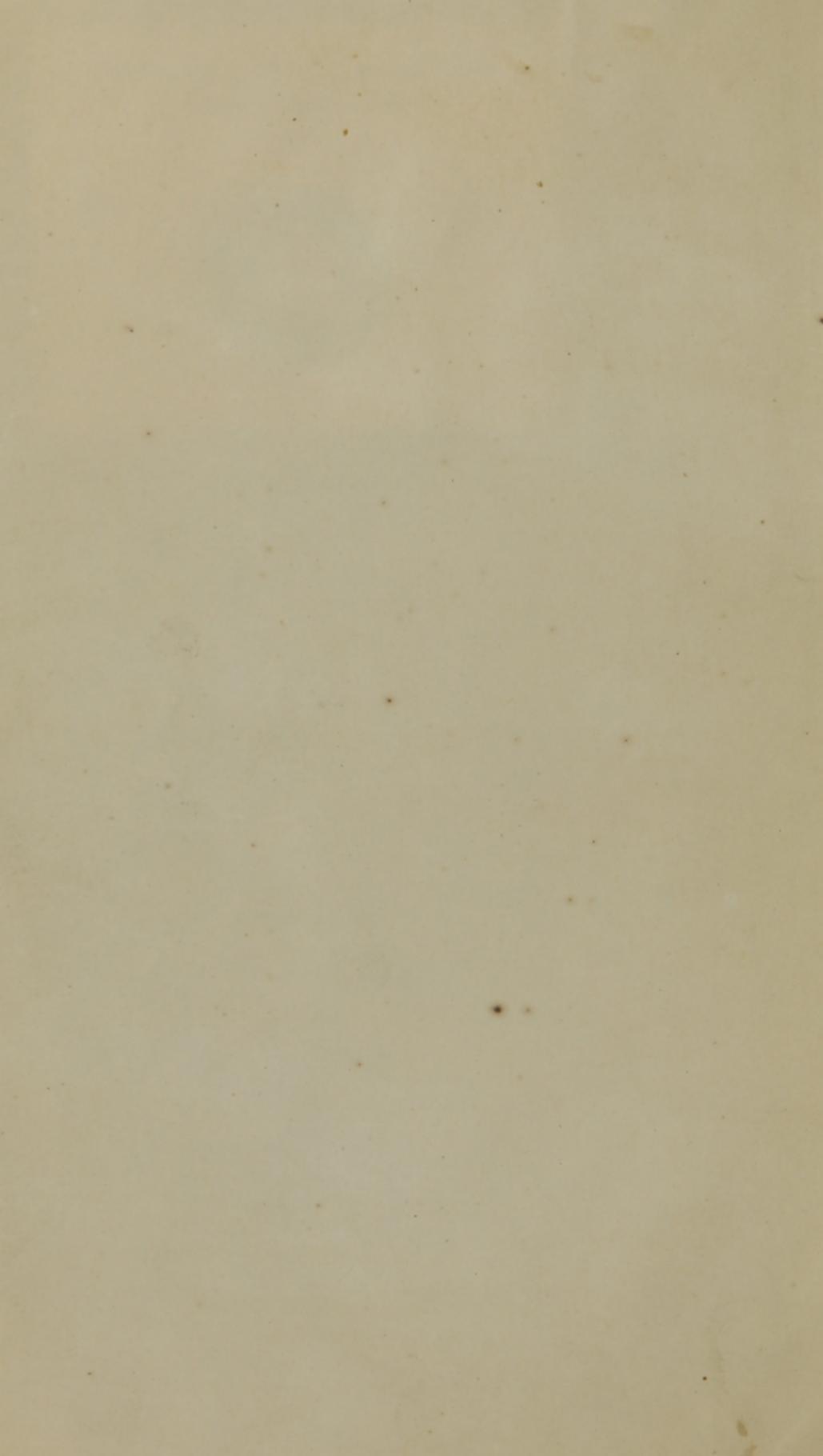


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TRIAL

OF

MADAMERESTELL,

ALIAS

ANN LOHMAN

FOR ABORTION

AND CAUSING THE DEATH OF MRS. PURDY;

BEING A FULL ACCOUNT OF ALL THE PROCEEDINGS ON
THE TRIAL, TOGETHER WITH THE SUPPRESSED
EVIDENCE AND EDITORIAL REMARKS.

“ On horror’s head, horrors accumulate!
“ Do deeds to make Heaven weep! All earth amaz’d!
“ For nothing canst thou to damnation add,
“ Greater than that!”

Price, 6 1-4 cents for single copies. Wholesale \$4 per hundred.

For sale at the Book Stand in Wall st., adjoining the Custom House; at the Cottage No. 312 Broadway, next to Masonic Hall; at the News Office, corner of Duane and Greenwich st.; corner of Nassau and Beekman sts., and Bowery News Office.

1841

T R I A L
OF THE
NOTORIOUS RESTELL,
FOR ABORTION AND CAUSING THE DEATH OF
MRS. PURDY.

It affords us high gratification to be able to state to our readers that the monster in human shape, who has so long flourished among us under the appellation of Restell, has, after an impartial trial by jury, been convicted of one of the most hellish acts ever perpetrated in a Christian land! The jury, after an absence of ten minutes, brought in a verdict of GUILTY, on the 3d and 4th counts, of producing abortion, and causing the death of *Mary Ann Purdy!*

This is a great triumph for us, and we cannot withhold the expression of our admiration and profound respect for the efforts of Mr. La Forge and the District Attorney, Mr. Whiting—for their zeal in bringing this woman to justice, and thus wiping a foul stain from our city and country. Every virtuous woman in the community owes to them, as well as the jury, whose names we give below, an everlasting debt of gratitude. This decision maintains the supremacy of the laws, and proves that sooner or later, justice must overtake the offender against the laws of God and man, however securely they may be entrenched behind golden ramparts, and however boldly they may bluster and threaten. The issue of this trial will be a warning to other offenders who emboldened by the success of Restell, were fast following in her footsteps, and scattering the mildew of vice over the land.

