stitution? "All persons shall be bailable" —and that is mandatory, because the Constitution says so—"by sufficient sureties." That is the major proposition; not merely the affirmation of the law which had previously existed, but an express declaration in the Constitution itself, made by the people, that "all persons shall be bailable by sufficient sureties." Now that covers every case that can possibly be conceived of, as an absolute right, not in the exercise of discretion, but as an absolute right, that "all persons shall be bailable by sufficient sureties." Then the Constitution goes on to prescribe an exception to this universal rule—that is, an exception to that extension of the common law rule, which makes the granting of bail on absolute right. "Unless," says the Constitution, "for capital offenses, when the proof is evident or the presumption great." So that the Constitution of this State—which is either in some of its provisions an expression of power, or in other of its provisions a limitation upon power—specifies in terms, and in the broadest language which could be employed, that the absolute right, not the exercise of discretion in the matter, but the absolute right to bail shall exist in all cases except one class of cases, and that is where the proof is evident or the presumption great. It is contended upon the other side that, by that language, the Constitution of this State intended that the Legislature should have the power, in those cases where the proof was evident or the presumption great, to prohibit the granting of bail altogether. In so construing this language of the Constitution, we not only have the whole history and office of the writ of habeas corpus absolutely ignored, but we have the very language itself which the Constitution employs overridden. It is not necessary to go beyond the language of the Constitution upon this question; but in the case of the People against Tinder, which was cited on the other side and has been frequently referred to—a case based upon a condition of the statutes which confessedly does not now exist—Mr. Chief Justice Field (Cope, J., concurring) uses this language, and, of course, the language is only used *arguendo*, for it was not necessary to the decision of that case that even that argument should be presented, but the language is that "the admission to bail in capital cases, where the proof is evident or the presumption is great, may be made a matter of discretion, and may be forbidden by legislation, but in no other cases. In all other cases the admission to bail is a right which the accused can claim, and which no Judge or Court can properly refuse." Now, so far as the argument on the other side rests upon any other legislative enactment in this State, it must be based upon that casual expression used *arguendo* in the case of the People vs. Tinder, and not called for by the exigencies of that case, and not necessary to the decision of any point which was involved in that case. Your Honor sits here as

THE SUPREME COURT OF THE UNITED STATES,

As the Supreme Court of the State of California, as the embodiment of all the judicial power that exists with respect to the exercise of this writ of habeas corpus; and every question arising in regard to that writ comes before your Honor as an original question to which your Honor's judgment, under the Constitution and under the laws, is to be applied. How do we know whether this question was even referred to before those learned Judges, as to the obvious construction of what was then the equivalent of the present Section 6 of Article I. of the Constitution? We read that section to-day by its own light, and we intensify that light by the light which flows from universal history and precedent in the matter of the writ of habeas corpus, and we say that the people of this State intended, not that they should deviate from our republican system, and not that they should deny to men a right which was so knit into our political institutions that its deprivation would be practical revolution, but to extend and make more effective and beneficial a right which had previously existed. So that the whole force and effect of Article I., Section 6 of the Constitution is to make the right absolute in every case where the proof is not evident or the presumption not great, and in all other cases to leave the matter discretionary with the Courts. And that is so thoroughly expressed in the language of that section that Section 1270 of the Penal Code is necessarily to be read and construed in connection with the constitutional provision, and when so read and when so construed, it leaves in the Court the exercise of a discretion which is as ancient as the common law itself.

Now, it is said in this section that the offense must be capital. In this case the information is for murder, which embraces two degrees, and may embrace manslaughter. I noticed the other day, in a case in which I happened to be engaged in the Territory of Utah, where the statute is identical with the Penal Code of this State upon the degrees of murder, that the indictment in terms charges murder in the first degree, whereas under our system of pleading—and I am not questioning the correctness or the accuracy of the information—it is sufficient to charge murder, without specifying either of the two degrees. So that upon the face of the information itself, even though the law had not been changed, and though some presumption were to arise from the existence of the indictment, or the information which is its equivalent, your Honor would be compelled to go into the facts of the case for the purpose of determining which of the two degrees of murder, or what lesser offense included in the charge of murder, there was some probability of the defendant being convicted of. Now, the words used in the Constitution proceed a step further. The right to bail is absolute in every case, not discretionary, but absolute. "*Unless* the proof is evident or the presumption great," and on this point of course

THE BURDEN IS ON THE STATE.

