style of diagnosis. In one case, a man appeared with chest trouble, having shortness of breath, with eyes puffed out, probably indicative of heart disease. Fitch asked the man to let him see his tongue. Fitch said the tongue showed fissures, distinctive of syphilis. I asked Fitch why he did not diagnose the case for chest trouble or heart disease, and he said he had no time. I said that the disease might be something which would be injured by the medicines given. Fitch said he had no time to make an examination. Fitch pronounced several persons leprosy that I did not think were so—clean, tidy women that showed no external signs of leprosy. Fitch showed the arms of several women on which he said spots had disappeared. I asked if the spots were anæsthetic. Apparently he did not know, I remarked that it might be *kane* (a disease which resembles in

appearance *morphœa alba*), the spots, not anæsthetic, resemble anæsthetic spots of leprosy. I know one or two persons that Fitch pronounced lepers that showed no signs of the disease at the time, and have not since. I talked with Doctor Fitch about cataract in the case of Grunwald. Mr. Grunwald was an old acquaintance of mine. He told me he had been to a Doctor Kraft, who had advised him to raise funds and go to New York for treatment. I doubted that he had cataract, and advised him as a friend to go to other physicians to have his eyes examined before taking the step advised by Doctor Kraft. I advised him to go to Doctor Stangenwald or Doctor Brodie. He went to Doctor Brodie. On the advice of his wife, Mr. Grunwald afterwards went to consult Fitch. According to Grunwald's statement at the time, Fitch asked him if he would like to have an operation performed. Fitch told me that he had performed several operations here—seven or eight, I think. He said that some of the cases had recovered sight for a time, but that inflammation has prevented perfect restoration. I think he said vision was destroyed by inflammation from syphilitic iritis in every case. I think he said he had no experience till he came here. I went to Kakaako Hospital with Doctor Fitch in March or April of this year; went all round with him, saw all the rooms, saw his dispensary room, his photographing apparatus and his photographs, and learned his methods of treatment. While there I saw Sumner. Doctor Fitch said he wanted to show me a man I must know, an old timer. I did not recognize Sumner at first. Doctor Fitch asked me in Sumner's presence if I did not consider him a cured leper. Out of delicacy, wishing not to hurt Sumner's feelings, I gave him an evasive answer—to the effect that if he had improved under treatment, as Fitch said he had, it would be well to keep him there until the cure might be assured. I did not consider Sumner a cured leper, and did not so tell Fitch. I saw Sam Kamoahakanu, the Lahaina leper, on board the *Likelike*, on the Tuesday following

his discharge from the hospital. Sam's name was mentioned in a newspaper article as a leper that had been cured. As I believed him to be still a leper, I went to see him in company with Doctor Hagan. He had a tubercle under one eye, and a sore finger. I knew Sam in Lahaina ten or eleven years ago. First discovered that he had leprosy about a year ago. When I was at the hospital, Doctor Fitch asked me about a leper boy who had apparently no skin disease, and wanted to know if there was any reason why he should not be allowed to leave the hospital. I said that his hands were paralyzed, the muscles next to useless, and that he was unmistakably a leper. Doctor Fitch said, that segregation at Kakaako could not be strictly enforced, as the lepers climbed over the fence whenever they pleased. Fitch then said that he wanted to build a fence outside the present fence, but that he was thwarted by Mr. Gibson and outside influence. He told me that certain lepers were allowed to go out on an order of the president of the board of health, against his wish. When Doctor Fitch talked of the identity of syphilis and leprosy, he based his belief upon similarity in sores, aching bones, anæsthesia, etc. He mentioned as his principal authority a French writer named Fournier, (quoted by Bumpstead and Taylor.) Shortly after Doctor Fitch came here from Kauai, he talked about his plans for the medical supervision of the islands. He proposed a bill to be introduced in the legislature making him medical director of the whole group, at a salary of \$7,000 a year. Doctor Rodgers, or Doctor Hagan, was to be his assistant. He asked me to use my influence with the native members of the legislature in behalf of the bill. A bill of that sort was introduced, I believe. I think by Kaunamano of Hamakua, and think it was not passed. As to the theory of identity, he said it was his own discovery. When I asked him how it was possible that such dermatologists as Erasmus Wilson and Tilbury Fox, who had studied such questions so closely and over so great an extent of years, should have missed

the discovery if it were so; he remarked that: The world had not found out how to stand an egg on end, until that old fool Columbus had showed them how. After Fitch published his letter in the Saturday Press, he asked me what I was going to say in answer. I said I did not know, if at all. He told me that if I did answer him, he would come back at me. He said Fournier was a big authority, and that he had plenty of ammunition left. He said many people had congratulated him upon his article. He said Doctor Damon and Mr. E. O. Hall had taken him by the hand and told him, that the last paragraph suited their views entirely. That paragraph was to the effect that none but licentious persons could receive the disease. I asked him what he meant by that paragraph, and he said, "Oh, that was molasses to catch flies." I said something disparaging of the remark, and he said that it did not do to be quarreling all the time. He said he was tired and wanted to go home to California. I told Doctor Fitch that he had thrown down the gauntlet and no one was to blame but himself for the treatment he had received. The only new points brought out in cross-examinations were, that the witness knew of at least one man who had been cured of leprosy by Hillebrand. And that the witness recommended Sam to go to Dr. Fitch, as *at that time*, he believed the doctor to be enthusiastic, energetic and conscientious.