It is to this end that we have so long labored; and thanks to able counsel and an upright jury, we have, at length, seen the travail of our soul, and are satisfied? The honour of our city is redeemed—vice is reproved in our midst, and long-suffering virtue is triumphant!

Her position is now a warning to all like transgressors. She may, it is true, have a temporary respite from deserved punish-

ment, through the jugglery of her legal advisers. But justice, is sure eventually to overtake her, however much she may endeavor to starve it off. We give below the efforts of the Counsel for the prosecution; the speeches on the other side were such vile phillippics, that we desist through mere charity to them to lay their spleen before the public. Whiting's speech, was far beyond all his former efforts as will be seen, and 'La Forge's, give an indication of what perseverance and study can do for a man. However we say no more but refer our readers to what follows.

NAMES OF THE JURY.

William R. Asher,	Barnard Sheridan,
Horace Hayes,	Wm. T. Hemmingwa
Jeremiah R. Fields,	James Cowl,
George Andrews,	Hesekiah Weed,
Moses B. Dupuy,	Israel Isaac,
Elisha Hallar,	Charles Crane,

RESTELL'S ADVERTISEMENTS, with remarks by G. W. DIXON, which caused the Grand Jury to *indict* her as a nuisance.

Fathers mothers, sisters and brothers, let no false delicacy prevent you from reading and considering the proposals of the female who signs herself Madame Restell. Let her speak for herself:—

“*To Married Women.*—Madame Restell, Female Physician, is happy to have it in her power to say, that since the introduction into this country, about a year ago, of her celebrated powders for married ladies, hundreds have availed themselves of their use with a success and satisfaction that has, at once, dispelled the fears and doubts of the most timid and sceptical; for, notwithstanding that for 20 years they have been used in Europe, with invariable success, (first introduced by the celebrated midwife and female physician, Madame Restell, the grandmother of the advertiser, who made this subject her particular and especial study,) still some were inclined to entertain some degree of distrust, until become convinced by their successful adoption in this country.

* * * * *

The advertiser feeling the importance of this subject, and estimating the vast benefits resulting to thousands by the adoption of the means described by her, would respectfully arouse the attention of the married by all that they hold near and dear to its consideration. Is it not wise and virtuous to prevent evils to which we are subject, by simple and healthy means within our control?”

What does this mean? Take it in its most innocent sense, and it is equivalent to this: within a year Madame Restell has procured several hundred abortions; she has committed several hundred crimes, punishable by the laws of man, and condemned by the law of God. We do not say so, she says it herself. Preventive powders! There is no such thing in nature. There is but one preventive, which is abstinence. The law of nature, instinct, the canons of the church, the laws of the land, all clearly define the ends and objects of the marriage vow—the promotion of happiness and procreation of children. This unprincipled creature knows better than God or man how married people ought to behave!

Seamen, you are going a three year's voyage, and have this security for the good behaviour of your wife. Certain acts have certain consequences; the flow of blood proves that a blow has been given or received. Not at all: all this is at an end. Madame Restell shows your spouse how she may commit as many adulteries as there are hours in the year without the possibility of detection.

Young man, you take to your bosom the image of purity, a thing upon which you think the stamp of God has been printed. That virgin bosom, that rosy cheek, that sparkling eye, assure you that the treasure is yours—yours alone. Not so: Madame Restell's Preventive Powders have counterfeited the hand-writing of Nature; you have not a medal fresh from the mint, of pure

metal ; but a base, lacquered counter, that has undergone the sweaty contamination of a hundred palms.

Father, you have a daughter ; she is a human being, and she has human passions, and they may be used or abused. All passions have their uses and abuses. Madame Restell tells your daughter how she may defile her body and debase her mind without fear or hesitation. Say she is virtuous. Can she remain so when she is thus openly encouraged and invited to sin ? Madame Restell's programme is the advertisement of a gin-shop. "Here you may get drunk for sixpence, dead drunk for a shilling, and have clean straw for nothing." No exposure, no shame—steal, lie, murder, it cannot be found out. Read the following :

"Madame Restell takes this opportunity to inform females, who would obviate the unpleasantness and inconvenience of making known their indispositions to any but one of their own sex, that she can be consulted, with the strictest confidence, at her office, with separate consulting parlors, 148 Greenwich-street. Madame Restell has been induced, from the want of suitable and respectable accommodations in this city for ladies on the point of confinement, to make every arrangement for their comfort and convenience, which her large and healthy residence so amply affords. The best medical assistance and most experienced nurses provided. All communications must be post paid, and addressed to Madame Restell, Female Physician. Principal Office 148 Greenwich-street, New-York."

Young woman, married or single, if you have sinned, it is of no consequence ; here is a mother confessor that will shrive and absolve you ; here is a place where you may lie down and recover from your confinement. We must speak plainly. It is no shame to a woman to be pregnant—rather an honor. The church has a form called Churching of Women. When a woman has borne a child, she rises from her couch, returns thanks to her Maker for her deliverance, and publicly avows, and with proper pride, that she has done her duty by her husband, her country, and her God. She is proud, not ashamed.

Unmarried mother ! there is a churching for you also. Go to Madame Restell ; she has a "consulting-parlor" where you may disclose your shame. If it is not of long standing, she will teach you to assume a virtue if you have it not. She will tell you how to impose upon your husband, or deceive your lover. Your unborn infant need not be presented at the font, or blessed by the priest ; Madame Restell can prevent its eyes from ever opening, and throw its mangled body into the dock. Killing is no murder ; she is as blameless as Dr. Graves, of Lowell, and Cheeseman, of Philadelphia—and if the wife of a single gentleman does now and then die under her hands, it is an accident, and accidents will happen to the best of families. This is a safe churching of women, and a convenient. There is no need of prayer, no call for a priest, no expense in baby-linen.