When the petitioner in this case proves that he is incarcerated and charged with a criminal offense, he is prima facie entitled to bail, and what the Constitution therefore means, read in conformity with its terms and with its obvious intention, is that on the whole record it must be evident that it is manifestly clear that the defendant is guilty of the highest crime but one—namely, treason—and in all probability will receive the highest penalty known to the law. But the proof here is not evident nor the presumption great. Let us see. We have advanced three points. The first is as to the construction of the constitutional provisions; second, as to what your Honor may inquire into under the indictment; and, third, as to the burden of proof to create the exception which the Constitution of this State describes, and which, by Section 1270 of the Penal Code, is permitted to be established. The information gives no light upon the question. It is silent, made so by the language of the Penal Code. Then, independently of that exercise of discretion which exists in every case, even though the proof be evident and the presumption great, and looking simply to the proposition as to what constitutes evident proof or great presumption, if the Court before which a writ of habeas corpus is pending says that there is a fair chance upon the proofs or upon the presumptions arising from the proofs, first, that the defendant may be convicted of manslaughter, or, second, that he may be convicted of murder in the second degree, or, third, rising higher in the scale of crime, that he may be convicted of murder even in the first degree under circumstances which would warrant the jury in affixing the penalty at imprisonment for life — in all of those events he he is not prima facie guilty of a capital offense, and the proof is not evident and the presumption is not great—in other words, the proof is not evident nor the presumption great that he is guilty of a capital offense; that is, an offense punishable by death. When, from an inspection of the record, the Court can ascertain that there is a fair chance that he will either not be convicted at all of murder in the first degree, or that he will be convicted of murder in the first degree under those mitigating circumstances referred to in several decisions of our Supreme Court, which would warrant a jury in annexing the penalty of imprisonment for life, he is not, as I have said, prima facie guilty of a capital offense. As I have already said the burden is upon the State to prove the exception which the Constitution has recognized. It is upon the defense, of course, to show in the first instance that he is entitled to bail, but that is shown prima facie when it is proved that he is charged with a crime, and it devolves on the People to bring the case within the exception to the general rule of bail by proving affirmatively, although, perhaps, for this purpose not beyond a reasonable doubt, first, that he is guilty of a capital offense; and, second, that the proof is evident or the presumption great. Now to do this

WHAT MUST THE STATE ESTABLISH?

I am not going to read to your Honor any law. You are familiar with the Penal Code of this State, and your attention has been called to every section upon which either side can rely, and the authorities upon this general question have been read to your Honor with great voluminousness. I shall assume, therefore, some points to be established, and I shall argue this case upon the hypothesis of the existence of certain fundamental principles, either found in the general law itself or embodied and crystallized in the statutes and decisions of this State. Now to show that the proof is evident or that the presumption is great, what devolves upon the State? It must prove that the killing was willful, deliberate, premeditated, the result of a settled design to commit a criminal offense; that both the act and the intent concurred, and that the act was done with malice prepense, either express or implied. Now I say here, in opposition to the argument of the other side upon that point of the case, that there is no evidence whatever of express malice. Nothing was said, nothing was done, to establish its existence. We are driven then, so far as the State is concerned here, to the question as to whether there is evidence of implied malice. In order to establish implied malice the killing must have been done under circumstances, exhibiting, as the authorities say, *both* an abandoned and a malignant heart; that is, a heart brutal, depraved, devoid of natural feeling, destitute of sympathy, callous, degraded, reveling in crime and prone to violence. And upon this point, or rather upon these points, the petitioner here is entitled not only to the presumption of innocence and to the presumption of character of which reputation is the outgrowth, but to any positive evidence which may be before this Court relating to his position, to his family ties, to his age, to his situation in life; in short, to his entire history in so far as it is disclosed by the record. I cannot, of course, because I respect the Court and I respect myself—I cannot make any answer here to anything that has been said about our claim to any special or exceptional rights for this petitioner on the score of his wealth, if he has any. We present no such claim. He stands before your Honor asking that he may be prosecuted, but not *persecuted*, asking that he may have those rights, and those rights only, which under the benificence of our American system of jurisprudence are extended as well to the beggar upon the streets as to the President in his chair at Washington—equal, exact, honest justice before the law. He is not to be punished because he is rich, or because he happens to be rich. That is no crime, especially when property is accumulated as the result of the efforts and the economy of