#### SATURDAY AFTERNOON SESSION.

The court assembled at 1 P.M.

Mr. Gerke called: Am a dealer in live stock. Have lived on the islands five years, first at Honolulu, then at Hanalei, Kauai; know Dr. Fitch; have heard him say that leprosy was the fourth stage of syphilis, and that he was prepared to cure it; that he had the cure in his pocket, that it came from Norway. Doctor Fitch said he thought he could better his condition by earning the reward of \$200 offered for the cure of each case of leprosy; he went to Honolulu, and returned and stated that he had been appointed physician to the branch hospital; he examined several cases at Hanalei; one man (Kuku) taken as a leper

to Honolulu by order of Doctor Fitch; Mr. Koelling said the man was not a leper; Kuku came back to Kauai; he is now fireman on Princeville plantation; his nose is flat; all his children have flat noses; the man had always done his work on the plantation; I was book-keeper on the plantation; I know of another case, a man sick with consumption; Fitch said the man was well enough to work; the man's contract was cancelled, and he was sent to China; when two days at sea the man died.

Cross-examined by Mr. Russell: Heard of the Chinaman's death at sea from a companion who returned from the trip. I distinctly remember about the case of the fireman sent up to Honolulu as a leper. Am sure Fitch ordered the man Kuku to be taken. Mr. Koelling offered to bet Fitch that the man would return. He did return. Fitch said Kuku was cured.

Mr. Mehrtens called: Am a police officer in Honolulu; know Doctor Fitch; had conversation with Fitch when he first came to Honolulu; he said that he could cure leprosy; he examined persons at the station house; he looked at the tongues of some of the police officers and said they had leprosy in their systems; said that cracks in their tongue showed it; they were not treated that I know of; they are there yet; he examined my tongue; he said I might have leprosy; in my opinion this was a joke.

Cross-examined by Mr. Russell: Fitch did not say anything about syphilis when examining officers; this was some time ago.

Dr. Rodgers sworn: Am a physician in practice in Honolulu; heard Dr. Fitch's testimony in regard to dispensary during his absence on Molokai; I think his testimony a gross perversion of facts; am still assistant at the dispensary; in February last, Dr. Fitch went to Molokai; had no notice of his departure until I read it in the newspapers. I went to the dispensary in the morning, found the dispensary gate locked, reported in person to the secretary of the board of health; the secretary said he knew nothing regarding it; I then wrote a note to the secretary of the board, February 7, 1883. The next morning the dis-

pensary was open; I made certain inquiries, the result was that I wrote another note to the secretary, dated February 8th; the purport of the note was that from information I was satisfied that the closing of the dispensary was in consequence of Dr. Fitch's orders. I applied for the position as assistant physician at Kalawao leper settlement last December; only heard Fitch say on one occasion that Mr. Gibson wanted him to go to the settlement as resident physician, that he (Fitch) was the only man who knew how to handle a leper; he said he did not know whether to go or not. I advised him to go. What he stated here was directly opposite to that told to me by him up to about April; the number of individuals entered upon the dispensary books as lepers, was one thousand; the books are now missing.

Cross-examined by Mr. Russell: If a physician advertises in a modest way his specialty, it is not considered against the code of ethics. Have a diploma from the medical department of New York University. I had no key to the dispensary; did not think place was ever locked. Dr. Fitch was the chief; I was only his assistant. Do not remember that I went there again the day that I found the place locked; do not know whether the dispensary was open that day or not. I have frequently visited the branch leper hospital; I have not treated patients at the branch hospital independently of Dr. Fitch. A note unsigned was handed the witness and he said regarding it, I wrote the note submitted to me; these are the contents: "My own position to be at \$3,000, when your \$5,000 commences; also a new commission as physician to leper asylum and branch hospital. I believe Gibson wants to conciliate me. My present position as assistant to the doctor, instead of to the hospital, is not satisfactory." Note must have been written by me after my appointment as assistant. Do not know the date.

W. M. Gibson, premier: My occupation is that of public officer of this kingdom; am president of the board of health; my commission dates May 20, 1883; have been present at the branch hospital on several occasions, when

lepers were discharged; I was present on the occasion of the discharge of patients in June. I am proprietor of the Pacific Commercial Advertiser newspaper; that is, I am one of those chiefly interested. I recognize the article entitled, "Lepers cured and discharged" as having been published in that paper June 5th. I am not the editor of the paper, although I am consulted and give my opinions. Remember the occasion of the discharge of lepers mentioned. His majesty and members of the board of health were present. The patients were discharged on the joint responsibility of the board of health and the physician in charge; they were discharged in consequence of there being no apparent evidence of disease. Remember that I thought at the time that the heading of the article "Lepers cured and discharged" was incorrect, and placed over article by mistake. The witness said he could not give the name of the writer, but Mr. Dole said he did not desire to know. Remember Sumner; it was understood that he was to remain with his family; he was, it may be said, discharged on leave. It was spoken of, but not enjoined on him to stay on the reef. There are printed forms to be filled in, in case of discharge. Some forty or fifty patients were discharged from the leper hospital last year. Only one physician approved of the case and that was Doctor Fitch. The opinion of the physician in charge was on the printed form in use at the branch hospital; I cannot recall the exact wording of the certificate; there was present the physician in charge; another physician who was expected to be present was ill; as there was only one physician present, the members of the board, being laymen, wished to have a chance to examine those about to be discharged. The men were stripped, to show that there was no break nor sore on their bodies. Sumner was so examined; he was clean in body. Understood that it was safe for Sumner to go at large. Remember report being presented in legislature regarding resident physicians at Kalawao. I did ask Dr. Fitch to go to Kalawao about six months ago. He was willing to go and reside there, but thought he could not be spared from the dis-