"In how many instances does the hard-working father, and more especially the mother of a poor family, remain slaves throughout their lives, tugging at the oar of incessant labor, toil-

ing to live, and living but to toil, when they might have enjoyed comfort and comparative affluence."

Mechanics, you cannot afford the expensive luxury called marriage. Such comforts do not become your condition. You have only the bare right of present existence, but must not prolong it beyond the grave. A mechanic's knee must not sustain a babe—a father's kiss is not for his lips.

There is no more use for obstetrical study. We are glad that Dr. Dixwell is in his grave. He helped as many immortal beings into the world as the three generations of Restell's helped out of it. He had the pride of science and philanthropy: it would have killed him to have known that the poor had no more need of his skill. There is one consolation for the faculty, however. The most disagreeable part of their labour is at an end; there will be no more rising at midnight, and mounting in hot haste, and helter-skelter spurring through stormy nights over rough and hard roads. Madame Restell's advertisement says: †

"Their universal and successful adoption for thirty years, in France, where they were first introduced by the grandmother of the advertiser, the celebrated and well known Madame Restell, for many years female physician in some of the Female Hospitals in Europe, are too well known to require comment."

"Hide, Cæsar, thy diminished head,
Napoleon, sleep with vulgar dead."

Malthus need not have written upon population. The cruelties practised upon the croppies in Ireland were as foolish as shocking. It only needed to bring a few Madame Restell's into the country, and there would be no need of axe, or gallows, or any other check on population. In thirty years she would reduce the population in China, and there would be no need of Captain Elliott and the Volage. According to her own account, six acres of sod would not cover the work she has done in New-York alone in a single year. Death must soon lay aside his useless scythe, and close his charnal chops.

Madame Restell addresses married women only. What an insult to the sex! No married woman in this land is without a spot for her distress; no married man is so utterly destitute that he cannot provide for it; if there are any such the law allows them a refuge in the alms-house. It is a more honorable refuge than Restell's house. The pretence carries falsehood on its front, as the following shows:

"Madame Restell, Female Physician, would inform ladies, that from the difficulty and impracticability of obtaining suitable and respectable accommodations for ladies on the point of confinement, she has been induced to make every arrangement for their comfort and convenience, which her large and healthy-situated residence so amply affords. The best medical assistance and most experienced nurses provided. Office, with separate consulting-parlors for ladies, and residence 148 Greenwich, between Courtlandt and Liberty-streets.

Dr. Graves produced an abortion in Lowell, Massachusetts

and was at once indicted for murder. The same thing happened to Dr. Cheeseman in Philadelphia, and he is now in the state-prison for it. Ephraim K. Avery had like to have been hanged for a single murder. In each of these cases the wretches were only known to have done once what Madame Restell openly boasts of doing by wholesale. We do not blame the press for advertising her abominable cards; it is the duty of an editor to do so; it is making her infamy notorious; but it is astonishing that there is not public spirit enough in a New-York Police, and virtue in a New-York Grand Jury, to abate such a nuisance and prevent a recourse to Lynch law. In Alsatia such a house would have been pulled down long ago. It would not stand an hour on Negro Hill. Philadelphia has taken the matter up. Singly we do the same, in hopes that the press will join us, compelling sin, if she must walk abroad, at least to wear the fig-leaf of decency.

GENERAL SESSIONS.

Present, the Recorder, Judge Noh, and two Aldermen.

Caroline Ann Lohman, alias Madame Restell, came into Court and was arraigned in due form. The accused was attired in the most elegant manner, in a black satin walking dress, white satin bonnet, of the cottage pattern, and a very elegant white veil of Brussels lace. In her hand she carried a parcel of printed papers, which made some persons mistake her for the lady Presidentess of the Tract Society.

Messrs Jordan and Morrill, counsel for the accused, said that as this case had made some noise in the world, it was their intention to examine the Jury pretty strictly, and they wished to have tryers sworn as to the competency of the jurors.

The Court appointed and swore Charles O'Conner and Mr. E. J. Porter as triers.

William K. Asher was then called and examined, touching his competency to serve as a juror.

Asher said that he had read a good deal against the accused, and nothing in her favor; but he was not prejudiced either pro. or con.—so he was admitted.

Horace Hays was next called and admitted, as also Jeremiah R. Field.

James E. Rogers said he had formed an opinion, and was rejected,

William Brown had formed an opinion, so he was let off.

George Andrews had no prejudice and was sworn.

Moses B. Dupuy said he had not heard much about the lady, and hardly knew there was such a person. He was sworn.

William A. Tyler had formed an opinion, and was rejected.

Elljah Haller had no opinion about it, so he was sworn.

Barnard Sheridan said the matter had been much talked over in his family, but he had so little recollection about it, that he had no opinion at all—so he was sworn.

William T. Hemmingway had no prejudice, and was admitted.

Elisha P. Delaplaine said he had read a good deal of stuff about it, which had influenced his mind, so he was let off.

James Cowles said he was quite indifferent—and he was sworn.

Lathrop L. Sturgis confessed to a prejudice, and was excused.

Ezekiel Weed had no prejudice, so he was sworn.

John C. Dowling had made up his mind, and was let off.

Israel Isaacs had not a thought unfavorable to Madame Restell—so he was taken.

Richard Elsey had made up his mind—so he was excused.

William K. Shaw had formed his opinion, and was also excused.

John Conway said he was prejudiced, and was excused.

John Duncan had got an opinion ready made. He was let off.

Charles Crane had read newspaper reports somewhat unfavorable to Madame Restell, but they did not make much impression on his mind. He was admitted to serve on the jury.

As he was the twelfth man, the jury was held to be complete, and all sworn.

The indictment was then read to the jury. It contains two counts, charging the accused with a misdemeanor, in attempting to produce an abortion on the person of Anna Maria Purdy, on the 2d of June and 22d of July, 1840.

William W. Purdy examined by the District Attorney.—I was the husband of Anna Maria Purdy. She died at Newark on the 28th of April last. I was present at the examination taken by Justice Merritt.

District Attorney—Did you see your wife sign this deposition?