AN HONEST AND A PROLONGED LIFE.

He is entitled to no immunities upon that ground, but he is entitled to stand up here in this clear air and to look your Honor in the eye and say, "I am an American citizen; give me the same rights that you would give to the poorest creature who approached the bar of justice and asked you to see that he was not deprived of his rights by mere intolerance and persecution." A man of 64, the father of a large and respectable family, who has served the State in its highest council, who has accumulated property by honest methods, who is not connected with or allied to the criminal classes, who has not been guilty of any previous act of violence, cannot be possessed of a heart cruel, abandoned, brutal, depraved, devoid of natural feeling, destitute of sympathy, callous, degraded, reveling in crime and prone to violence. The antecedents, the elements of which such a man is made up, establish the very reverse of all these and ally him, by the force of the facts themselves, to all that is the best, the noblest, the most humane and the most elevating in our American civilization. The criminal instinct is not spontaneously generated in such a man. If *he* kills a human being there must be some extraordinary circumstances, some overmastering impulse or necessity, some incident reaching the vital parts of his soul, which, if they can be ascertained, will account for and explain his conduct and relieve him from the possibility of being characterized as a murderer in the first degree without the benefit even of that natural equity which the law has reposed in the breasts of juries. It is impossible, or next to impossible, whatever the apparent quality of his act, that such a man can be a common murderer; and I believe if it were true that human beings could be found whose natural instincts would lead them to seek to degrade such a man to the rank of a common murderer, they would be themselves incapable of accurate discrimination, and would exhibit in themselves the very inhumanity with which they would charge him. They would not be able to comprehend him or his situation. They would dishonor, lower, pollute the very sources of purity, of dignified and exemplary manhood, of true and holy domesticity, in our American society. Now, I say that here we have such a man—not by inference, not by assumption, not by indulgence in vagaries of the imagination, but from

THE HARD FACTS, THE COLD RECORD

In this case—we have such a man as I have endeavored to depict; and your Honor is to determine, for the purpose of this investigation, whether this man wantonly, without cause or provocation—willfully, deliberately, impelled by a heart steeped in wickedness—has murdered a human being; whether, taking a man in his situation, and with the burden of disproving the presumption of innocence, and of establishing that his offense was capital, and the proof evident and the presumption great, upon the State, he has perpetrated an offense for which a jury ought to consign him to the disgrace and to the ignominy of a violent death. That is the question, as I understand it, on which your Honor is called upon to pass.

Now, the facts of this case have been very ably, though tersely, presented by my learned associate, by whom the argument was opened, and I cannot hope within the brief time which is now allotted to me, to go over those facts with the discriminating minuteness with which I should have desired to bring them to your Honor's notice. But that is unnecessary. This whole record has been read before your Honor, and your Honor is quite as capable of comprehending the facts as the counsel upon either side. I will, therefore, merely suggest what our view of the case is upon the record as now presented, and I shall not make any statement, if I can avoid it, outside of the record, as to what might have been presented, so that your Honor may see the theory upon which we claim that the proof is not evident nor the presumption great. We have had—and I say this preliminarily to this part of the argument—a number of cases from Alabama and from North Carolina read in regard to what constitutes matter in justification or exculpation of a person charged with murder. I thought the law upon that subject was so thoroughly settled in this State, that it could not be made a subject of dispute between any persons, and I had no idea that it was necessary to resort to Alabama or North Carolina, or to any of the Southern States, or Northern States either, for that matter, to determine what our own Supreme Court has established in perhaps twenty decisions. The law is very simple. Threats may be given in evidence whenever at the time an act of homicide is committed a question arises as to which of two men made the first attempt to shoot—that is, of course, in a case where death is the result of shooting, and that is this case. You might search all the records in the State of California, or elsewhere, and you would never discover one, I will venture to say, so completely barren as the record in this case is as to what immediately took place when the petitioner Harlan entered the Byrns Hotel in Woodland—not, of course, as evidenced by his acts, expecting to see Craft on the bootblack stand—and looked or glanced up the room to see if he was there. He did that first, and then