pensary; he said he was not afraid of leprosy. I knew something about the article (in the newspaper) before it was published. I suggested to one of the writers that something be said about the lepers being discharged. The patients were discharged, because the physician advised that some were cured and safe to be liberated. At one time I told Dr. Fitch that I thought he might have to go to Molokai as medical superintendent; the matter has been left in abeyance; he and his wife seemed to be willing to go; in addition to leaving the dispensary, it was said that nobody was there when Dr. Fitch was not there; that people would leave the dispensary if Dr. Fitch went away.

By Mr. Russell: Leprosy has claimed my attention only partially; I am not familiar with the medical treatment of physicians at leper hospital, prior to Doctor Fitch; I know of no cases of lepers being discharged as cured during Doctor Emerson's administration; I know of some forty who have been discharged from the branch leper hospital, and about twenty from the leper settlement since Doctor Fitch's administration. I think Doctor Fitch's treatment has been favorable, whatever his medical skill may be; he has inspired confidence in the mind of the natives.

By Mr. Dole: The people mentioned were discharged on Doctor Fitch's statement and signature only. Mr. Dole read the article headed "Lepers cured and discharged," which had appeared in the Advertiser, and Mr. Gibson continued: Thought article incorrect at the time, and after publication had said so to one of the writers, and suggested the preparation of an article that would correct the impression of "cured lepers." Neither myself nor the members of the board regarded the patients discharged as cured lepers. Have not understood that Doctor Fitch asserted in any case that the people discharged were lepers, and had been cured. Doctor Trousseau was the physician who was expected to be present; I think his name will appear on one or more certificates of discharge.

Doctor Brodie recalled: Fixed the date of

his treatment of Grunwald as August, 1881, for six weeks.

Doctor Hagan was recalled on a point relating to the man Sam, described by Mr. A. C. Smith, but his testimony was objected to, objection being sustained by the court.

T. G. Thurm sworn: Am publisher and proprietor of the Saturday Press; published the article on which the libel is based for the public good; have published articles on the subject of leprosy several times; the article published April 22, 1882, appeared with my knowledge. It was published during my absence in San Francisco, but I was aware of the contents before publication. I consider the matter of leprosy as of vital importance to this community, on account of the numbers of lepers at large. Consider it the duty of the press to be correct on the subject.

Mr. Dole, for the defense, here rested his case, and, after a short recess, the following rebuttal testimony was introduced by the prosecution:

George Smith, examined by Mr. Hatch: Am engaged in the drug business; have tested urine for one other physician in Honolulu besides Doctor Fitch; have put up prescriptions for Doctor Fitch not containing iodide of potassium.

Doctor Stangenwald, examined by Mr. Hatch: Am a physician and chemist in Honolulu; know Doctor Fitch; have visited the branch hospital once; spent half a day there. I saw a number of cases that seemed to be very much improved from their former condition; in some cases I consider Doctor Fitch's treatment legitimate; have acquaintance with leprosy in India. Leprosy can be improved by treatment, in many cases, but it is incurable. It is not equally contagious in all stages. The standing of Bellevue Hospital, New York, is good.

By Mr. Dole: I do not think I know the case of a cure by Doctor Hillebrand; I should be very cautious how I accepted statements of supposed cured cases. I saw Mr. Sumner at the branch hospital before his discharge; I examined him; he appeared very much im-

proved, still he was a leper; the fact is acknowledged everywhere that it is not safe for lepers to mingle with the community; think that the disease has remained in abeyance as long as ten years, in India; leprosy is essentially a blood disease; it may remain latent for many years; anything that tends to lower vital power tends to develop the disease. Syphilis could no more produce leprosy than a cocoon could produce an apple tree.

William Phillips, a half-white, examined: Have been under Doctor Fitch's treatment for leprosy; I did not think I had leprosy, but Doctor Fitch told me I had; I am now quite well.

Kaao examined: Have been at the branch hospital for lepers; was sent there because the doctors said I had the leprosy; my condition was very much improved by Fitch's treatment since I first went there; I am not yet discharged; the photograph produced is of me when I first went there. (The picture shown represented the subject with greatly swelled arms and face.)

Mr. Dole objected to the testimony as not rebuttal. Mr. Russell said that the defense had endeavored to prove the truth of charges made against Doctor Fitch in the article, to prove that he was a quack, charlatan, etc., and these lepers were produced to show that Doctor Fitch's treatment was beneficial.

Mr. Dole's objection was overruled by the court.

[Proceeding, Mr. Dole, for the defense, desired the witness to take off his shirt and expose his back. There seemed to be some reluctance on the part of the patient to do so, but he finally removed the covering and exposed a back which told a story in itself, being covered with macules and tubercles, a most repulsive sight. *En passant*, it is proper to mention that his honor told the prosecution to keep the witnesses suspected of a taint of leprosy out of the witness box proper, Mr. Sumner, Miss Aylett, this witness and the three following being sworn standing in front of the clerk's table.]