Jordan—He saw her sign the paper shown him, perhaps.

District Attorney—Well, what does it matter? He saw her sign the paper. Now will the officers send for Justice Merritt?

Jordan—Mr. Purdy, I'll take the liberty of asking you a few questions. Did you and your wife live together in 1839?

Witness—Why we never lived or slept apart; sir.

Jordan—What, did you live together before you were married?

Witness—No sir.

Jordan—When were you married?

Witness—The 26th November, 1837.

Jordan—Where did you live in June, 1839?

Witness—Either in May or June we broke up house-keeping and went to board in Mott street. Before that we lived 200 Elm street.

Jordan—What business were you in?

Witness—I was in the smoking line.

Jordan—What did you smoke?

Witness—Meat, and fish sometimes.

Jordan—Were you at home pretty constantly?

Witness—I was at home pretty much in the day, and always of a night. I used to go to fires though sometimes.

Jordan—Did you know in May or June, 1839, there was such a woman as Madame Restell?

Witness—No, sir.

Jordan—Was your wife in the habit of being absent from home?

Witness—Oh! she was in the habit of going round for shopping if she wanted any thing. She was not in the habit of running about, if that's what you mean. She went once to the dress maker's, and once to the Bowery to buy a dress. If she wanted to go out she went out like other women.

Jordan—Do you know if she ever went out at all?

Witness—Well, I know she went to 200 Bowery.

Jordan—*How* do you know?

Witness—Because I went after her, and paid for the dress she bought.

Jordan—Do you know she did not go somewhere else, now?

Witness—Why, sir, she went and came back, and I went to the Bowery, and I guess that's enough, for my sister said—

Jordan—Stop, sir, or I shall ask the Court to order you into custody. For, your honor, I intend to treat this witness fairly, but at the same time I stand here, knowing what I'm about, and if the gentlemen on the other side—

Recorder—Now, Mr. Purdy, listen to the counsel, and respond to his questions and nothing more.

Here the District Attorney got up, and charged Jordan with abusing the witness, and Jordan replied, that if the witness would let his tongue run with the rapidity of a mill tail, it was the duty of counsel to stop him. He felt as good natured as the District Attorney, and wanted to go on.

Recorder—There, go on gentlemen, attend to the question, Mr. Purdy.

Jordan—Now, Mr. Purdy, you did not go with your wife to the Bowery, I suppose, after all?

Witness—No, sir.

Jordan—Did you go out with her at any other time?

Witness—Yes, sometimes.

Jordan—Did she ever go out without you?

Witness—Yes, sometimes.

Jordan—Had she company when she went out?

Witness—Well, I believe she went out alone.

Jordan—Did she ever go out with company to your knowledge?

Witness—Once she did, when I could not go; she went with a young man of my acquaintance, of the name of Mowbray.

Jordan—What was he?

Witness—A painter.

Jordan—Oh! then we have it at last. Young painter Mowbray went out with her!

Witness—Yes, they went for a walk on the fourth of July night, and came back again in a short time.

Jordan—Did any body else go with them on that night?

Witness—Yes, I think Mowbray took his lady; her whom he since married.

Jordan—Did you, sir, see the lady and Mowbray with your wife at all?

Witness—No, sir, but I saw Mowbray, and the servant girl said—

Recorder—Never mind the girl now.

Jordan—Where is this Mowbray now?

Witness—I don't know.

Jordan—How long since you saw him?

Witness—One day last week, I think.

Jordan—Have you ever been in the employ of the Harlem Railroad Company?

Witness—Yes, for two years.

Jordan—When did you quit?

Witness—Why, I got paid up to—

Jordan—I don't want to know when you got paid up to, sir.

Witness—Well, will you tell me this, sir?

Jordan—No, sir, I'm not under an examination, and won't tell anything.

Witness—Then, sir, I was paid up to the first of May, but I left off going on the cars some time before that.

Jordan—Well, it's a mighty small thing to tell I should say.

Witness—Then I can't tell.

Jordan—Oh, I understand you, sir. Now sir, you must tell me when you quit working for the Rail Road Company.

Witness—I can't tell. It might be in March or April, but I got paid up to the first of May.

Jordan—Were you engaged by the month or year?

Witness—By the month.

Jordan—Why did they pay you up to the first of May, if you were engaged by the month?

Witness—Well, you must ask Mr. Wigham. I suppose they kept me as an extra hand.

Jordan—That's all, I believe. Oh no, I want to ask another question: have you ever been in Pennsylvania for the last year or two?

Witness—I've been to New Jersey.

Jordan—Ah! I didn't say anything about New Jersey, I said Pennsylvania.

Witness—Well, where is Pennsylvania?

Jordan—Well, it's not in New Jersey.

Witness—Well then, I never was there; I've been to Newark and up the North River, and about Orange co.

Jordan—Had your wife ever been to Pennsylvania?

Witness—She went to Philadelphia once.

District Attorney—Purdy, how do you know your wife went to Philadelphia?

Witness—Oh, Mr. Black said, and the Doctor said she must go somewhere.

Jordan—We don't want to know what Mr. Black or Mr. White said.

District Attorney—Well, he only knew that she went away unwell.

Witness—That's all, sir.

District Attorney—Had she generally good health?

Witness—Yes, previous to her premature delivery.

Jordan—What time did she go to Philadelphia?

Witness—Why, last summer.

Jordan—In 1839 were you the owner of a gold watch?

Witness—Yes.

Jordan—And chain?

Witness—My wife had one, and other trinkets.

Jordan—How long had she been the owner of these articles?

Witness—Why she had them when I married her. The chain

I bought last summer.

Jordan—Did you know of her pawning them?

Witness—No, sir.

Jordan—What has become of the watch?

Witness—It is eat up, I believe.

Jordan—Now be careful, or you let out something.

Witness—Well, if I let out anything, you'll catch it up, won't you?

Jordan—Exactly so, my friend—you're getting sharp.