HE TURNED AND SAW CRAFT IN THE CHAIR.

What Craft did then, how he looked, how he acted, what motion he made, so far as any positive testimony in this record is concerned, is not explained and not attempted to be explained, and is left entirely to conjecture. Now then, that being the case, it is so well settled that it would be almost idle to cite cases on the subject that we have a right to look to the antecedent relations and explore the conduct, including the threats, of the deceased, as well as the prosecution have the right to look to the immediate antecedent conduct of the petitioner. The object is to enable your Honor to infer or judge, as we have to infer or judge, from all the facts of the case as disclosed by the record, what the probabilities were when the eyes of those two men met, and, when the moment arrived at which the affray was commenced, who was the more likely, from their antecedent conduct, to have commenced it. Why, as was said in the case of Pridges vs. The State, a Texas case, the acts of the deceased at the time of the killing may be of themselves insufficient to extenuate, but when coupled with previous threats of violence, may present entirely new phases. "Trifles light as air," to use the graphic language of the Court, "then become pregnant with meaning and may completely negative the idea of malice." In the cases of the People vs. Scoggins, 37 Cal., 681-2; People vs. Iams, 57 Cal., 119 to 121; People vs. Arnold, 15 Cal., 476; People vs. Campbell, 59 Cal., 247; People vs. Tamkin, 62 Cal., 468; People vs. Westlake, 62 Cal., 303, and in a multitude of other cases which might be cited, the doctrine has been universally and over and over again laid down and applied, that threats, both communicated and uncommunicated, may be given in evidence. Communicated threats for the purpose of showing under what state of facts the accused had a right to act; uncommunicated threats to show the attitude and aspect of the deceased, in a case of homicide, towards the person by whom he was killed. Let me read two citations from the head notes to the case of the People vs. Scoggins, one of the best leading cases of this or of any other Court, on the subject:

"Threats made by the deceased or injured party, if known to the defendant at or prior to the transaction, are admitted, for the purpose of showing that the circumstances of the offense were such as to excite the reasonable fears of the defendant that his life was in danger, or that he was in danger of serious bodily injury, and thus justify his act.

"In a case of homicide, where it is doubtful which party commenced the affray, threats made by the deceased are admissible on the part of the defendant, although unknown to him at the time of the homicide, as *facts* tending to illustrate the question as to which was the first assailant."

THE THREATS AND CONDUCT OF CRAFT.