Kepaaina, examined by Mr. Hatch: Am

living at the branch leper hospital under Doctor Fitch's treatment, for leprosy. I was arrested and sent there as a leper [photograph shown to the jury as he was upon entering]. By Mr. Dole: There is some disease in my left hand yet.

At request, the witness unrolled the covering on the diseased hand, and rolled up his sleeve, showing hand and arm to the jury.

Mary Pinau examined: Am living now at Kawaihāo, at the house of a man named Kaua; have been under treatment by Doctor Fitch for leprosy, at the branch leper hospital; was benefited by the treatment; there is a great change in my appearance; was sent to the branch leper hospital by the government. Doctor Fitch said I was to go to the settlement at Kakaako. Doctor Trosseau afterwards examined me.

Kamakaoilani examined: Have been under treatment of Dr. Fitch for leprosy; was sent to the branch leper hospital; I went to Dr. Fitch myself, and asked if he would let me go to the hospital; no other doctor examined me; my face was very much worse than it is now; my forehead was overhanging.

Charles Tryer examined: Have been under Dr. Fitch's treatment for leprosy, as I was told; Dr. Brodie told me I had leprosy, and Dr. McKibbin; Dr. Trosseau examined me, but did not tell me what was the matter; the result of Dr. Fitch's treatment was very good; he gave me medicine for one month; I went home and have improved; have been improving ever since; my toe broke out so that I could not get a boot on; was under treatment by Dr. Brodie; he did me no good; the foot is entirely well, except a small hole in one toe; there is no numbness; before it was numb; was not able to work before I went to him; am able now to work.

Cross-examined: Am living at Koolau; the government arrested me as a leper and then sent me home again. [The witness took off his shoes and stockings and showed his feet to the jury.] Have been wearing shoes for three days; no pain from the sores; some of the

bones have come out of both of the sore toes.

Witness No. 24 examined: Although the name of this witness was given, he desired through his honor that no publicity be given to it in the papers, and he is therefore known as No. 24, that being his number in the order of witnesses. He said: My wife has had leprosy four years; she is now in the leper hospital; have been married to her eight years; have lived with her up to two months ago.

By Mr. Dole: My wife says she has the leprosy; she has been at Kakaako two months; have lived with her up to that time; have had two doctors attending her; the doctors said my wife had the leprosy about four years ago; Dr. Thompson of Kohala said so; I do not know that I have got the leprosy.

Dr. Fitch, in rebuttal, said: Heard Mr. Mehrten's testimony; some of the native police asked me if there was anything the matter with them; I spoke in a joking way; I told them they all had it bad; I had no litmus paper at the time I asked Mr. McCartney to make the test for me. Witness described his methods of using litmus paper.

With regard to Keku, his wife was a leper, and he asked to come to Honolulu from Kauai with her and be examined. Doctors here said he was not a leper, and he was sent back. Did not recollect speaking to Gerke; did have conversation with Koelling. Had heard portion of Doctor Rodger's statement; did not lock the door, did the drawer.

By Mr. Dole: Carried the key of the drawer in my pocket. Doctor Rodgers never complained to me. First knew of it by drawer being smashed. Did not speak to Mr. Gerke to-day nor yesterday. Have a good memory. I found leaves gone from the record book, and then I locked the drawer. Forgot the proper way to use litmus paper, have to refer to the book.

By Mr. Hatch: Have given Mr. McCartney a prescription lately to put up for me that did not contain iodide of potassium.

This closed the evidence.

## MR. DOLE'S ADDRESS.

In his opening address to the jury, for the defense, Mr. Dole spoke in substance as follows: I am sorry that you have been detained so long in a case like this which has presented such disagreeable and painful phases, but the public importance of this case has made it necessary for us to go to the bottom of it. I will be as brief as I can in commenting upon it. The evidence is so great in quantity that it will be impossible for me to refer to it in detail, and unnecessary also, for I am sure that you all remember it well; I need, therefore, but refer to its most salient point. This is a case in which the most important question before the Hawaiian nation is being tried on its merits. The community have from time to time become alarmed on the question of leprosy, and then the rush of business and other interests have driven it aside, and society with its pleasures and its cares has allowed itself to go to sleep in the face of the greatest danger that has ever threatened it. It is well that society should be awakened from this sleep, and I believe that this case of libel you have been so long considering, in which Doctor Fitch is the prosecuting witness and Mr. Thrum the defendant, will accomplish this.

Leprosy is the worst known disease of the present and historic times. It has successfully defied medical skill. Physicians have not been able to say whence it comes or to explain its laws. It has always and everywhere been found to be incurable. It attacks all races, and all classes; no rank in life is safe, adults and children are alike exposed to its ravages. Medical skill can make no limit, no assurance can be given from the lessons of experience against this most terrible, most loathsome and most hopeless of all human diseases. But Doctor Fitch has come, like a new Columbus breaking an egg, to tell the people of this nation that leprosy is identical with syphilis, a disease which is remarkably amenable to medical treatment and is undoubtedly curable. It is for discussing this theory of Doctor Fitch and criticising his statements and methods in

applying it, that the defendant is charged with the crime of libel. The subject is one of vast interest to the whole community. Nearly all of the physicians of this country have been studying the disease of leprosy for years; they have not hesitated to expose themselves to its contagion, have patiently investigated its nature, trying to discover some clue that might lead them to some method of treatment which would conquer a disease which has hitherto been found unconquerable. All the physicians here agree, with one exception, and that one exception is Doctor Fitch, that leprosy is altogether distinct from syphilis. All the great medical authorities over the world, without exception, support this view. Upon this question depends the moral, social and commercial future of the Hawaiian Islands.