Witness—Well then, I've not seen it since it came from Mrs. Restell's.

Jordan—When did you see the rings?

Witness—I saw some of them this morning.

Jordan—Now you've said something about the pawning business; do you know of your own knowledge that the watch was pawned?

Witness—Well, I don't know how you want to get round it. I saw what satisfied me, that—

Jordan—I don't want to know what satisfied you.

Witness—Well, then, I didn't know.

Jordan—Was your wife a lady of property when you married?

Witness—No: she tended store in a confectioner's in Pearl street.

Jordan—Are you a married man now, sir?

Witness—No, I'm not.

Jordan—Did you live with a woman, or are you in the habit of sleeping with one at this time, sir?

Dist. Att.—He is not bound to answer.

Rec.—I doubt the pertinency of the question, gentlemen.

Witness—Well, I shall not answer that, at all.

Jordan—How large a woman was your wife?

Witness—She was not so tall as me by a head and a half.

[The witness himself is considerably under the middle size.]

Jordan—That's all sir.

Henry W. Merritt called and sworn— I am one of the magistrates of the city. I was called upon to take the examination of Mrs Purdy, The papers I hold are depositions taken before me on the 24th of March last, and a subsequent one on the 22d.— They were taken in the presence of Madame Restell.

Jordan—Now, sir, we propose to object.

Dist. Att.—I only want the preliminary question, now, if the Court please.

Jordan—Well, if you reserve our rights, I have no objections.

Recorder—O, of course, sir.

Merritt—It was taken in her presence, and I told her she might have counsel. She said Mr. Morrill would be there, and she would go with me. Mrs. Purdy was confined to her bed, at the corner of Broome and the Bowery. She was told that she might cross-examine the witness, and she did put a number of questions to her.

Dist. Att.—Did Mrs Purdy answer the questions, and were they put in the affidavit?

Merritt—They were not; I didn't think--

Jordan—Well, sir, why not?

Merritt—Why, now I remember, it was but one question which she repeated several times.

Jordan—Well, sir, I want to know if Justice Merritt has a right to determine what he will put down? for if so, the Lord preserve me from Justice Merritt.

Merritt—Stay till your time comes.

Recorder—It will become a question by and by, Mr. Jordan, if the question ought to be put down.

Jordan—Did you put down the question she put to the woman?

Merritt—Not from her mouth; it had been put down before.

Jordan—Well, it could be put by no other mouth. She had no counsel.

Merritt—Well, it was not.

Jordan—Did she send out for counsel, to your knowledge, sir?

Merritt—No.

Jordan—Was it stated that the sole object was to get her identified?

Merritt—I don't know that it was so stated, but that was the object.

Jordan—Was she told what the object was?

Merritt—I presume she did know. I've no doubt I told her so, indeed.

Morrell—How long after her arrest was it before she was carried to the Bowery?

Merritt—Why, she was not carried at all.

Morrill—Well, before she went there? Was it half an hour?

Merritt—I think not.

Morrill—Was it twenty minutes?

Merritt—I don't know anything about minutes.

Morrill—Well, did you not say that it was only for identification, and she would not want counsel?

District Attorney. We propose to read the papers now, sir.

Jordan—Well, we object to it, sir; and I think we are entitled to the warrant before we go into the argument.

Recorder—Well, gentlemen we will leave off now, and hear the argument to-morrow. Adjourn Court, Mr. Hays.

MONDAY, July 19, 1841.

THE CASE RESUMED.—The Recorder proceeded to read the opinion of the court as to the depositions of Mrs. Purdy, taken on her death bed, being admissible as evidence on the trial. The decision of the court was, that they were good evidence, and were as follows :

THE PEOPLE vs. RESTELL, *alias* LOHMAN.—The prosecution

in support of the indictment, offers to read the deposition of Ann Maria Purdy, taken before Justice Merritt, a Police Magistrate, on the 22d of March, 1841, upon which a warrant was issued against the accused.

To sustain the right to introduce the deposition in evidence on the trial of this indictment, Mr. Merritt testified, that he took the deposition of Mrs. Purdy on the day that it purports to have been sworn to; that the accused was present and heard the deposition read over to the deponent, and that she was inquired of by the Magistrate if she desired to cross-examine the witness; and that she availed herself of the opportunity of propounding some questions.

Purdy, late the husband of the deponent, testified to the death of Mrs. Purdy on the 28th day of April last.

It was also proved on the part of the accused, that the Magistrate omitted to insert in the deposition, or annex to it, certain questions put by the accused to Mrs. Purdy, and her answers to these questions, he alleging that he did not deem them material, and that they had been substantially answered in the deposition previously taken.

The question that is presented by the argument is:—Is this deposition thus taken, admissible in evidence on the trial of this cause?

The statute (2 R. S. 590) clearly defines the course to be pursued by the committing Magistrate.

The 2d section provides, that whenever complaint shall be made to any such Magistrate, that a criminal offence has been committed, it shall be the duty of such Magistrate to examine, on oath, the complainant, and any witnesses who may be produced by him; and the 19th section of the act requires that the evidence given by the several witnesses examined shall be reduced to writing, and signed by the witnesses respectively.

The 3d section directs, that if it shall appear from such examination that any criminal offence has been committed, a warrant, &c. shall be issued, &c.

This appears to be a preliminary proceeding, designed, as well to satisfy the Magistrate of the actual commission of an offence, as also to afford redress to the accused, when the complaint shall prove to be groundless or malicious.

It is a proposition too clear to admit of discussion at this advanced period of legal science, and when the rights of the accused are guarded with scrupulous care, that a mere preliminary *exparte* deposition, taken without affording to the accused an opportunity of confronting and cross-examining the witness, cannot be read upon the trial.

It has, indeed, been held in England, that a deposition taken before a Coroner's Jury, though in the absence of the accused, was admissible in evidence.—[Barb. p. 368, 3 T. R. 713—Bull N. P. 242.]

“But,” says Barbour, “this doctrine has been questioned by several writers of eminence, and it seems to be the better opinion, that *exparte* depositions ought to be excluded altogether as evidence against the accused.”

That the depositions taken *exparte* before the Coroner were ad-

missible in evidence when the deponent is dead, by the English law, seems to be sustained by various authorities; and the principle is fully laid down by Roscoe in his "Criminal Evidence," that depositions taken before the Coroner are admissible in the same manner as depositions taken before a Magistrate, where the witness is dead; and Justice Buller adopts the same principle in the case of *Rex vs. Eriswell*. [3d T. R. 707.] And Lord Kenyon coincided with Justice Buller in opinion. [2 Starke Ev. 276, 2d ed.]

Roscoe says, that "the general practice is to receive depositions taken *ex parte* before a *Coroner's Jury* without inquiry," and while the correctness of the practice may be questioned in respect to depositions taken before a Magistrate, the reason for the distinction is, "that a Coroner's Inquest is a transaction of notoriety to which every one has access," and, therefore, I presume, that the learned commentator would *legally* infer that *every body was* present, including the accused.

This doctrine has since been fully exploded, and I trust is too absurd to be again revived.

In the case under consideration, it is in proof that the deposition was read over to the deceased, in the presence of the accused; and that she being apprised of her rights, was also offered the opportunity of cross-examining the witness.

The question then is—Can a preliminary affidavit or deposition, taken *ex parte*, and intended originally merely as forming the basis for an arrest, by being read over to the witness and sworn to in the presence of the accused, after her arrest, with a knowledge of her right to cross-examine, be read in evidence on the trial, the witness having deceased?

As there are no statutory provisions authorizing the reading of depositions thus taken on the part of the prosecution, it becomes necessary to examine the principles of the Common Law applicable to this subject.

The rules in respect to taking examinations and depositions in criminal cases in this State are similar to those that prevail in England under the statutes of Philip and Mary, and 7th Geo. 4, ch. 64. [8 Wen. 599.]

Before the enactment of the St. 7, Geo. 4, the Justices had no power to take the examination of persons charged with a misdemeanor; but by sec. 3 of that act they are required to take such examination, and *also the information*, upon oath, of those who shall know the facts and circumstances of the case, and shall put the *same into writing*, &c.

Roscoe, in his Cr. Ev. p. 62, says, "Although there is no express enactment in 7, Geo. 4, that the depositions of the witnesses, taken under that statute, shall be admissible in case of their death, yet it is clear, should the witness be proved at the trial to be dead, his deposition taken before the Magistrate will be admissible in evidence."

This position appears to be fully established by authority.— [1 Hales, P. C. 305; Bull. N. P. 242.]

So, too, where the witness has become insane, or is kept away by the practices of the prisoner, or is prevented from attending by any *permanent* disability. [*Rex vs. Eriswell* 3, T. R. 710; 1 Leach 12; Bull. N. P. 239; Haw. P. C. b. 2, 2d Stark. 266,]

Russell also adopts the same principles, and says, "Although there is nothing in these statutes, Philip and Mary, and 7th Geo. 4th, providing that the depositions taken under them shall, in any case, be evidence, yet from the construction of the two former by the highest authorities, and upon general principles of evidence, it may now be considered as a settled rule, that if it be proved that the witness is dead, or insane, &c., his deposition may be given in evidence on the trial, &c., provided the deposition be taken in presence of the prisoner," &c., [2d Russ 659.]

Mr. Starkie, in a note to the case of *Rex vs. Smith* 2d Stark. 211, adopts the same principle. [1 Hales, P. C. 305 ; 1 Ph. Ev. 351.]

It is laid down as a general principle of evidence, that to render a deposition of any kind admissible against a party, it must appear to have been taken on oath in a *judicial proceeding*, and that the party should have an opportunity to cross-examine. [2 Russ 660, and authors there cited.]

The deposition must be taken conformably to the statute, otherwise it would be extra-judicial. [*Rex vs. Smith*, Eng. C. L. Rep. 3, 318.]

The cases that I have cited all go to establish the principle, that the reading of the trial or depositions taken in the presence of the prisoner, with the right of cross-examination, and the witness subsequently deceased is a common law principle, as neither of the statutes of Philip and Mary, or of 7th Geo. 4th, confer this power.

I have shown that the provisions of our statute are similar to those of the English statutes, and the next question is, Have we adopted those principles of the Common Law?

By the 13th section of the 7th article of the Constitution of this State, such parts of the Common Law as are not repugnant to the Constitution or laws of this State, were fully adopted, and are in full force here. [4 Page 498 ; 5th do. 233.]

But it is said that the deposition was not drawn in the presence of the accused, but merely *read* to the witness in her presence, having been previously prepared. This would seem to be sufficient. A similar case is referred to by Russell on C. 2 vol. p. 661, when the deposition was principally reduced to writing in the *absence* of the prisoner, and the question was submitted to the twelve judges and held sufficient. The same principle has been sanctioned in our own courts. [8 W. 595, 99, 15 ; do. 419, 21.]

It is also objected, that a caption to be, deposition having been added (entitling as of the General Sessions) constitutes such an alteration as will vitiate the deposition, and render it inadmissible as evidence.

The addition of this caption neither enlarges or diminishes the *substance* of the deposition ; and if the principle is correct, which appears to be well sustained by authority, that a deposition taken upon a charge of an assault and battery may be read in evidence on a trial for murder by the same party, it would appear that the entitling a paper improperly could not produce the supposed consequence. [See 2 Russ. on C. 662, and authors there cited.]

It is averred that the Magistrate was neglectful of his duty in omitting to annex to the deposition the questions put by the accu-

sed, as well as the responses to these questions that were given by the witness. In this the Magistrate may have erred. It is a dangerous assumption on the part of a Magistrate to judge of the importance or effect of any inquiry that the accused might deem proper to propound, and to insert, or omit to insert, what he shall deem material to the defence. But the Justice stated that the questions put had been responded to in the body of the deposition. This I deem a sufficient answer to the objection.