The law of libel is intended to afford protection against the publication of injurious, false and malicious statements. If criticism of officials is true and published for justifiable ends, it is praiseworthy no matter how damaging it may be to the official referred to. It is right to insist upon the strictest accountability of public officers. Who may as properly and effectively insist upon this accountability as independent journalists? If the laws be administered for other motives than the public good, if ulterior ends be considered, if outside influences are allowed to have weight, the ends of law are defeated. It is the privilege of every newspaper to comment upon the faulty, methods, the improper action, or the bad official character of any public servant. It is not only a privilege but a duty. If the public journals do not spread before us the incompetence, the irregularities, the improper or unlawful conduct of officials, who will? The newspaper that neglects its duty in this respect is not worthy of the name. Now the existing management of this matter of leprosy is more important to this community than any other question. It goes to the pocket of every taxpayer. It is a menace to property, to society, to health and life. It is the great public question, and Doctor Fitch is its principal exponent. The legislature and the government have

given him great powers. He is the chief executive officer in the treatment of leprosy. He is an agent of the board of health, with the law and the police at his back. He has more power for good or ill than any other officer in the kingdom; and though his rank may be lower and his salary less than that of other officers, he holds to-day the most important office under the Hawaiian Government, for on the proper exercise of the authority of his office depends the health, the wealth and the future of the realm; and if he may not be held to a strict accountability, if his methods and professional conduct be not fair subjects of newspaper inquiry and condemnation, then there is no such thing as freedom of the press and free speech in the kingdom. We all know something about leprosy. We have read something of its history here and elsewhere, and we have doubtless gathered from the medical testimony during the trial much additional information about this dreadful disease. We are all familiar with its appearance. No disease was ever so fearful, none so hopeless. It is not a mere matter of life and death, but of worse than death; for in its course death begins years before life ends. Life to the leper is worthless, and worse than worthless. He is loathsome to others, and most loathsome of all to himself. In the middle ages, leprosy extensively prevailed and segregation and nothing else has driven it into the corners of Europe. How is it here? I tell you, gentlemen, the government is playing with this disease. When you see the king and the board of health, all laymen, going on a kind of picnic party to the Kakaako hospital, taking with them one—only one—physician, out of the three medical inspectors of lepers, examining the patients, having them stripped, and, upon the advice of that one physician with his unsupported theories, turning nine of them loose upon the community, and then writing the affair up in a newspaper, I say it is worse than child's play. And they dare to do this when every medical man in the kingdom, except one, says that such action is dangerous to the public at large—and that on

is Doctor Fitch, the prosecuting witness in this case. Is it not a commendable thing in a journalist, week in and week out, year in and year out, to fight this kind of thing and to denounce the man who has aided and abetted this outrage, and others like it? If the most influential medical office in the gift of the government is held by a man who is unworthy to hold it, is it not the duty of newspapers to say so? This man is medical superintendent of the leper settlement on Molokai, is in charge of the public dispensary in this city, is physician of the branch hospital on the outskirts of the city, is an agent of the board of health, with power to arrest, imprison and segregate every leper that he can find, and it is his duty under the law to do so. This man can stamp his action for good or ill upon the future of the whole Hawaiian race, and upon all classes of this community. We have had medical testimony that leprosy is seen daily on our streets, is found in public places of resort, and among government employes. It is the clearly defined duty of Doctor Fitch to carry out the law of segregation. How has he done it? We find him with his two theories, that leprosy and syphilis are identical, and that leprosy in certain stages is not contagious, or is not contagious at all, as he says in his printed statements. If he confined his theories to private practice we might have less ground for noticing them. But to experiment with his theories at the risk of the whole community and in defiance alike of medical testimony and public opinion is an outrage. He admits that Mr. Sumner was discharged upon his recommendation. It was said that Sumner was to be isolated at a private house at Fisherman's point. But he was not isolated at that place. He remained there a few days and removed to a house in the heart of the city, near the Hawaiian Hotel; has been to Waikiki; is free, in fact, to go where he likes and to associate with whom he likes. And there is the unfortunate young lady who, I believe, is a fine school teacher, who has been treated by Fitch for leprosy for more than a year. She has been allowed to carry on a large school of little children

for all this time, children who have not the knowledge and discretion of adults in regard to this disease; is not this almost like murder? And yet the prosecuting witness says he believes in segregation. Is not such action worthy of all the condemnation that can be conveyed with types and printer's ink? Does it not call for more severe invective than has yet appeared in any paper?