I am, therefore, clearly of opinion, that the deposition is admissible.

Gilbert F. Hays, sworn for defence, deposed that he arrested the accused at her house in Greenwich-street, in March, on the warrant of Justice Merritt on this charge, and took her to the Police Office, where her husband, Mr. Lohman, accompanied her. The latter asked witness where he could procure counsel. Witness told him, and he went for counsel. The accused was left in the Police Office with witness, and in about five minutes they proceeded to the house of Mrs. Purdy. Justice Merritt asked her, before going, if she had any objection to go to the house of Mrs. Purdy, she answered she had none. Did not hear Justice Merritt say that the object in taking the accused to Mrs. Purdy's house was for the purpose of having her identified. Justice Merritt told her she was entitled to counsel, and witness told the Justice that Mr. Lohman had gone for counsel. After reaching the house of Mrs. Purdy, Justice Merritt told accused to pay attention to the reading of the affidavit, first asking Mrs. Purdy "if this was the woman." Mrs. Purdy answered "Yes." The Justice then cautioned Mrs. Purdy, telling her she was then on her dying-bed, and to be careful if she had made any mistake. The affidavit was then read to Mrs. Purdy and sworn to by her, in presence of the accused.

Cross-examined. When witness arrested accused, she read the warrant, and said her name was not Madame Restell. Witness told her she was the one he wanted. Nothing was then said about counsel; at the house of Mrs. Purdy the accused said nothing about counsel; she said something to Mrs. Purdy, but witness cannot say what it was. The charge was stated to accused by Justice Merritt at the Police Office.

Henry W. Merritt, Esq. recalled—deposed that when accused was brought to the Police, he stated to her in substance what the affidavit contained. Witness told her that Mrs. Purdy was sick and confined to her bed, and it was necessary to go up there. At the house, witness told accused he was about to read the deposition of Mrs. Purdy, and suggested to her to pay attention to it. It was read, and sworn to by Mrs. Purdy in presence of accused. After the affidavit was read and sworn to, the second affidavit was taken of Mrs. Purdy, identifying accused. I told accused she might ask Mrs. Purdy questions.

Cross-examined—We were at Mrs. Purdy's house from half to three-quarters of an hour. When witness returned, Mr. Morrill was at the Police Office; told him as soon as Counsel were ready I would proceed to examine the accused under statute. Mr. Morrill did not express a wish to go back and cross-examine Mrs. Purdy.

Direct resumed—Witness wished the Counsel, Mr. Morrill, to fix a day for examination of the accused, and the 24th March was fixed. On that day Messrs. Jordan and Morrill attended, and in the presence of the accused, witness asked them if they wished a week to go and cross-examine Mrs. Purdy; they said nothing, declining to answer. Witness then told them he would proceed to the examination of the accused, and did so. Judge Lownds was present at the conversation.

The District Attorney then proceeded to read the depositions of Mrs. Purdy, some parts of which, viz: conversations with a third party, (colored Rebecca,) were ruled out. The substance of the affidavits having been fully published before, it is needless to repeat them here. They testify to the fact of the application for and the receipt of drugs from the accused, the want of effect and the subsequent manipular operations to produce the effect, and the actual production of that effect, contrary to law, with the resulting deleterious effects to the health of Mrs. Purdy, as witnessed.

Lucinda Van Buskirk sworn—Is a married woman; was acquainted with Mrs. Purdy when alive; saw Madame Restell once at her residence in Greenwich st.; went with Mrs. Purdy there in July, 1839, after her miscarriage. Mrs. Purdy wanted Madame Restell to give her the watch and chain and rings, &c. which she had left there, without her husband's knowing it. Madame Restell said she could not give them up until she gave her the rest of the money, saying, 'we have done it very low, much lower than we are in the habit of doing it, and I have given \$5 of the \$6 to the doctor.' She said, 'if you had gone your full time, it would have cost you a good deal more.' Mrs. Purdy said, 'then I shall be obliged to tell my husband.' Madame Restell replied, 'Oh, you cannot do that, for it will be a State Prison offence for you as well as for me.' She did not give Mrs. Purdy the watch and other articles at that time, but asked her the number of her boarding house, which Mrs. Purdy gave. Madame R. said she would send up for the money.

Cross-examined. Never saw Madame Restell but that time and now; went to oblige Mrs. Purdy and to gratify an idle curiosity in seeing Madame Restell, of whom she had heard much. Never went there afterwards. Saw one lady there whom witness thought was a married woman, who came in and sat down, and soon after two other women came in and sat down. Two men also came in, but went away before witness did. Madame Restell said they had often given her 40, 50, and sometimes as much as \$100, and she had done the thing for \$20. Madame Restell said she would come up to her boarding house and get the money—she handed each of the ladies a circular to read, which I have mislaid. Witness did not hear half the conversation between Mrs. Purdy and Madame Restell. A gentleman purchased some medicine of accused and gave her \$6 for it.

After a recess of an hour and a half, the Court again assembled at 5 1-2 o'clock.

Mr. David D. Marvin testified that he was a physician, resident No. 80 Green-st., that he attended Mrs. Purdy from the 21st to 29th July, 1839. He found her laboring under severe

pains, and it was one or two days after he first saw her that her child was born, and he was inclined to believe from her previous good health and the suddenness of her delivery that it was premature.

Cross-examined by Counsel for accused—He was first acquainted with Mrs. P. in the spring of 1838. After her delivery she recovered, but was more exposed to inclement weather than is consistent with health, until her sickness prevented her being out of doors. Mrs. P. was a woman of ordinary intellect, of fickle disposition, not illiterate for her station, but easily influenced. She was in the habit of visiting her neighbors considerably. Witness has seen deceased and one Mowbray together, both in the presence and absence of her husband. She assigned, on the 21st, severe exertion in washing, as the cause of her premature delivery, and repeated this once or twice afterward within the two days succeeding. He remembers her once making affidavit with reference to a certain pawn-ticket, and he went with her to a pawn-broker's either in Chatham square or in Division-st. with the affidavit and got a watch, brass chain and some rings, which she had pawned. [The counsel were here called upon by the Court to produce the affidavit, but were unable. The counsel for accused wished to convict Mrs. P. by it of having sworn falsely.] The watch was given to witness for safe keeping, because she was afraid of losing it: it was destroyed by accidentally coming in contact with quicksilver. The rest of the jewelry entrusted to witness was returned to Mrs. Purdy. Witness has no knowledge of Mr. Purdy's having been out of the State for the last three years. Witness does not know that Mrs. Purdy ever went to Madame Restell's with the watch. Neither witness nor his lady ever accompanied Mrs. P. to Madame Restell's. The deceased was able to be about until the winter of 1840. Her complaint then was pulmonary consumption.

Here the prosecution rested.

The defence was commenced, and Mr. Morrill offered as evidence the examination of Madame Restell, held March 24th, 1841, but it was ruled out by the Court.

Barrow A. Cohen was sworn. Witness attends the pawn-broker's store of Mrs. Levy, No. 5 Division-street, and did in 1839. Does not recollect Mrs. Purdy or Dr. Marvin. He has an affidavit made by the former. [He here gave it, with a paper attached, to counsel for the accused. Mr. Morrill read the papers. They were a list of articles pledged, as the paper says, Feb. 12, 1839, and an affidavit signed by Emeline Purdy, swearing that the pawn-ticket for those articles had been lost. The goods pledged were a watch, pencil-case, and two rings, worth \$16.] Witness does not know the handwriting, and does not recollect positively the articles he gave up at the time of receiving the affidavit.

W. W. Purdy testified that he never called at Madame Restell's for the goods. He now lives at Harlem, where he keeps an hotel, and has been married since his last examination. Witness never wrote, or caused to be written, a letter to Madame Restell, nor has he ever called on her to pay money, nor has he ever said to any one that he would compromise this matter for any sum of money. Witness has been to newspaper offices to state that he

had been discharged by the Rail-road Company, because he had had Madame Restell arrested. John S. Wigham told him so. He had been on the car on which he was employed for some days, and called upon Mr. Wigham who told him the President of the Company had said, that as the Restell affair had made so much noise, and as witness had "run low," for a month or two, (i. e. his receipts were less than before,) they could not have him any longer. Immediately after this, he stated the fact at a number of the newspaper offices. The President of the Company then requested him to stop the publication of it, which he did. The reason of his not having collected as much as others, was his wife's illness, which made it necessary that another man should run his car for him. The President never intimated that he had appropriated any part of the money to his own use.

Dr. Marvin recalled.—Stated that he believed the Commissioner wrote the affidavit presented, which is the one that Mrs. Purdy carried to the pawn-broker's in company with witness.

The testimony was here concluded, and on application of the counsel for the accused, the Court was adjourned to 11 o'clock.

Mr. LAFORGE arose, and in a quiet and pointed manner laid the case of the people before the Jury. He enlarged on the character and position of his client, which had been so brutally assailed by Mr. Jordan, one of the counsel for the prisoner, and compared his attack to that of the midnight hyena upon the sacred bodies of the dead. The learned gentleman went on to say, that this was a case, the effects of which to the community were as vast as they were incalculable; and that, unless New-York, by her tribunals, vindicated herself from such a damning stain upon her moral character, the finger of scorn and the hiss of contumely would be raised in every direction against that degenerate city, which has no parallels in history but those of Sodom and Gomorrah.

The learned counsel on the other side has taken pains also to attack the character of Mr. Purdy, the husband of the unhappy woman who was the victim of the arts and vile practices of the prisoner. He reviles him because he dares to vindicate the loss of a murdered wife and child! Merciful God! if this is a crime, palsied will be the arm of every father, brother, husband, or son, who seek to draw down heaven's vengeance upon the miscreant who has robbed, polluted, or destroyed the dearest treasure of their hearts. But no, it is not by such arts as these that the ingenious counsel is to place the husband of the victim in a false position. His motives must be too apparent for such a forced construction—his character has been too excellent. His vocation is humble, it is true, but it is, nevertheless, honest; and though unlike the prisoner he did not receive the hourly visits of the rich and great, yet he has approved himself a good man, and as such of value to the community at large. He has not sought to enrich himself by aiding and abetting adultery and seduction; he has not, like the prisoner, purchased *death* (I mean moral death) by the wages of sin! For him the home of honesty has been sacred; for him the poor man's unborn child and the virgin's honor has been unassailed; no domestic desolation mourned his enjoyment; no anniversary of wo commemorated his achievements. From

his own sphere of life naturally and honorably he selected a companion, whose beauty blessed his bed, and whose virtues, until she fell into the snares of the prisoner, consecrated his dwelling. He then hoped, in time, to bless his fireside and board with children, the fruit of their mutual loves.

It was at this time that the licentious and dangerous publications of the prisoner fell into Mrs. Purdy's hands. She became terrified by the devilish arguments and terrors used therein, and operated upon by one of the agents of this woman, fell a victim to her wiles. The fatal issue you all know. Let me, in mercy to humanity, draw a curtain over the picture.

The learned gentleman then went on to show, that if the prisoner's crimes were suffered with impunity, that lust, licentiousness, seduction and abortion would be the inevitable occurrences of every day. And what, said he, is to be the punishment of the monster who fosters and creates these crimes? Oh, I would hold such a demon, as one who, going forth consecrated in the image of the Deity, awaits, with the dagger beneath his robe, for the signal of massacre to unvein the heart of the confiding of the blood of life and innocence. The learned gentleman pursued this strain for some time, and concluded by a brilliant peroration upon the amount of evil which such characters as the prisoner would commit in a community like ours; and took occasion, before closing, to pay a proper compliment to the dignified and independent course which the "Polyanthus" had taken in the controversy, and gave the Editor of that Journal the credit of aiding most essentially in the arrest and conviction of the prisoner.

THE END.