Taxpayers have a right to inquire into the stewardship of their servants: have a right to know what officials are doing and why. If a defamatory article be true and is published from no unworthy motive, it is not a libel, no damages have been sustained and no punishment ought to follow. This defendant has no ax to grind. He has the same interest that you have in this subject. In the exposure of great wrongs, strong language is necessary; milk and water remarks are useless. Doctor Fitch is not on trial before you, as you may have imagined, from the efforts of the counsel for the prosecution to limit the introduction of evidence on the part of the defense. The liberty of the press is on trial. You are to decide whether it be worthy of praise or blame to try to prevent official abuse. You are to decide whether it is desirable or not to restrict truth. As Anglo-Saxons—as members of a national stock to whom belief in free speech and a free press is a cardinal principle and for which your ancestors have been ready to fight, to you I appeal to guard this great privilege. What would we be to-day without an independent press? Without it the tendency here would be away from liberalism and toward unconstitutional government; this tendency is alone held in check by the presence here of an independent press representing a healthy public sentiment. There are two or three or four small sheets fighting this battle; but they are independent. Let us keep them so; let us not drown their protest till the offenses of misgovernment are reduced to a minimum, till the nation's life shall be altogether in the hands of honorable men.

The physicians of the world, with the single exception of Doctor Fitch, agree that leprosy

is contagious. It is not safe to let a single leper associate with those who are uncontaminated. It is Fitch against the world. He has been unable to produce a single medical opinion in favor of his belief. Doctor Trousseau has told you that he fears the possibility of leprosy inoculation by means of fleas, mosquitos and flies, and that in France a certain disease is transmitted through a kind of fly. How would it be here, in the years when those purple flies abound, whose bite ordinarily is dangerous, should they become charged with the deadly virus of leprosy? Imagine a south wind to send a hundred million of mosquitos from yonder hospital on the reef to the homes of Honolulu; who can defend himself or his family from such possible messengers of infection? I say to you that the hospital at Kakaako is a standing menace to the safety of every man, woman and child in this city. It is not a detention hospital, but a permanent hospital. And now as to the use of the terms used in the article complained of: The article uses the words "quack," "charlatan," "knave," "rogue" and "ignorant pretender," not absolutely "ignorant pretender," but "comparative ignorant pretender." Now, quack means a boastful pretender to medical skill, and a charlatan means about the same. I leave it to you if the evidence does not show these words to have been correctly used. Knavery means in law dishonesty, not financial dishonesty necessarily, but a slight sense of honor. What about the eye practice? Two witnesses state that Doctor Fitch admitted that he had no experience in eye operations before coming here. He wants to learn, and he takes advantage of his position at the government dispensary to get some experience in this line. He uses no ophthalmoscope, and he has put poor fellows to the pain and danger of an operation, when he might have known that there was not the slightest chance of doing good. He performs the operation for cataract on Grunwald when he was incurably blind, as he might have ascertained if he had been a competent physician, and he promises him he will have his sight in three months after the

operation, when he ought to have known, as Doctor Brodie stated, that after an operation for cataract the patient will see immediately, if he is going to see at all. It is painful to think of this man going around recklessly slashing the eyes of trusting natives and others for the sake of acquiring experience. The article charges him with being a "comparatively ignorant pretender." There is his diploma. It is in Latin; I do not know exactly what it says, but it has a respectable look. It is not the diploma referred to in the license to practice in California. It is dated March 1st, 1870, whereas the diploma referred to in that license was dated the 26th of February, 1870. This could not have been a clerical error, as both the month and the day of the month differ. There may have been an honest mistake in regard to this difference of dates, but I submit it to you as it stands. But a diploma simply gives a man's standing at the time of his graduation. Thirteen years afterwards his standing is decided by his success and his methods. Whatever Doctor Fitch has been doing all these thirteen years, he has hardly held to the knowledge required for obtaining a medical diploma. Why should he have come to these islands three years ago at a salary of \$75 or \$125 a month? The litmus paper test is significant. Mr. McCartney said that Fitch asked him how to use litmus paper in testing for acid and alkali. Doctor Fitch, on the stand, after stating that he thought he had a very good memory, said that he never could remember about using litmus paper and always had to turn to his books to ascertain the correct way. He also spoke of two or three kinds of litmus paper, whereas there can only be two kinds. In the management of the dispensary, Doctor Fitch testified to having on occasions, or on one occasion, as many as three hundred and twenty-two patients in one day, and that he diagnosed the whole of these and prescribed for them in six hours, which allows about a minute and a half for each one. Does not this sound like quackery? He recommends to the board of health that a resident physician be stationed at

Kalawao, and when Doctor Rogers—a good physician, as he admits—offers to take the place, he opposes it because it will diminish his own salary, and the poor unfortunates at Kalawao go without a resident physician. It seems to me, gentlemen of the jury, that looking at the evidence in this case, together with Doctor Fitch's published articles and his testimony in the case, we may find that the article complained of as a libel, is substantially correct and appropriate to the occasion. We find Doctor Fitch's own statements often utterly inconsistent with each other, even in the limits of the same article. Over and over again in these articles does he profess to insist upon strict segregation. In practice he cares nothing for it. Sometimes he says leprosy is neither infectious nor contagious, and again shows it to be so easily transmitted that it may be taken by smoking the same pipe or eating poi with lepers. It is apparent that in his published articles he has stated a good deal to catch the eye of the public, but which he never intended to reduce to practice, and which he never has put to practice. At the hospital at Kakaako segregation is a sham. The patients climb over the palisade and escape, and friends communicate through the palings. I believe, gentlemen, that you fully understand the case in all its bearings and its great public importance. I submit to you the interests of the defendant, Mr. Thrum, on trial before you for his liberty, and the interests of the free press and of free speech in the Hawaiian Islands. I thank you for the patience and attention with which you have followed the course of this long trial, and listened to my arguments.

#### MR. RUSSELL'S ADDRESS.

Mr. Russell then rose for the prosecution and said: The counsel for the defense said the doctors of this country fought this dreadful disease of leprosy at their own risk; if this be true, which one of them has done any more than Fitch; has any one done as much, or half as much? Doctor Fitch tells you, and he is not contradicted, that in the dispensary they come there to be treated for syphilis and leprosy; when the natives knew it was the best

thing to do, they flocked there by hundreds. It was his duty as the medical representative of the government to encourage that which he had instilled in the native mind, and which was this, that the better course for them was to come forward and be treated for whatever diseases they had, and more particularly leprosy, and not hide away in caverns and garrets, as had been their custom before the kindly influences of Fitch, which educated them to the standard of offering themselves for treatment; I contend that Fitch performed that which good judgment dictated; I contend that his treatment was just such as to nurse the native mind, and no man has cultivated that principle more than he. Is that reckless treatment? Reference was made to the fact that doctors meet lepers in the street every day; the only evidence on that point was given by Doctor Emerson. He saw two new acquaintances, and they were lepers, in sixty days. It is said that Fitch's theory was his own. I don't pretend that a man's success is a proof of his ability, because hundreds of the ablest men have been failures; the attempt is made to drag Fitch into disrepute in comparing him to Columbus, who discovered America; Jenner was mobbed for his discovery of inoculation as a preventive of small-pox.

A great deal of stress was laid on the case of Miss Agnes Aylett. A year ago she went to Doctor Fitch; he told her he thought she had leprosy and he treated her for it; she is not a private patient; she is a dispensary patient; she told you that the black spots that were on her person have disappeared under the treatment of Doctor Fitch; she has not suspended a single day in her vocation of schoolmistress; would any of you suppose from her appearance that she was a pronounced leper? Doctor Emerson said in the early stages of leprosy it was less contagious than in its advanced stage. As to the independence of the press, I am at a loss to understand what it is intended to convey. If the "liberties of the press" are meant, that, I understand. If you rank the fourth estate greater than the government, then the govern-

ment had better collapse. There has been nothing unfavorable presented to you that affects the diploma of Doctor Fitch. The vigor he has shown in his former life, in order to attain his present position, is highly commendable. He went onward and onward until he reached the point that he sought to achieve. Reference has been made to his methods of dispensing. Doctor Hagan told you what occurred at the dispensary during the two or three visits that he made. There was not an instance shown you where a mistake had occurred through the want of attention on the part of Doctor Fitch. A good deal has been said about letting these lepers go from the branch hospital amongst the community; it is not exclusively the work of Doctor Fitch; Doctor Trousseau said he had signed papers allowing five persons to leave the branch hospital; he did not say they were persons that were there by mistake. Allowing these persons to go abroad is not in conflict with Fitch's theory.

If it be true that it is not dangerous for Miss Aylett to be abroad, how could it be said that it was dangerous for Sumner to be at large? Fitch does not say that every stage is entirely non-contagious. Four or five persons were presented here to illustrate Doctor Fitch's theory. The photographs also presented were taken at the time of their entry into the hospital, and I claim it showed a wide gap between their former and present condition. Instead of being a sorry picture, it is a picture of which Doctor Fitch ought to be proud, of which the community ought also to be proud. Can it be said of a man that attains such results that he is a "quack?"

[The learned counsel analysed in detail the various cases that had been presented to the jury during the afternoon, showing that the theories had been carried out and the means had been effectual in removing the previous ghastly appearance of the patients. He also referred to the testimony of Doctor Rogers with regard to the dispensary being closed on a certain occasion; also, to the operation on the eye by Doctor Fitch.]

How far does all that has been shown and told you convince you that Fitch is a "charlatan" and a "quack?" The article in question, instead of representing the liberties of the press, represents the abuse of the liberties of the press. The press is a power. What has Mr. Thrum done towards stamping out this dire calamity from our district? Which of them is the quack, Thrum or Fitch? "By their deeds ye shall know them." Has Thrum presented any tangible evidences of his theory? I agree that if the liberties of the press were muzzled, it would be detrimental to the public interests. Is not Fitch the victim of a despotism of the press, and for which he brings the press before the bar of justice? Mr. Daggett, minister resident of our powerful neighbor, the United States, in his introductory remarks in opening the exercises of the Americans a few days ago, July 4th, was pleased to say: "I see before me representatives of nearly all the nationalities of the world—Germans, Scandinavians, Englishmen, Irishmen and the gentle Hawaiian, who comes here with his kindly *aloha* to welcome the stranger within his gates." If Mr. Daggett had ransacked the vocabulary, he could not have found a more appropriate word than "gentle," to describe the native character. Shall not we, as strangers within his gates, extend our kindly aid, our heartiest *aloha* to him, and endeavor by every act to aid and succour him, and exert our every energy to ward off and finally stamp out this dire disease which threatens his national existence? I take it that it is a duty incumbent on every one of us to do so. Has not Doctor Fitch done this? What has Mr. Thrum done looking to this conclusion? Comparatively nothing, save the writing and publishing of such articles as these from the comfortable editorial room, while Doctor Fitch exposes himself to many inconveniences of travel, and the risk of being poisoned himself by this terrible malady. I ask you to consider the whole subject, not only from a personal standpoint, but from a national standpoint, and there is nothing left for me but to add my thanks for your patience and atten-

tion, and I leave the case with you.

In the midst of Mr. Russell's speech, about 7 o'clock, a recess for supper was had. After Mr. Russell's close, came the charge.

#### CHARGE TO THE JURY.

At the conclusion of Mr. Russell's address, Judge Judd charged the jury (in brief) as follows: He spoke of the case as one of national importance and said that great interest was shown in it, greater than had been evidenced in many murder trials. The court-room had been filled with spectators during the past two days. He said to the jury that if they found a verdict of guilty, it must be of first or second degree. Criminal action for libel was justified by the usage and experience of all nations. Since the first penal code of this kingdom, made in 1850, there had been a libel law on the statute books. The whole of the article must be considered. The first issue was: could the article fairly be considered as applying to Doctor Fitch; the second, were its applications true or false; the third, was it published for justifiable ends. If true, and published maliciously and without justifiable ends, it would still be libelous; but, if true and printed for motives of public good, or if it could not be found to apply to Doctor Fitch, then the defendant must be found not guilty. It was not necessary to prove the literal accuracy of every epithet used; but if the general scope of the charges stand proved by the evidence, and the general intention of the publication be proven to be good, then the accusation of libel is not sustained. The importance of the office held by the prosecuting witness could not be overestimated. If, by any means, these islands should become a plague spot, the effect would be more important upon the future of the nation than the withdrawal of the reciprocity treaty. If the medical man in charge of all those supposed to be afflicted with leprosy should assert and believe that leprosy is not contagious, and succeed in producing a general acquiescence in this belief, the public fears would be lulled, and persons be less likely to be careful in keeping themselves from contagion. The injury which such a course of con-

duct might entail is untold. And the Saturday Press could not sustain its character as a leader or as an exponent of public opinion, or a guardian of the welfare of the country, if it did not expose the falsity of such an opinion—that is, if leprosy is in fact contagious. So also, if the medical superintendent and the agent of the health, who has by law almost unlimited powers, shall by his published reports to the legislature, or by his other printed articles or spoken words, induce a general belief that leprosy and syphilis are identical, the result would be, that those who are living pure and moral lives would become careless as to the exposure of themselves or their children by mere contact with lepers—believing sexual intercourse, by which syphilis is commonly taken, to be the only way in which they could take leprosy, and keeping themselves free from that. So, if Doctor Fitch should persuade people generally that leprosy is curable, people would become indifferent, and say: "I have the means of employing a physician; it matters not if I take leprosy. I can be cured." It has been often stated that among people where leprosy is less feared, it spreads with greater rapidity than where it is more feared. Now, you have heard the testimony of all the other physicians, except Doctor Fitch, and quoting from medical authorities all over the world, that leprosy is not identical with syphilis, that it is incurable, and that it is in a certain sense contagious; and if they have proved this to your satisfaction, the defendant was justified in what he said of Doctor Fitch. Doctor Fitch has said that he believes in a policy of segregation of lepers. If he allows lepers to be discharged, who, by the weight of testimony, are not cured, would this be adhering to a policy of segregation? The physicians who have testified for the defendant say that leprosy may be ameliorated by treatment and by improved diet and hygienic conditions. Therefore, the introduction by Doctor Fitch of lepers from the hospital whose condition is improved was not strictly rebuttal; but I admitted this proof

because it is difficult to show whether leprosy patients are merely improved or cured; Doctor Fitch is in one sense himself on trial, but only so far as to test the truth of the terms applied to him by the Saturday Press; and not whether he is not doing a great deal of good to the native Hawaiians in treating them for syphilis. The question is, does he not do more harm than good? The testimony that refers to Doctor Fitch's conduct in the dispensary in prescribing for three hundred patients in six hours, his operations for cataract, and in his use of litmus paper is all to be considered by you in regard to the language used in the Saturday Press concerning him whether he is an ignorant pretender with theories that are a snare and a delusion. And you will not forget the fact that the diploma presented in evidence to-day, bears a different date to that of the diploma referred to in Doctor Fitch's certificate to practice in the State of California. The law gives the press great latitude, but holds it to a strict accountability; and it is necessary for the jury to decide, not only whether the article is defamatory, but whether, although defamatory, it is justified by facts and was published with good motives. You can have but little reason to doubt that defendant's motives were good, if the facts he has published concerning Doctor Fitch are true—for his motive was to advance public welfare.

After the charge, the jury retired, and, after an absence of between ten and fifteen minutes, returned with a verdict of "not guilty," two dissenting.

Mr. W. O. Smith assisted Mr. Dole for the defense during Saturday.

The interest of all classes in the trial was manifest from the first, and increased in intensity as the trial progressed. Almost, if not quite the entire bar of Honolulu, including the attorney-generals, *de jure* and *de facto*, were present at the close of the trial. The verdict was greeted with applause, and the defendant congratulated on all hands.