That is a condensed expression of the law on the subject, which renders it wholly unnecessary to resort to the Courts of North Carolina and Alabama for an exposition of that branch of the law. Now, let me, in the shortest possible way, bearing in mind that your Honor has heard this entire record read, state to you what our position is in reference to this case—that is, the case as it is now presented. Craft, the deceased, heard that Sill was married to the daughter of the petitioner. He must have been in Sacramento at the time, because his interview with T. S. Spaulding began at Sacramento. He talked to Spaulding here and then went on to Woodland. This was on the 2d of February, 1886. There he talks still further to Spaulding, and talks to W. R. Pond and to S. J. Sill. Whether Pond or Spaulding communicated fully what occurred, to Sill, perhaps the record does not altogether disclose; but the gist and essence of everything that was said to these gentlemen was, on Thursday, the fourth day of February, in the evening, communicated by Sill to the petitioner Harlan. Of course, we are not contending here that words will justify an assault, that slander will justify homicide; but these are words connected inextricably with specific threats. What are those threats? They are threats against life—threats specifically against the life of Sill; threats inferentially, but not specifically, against the life of Sill's wife, the daughter of the petitioner, Harlan; general threats, sufficiently comprehensive to include all of the members of Mrs. Sill's family. He will sacrifice lives, not one life, but more. And this information is admissible both for the purpose of characterizing the attitude of Craft towards Harlan, and also admissible because communicated to Harlan and to illustrate the conduct of these parties on Sunday, the 7th of February, when this homicide was committed. Harlan was the father of this lady. The foul and horrible charges made against her related to a period prior to her marriage to Mr. Sill. At the time of the interview between Sill and Craft, Craft had him completely at his mercy and could have killed him on the spot if he had made a single motion. I shall not, however, waste my time here by answering the aspersions which were unnecessarily thrown on the character of Mr. Sill. The fact is that on Thursday, the 4th of February, 1886, the petitioner, Harlan, was apprised of the fact that his daughter had been charged with virtual prostitution; that she had been charged with having committed a feticide; that her life had been threatened, and that the life of every person connected with her or interested in her was also involved in the comprehensiveness of the threats which had been made. More than that. To two of these persons, and among them Mr. Sill, the deceased Craft stated that he had letters to establish the charges which he had made. And presumptively the father of that lady must have been pretty anxious to see Mr. Craft and ascertain what he meant by his statements in reference to those letters. But beyond that Craft not only made these threats against life, but

HE FIXED A CULMINATING DAY,

He designated a period when a certain thing must be done or he would proceed to take lives, and that was Sunday, the 7th of February, when this homicide was committed. We do not propose to place Mr. Harlan in the attitude of a coward. He was the head of a family and of mature years, a man of eminent respectability, a man whom we may presume was possessed of a calm and deliberate judgment; and it was very natural, if such was the fact, that on Sunday, the 7th of February, on a day when the operations of business usually cease, that he should desire to interview Mr. Craft, to find out what he meant by his assertions and by his statement in reference to these matters. There is not one particle of evidence here to show that when his eyes encountered Craft in that office of the Byrns Hotel, at Woodland, that Craft made a single motion or suggestion which would have afforded an opportunity for explanation. I say broadly that there is no testimony here to show what Craft did at the moment when the eyes of Harlan encountered his, and no amount of assertion can extract any such testimony from this record, because it does not exist. Now then, if your Honor please, we come down that far. We have had a recapitulation here of Mr. Harlan's movements. Harlan did not move at all; he stood perfectly still at the Woodland Bank corner, between the hours of 1 and 2, on the 7th of February. He was not the moving party. The moving parties were Craft and Nelson. Harlan stood there like a statue, while they were moving around and trying to get around him. So far as the testimony can lead to any inference, they were trying to "get the drop on him." Craft was at Woodland on Saturday night. The testimony of Mr. Ira R. Doolittle shows that. Craft did not sleep at his father's house. He slept at the Byrns Hotel; slept there with some gentleman whose name, I think, was Hamer. He arose on that Sunday morning at 5 o'clock. That is the testimony. And the first thing we hear of Mr. Craft on that day, with all this antecedent history behind him, is that he is in the kitchen of the Lindner building with the witness Nelson. Nelson locates himself in the back part of this Lindner building, while Harlan is standing upon the Woodland Bank corner. He sees Barnes; he sees Sill; he sees Mr. Stephens. He does not move about. He says nothing, which has been established here. These two persons—Craft and Nelson—are in the back part of that building, and yet one of them, Nelson, is watching every movement in the neighborhood of Mr. Harlan. What is that for? It may be very probable that Harlan desired to see Craft. I hope he did. I think as a father, as the head of a family, when

HIS DAUGHTER HAD BEEN TRADUCED AND MALIGNED

As shamelessly as she had been by Craft, that he had a right to desire to see him, and, more than that, a right to be willing to take any consequences which might result from the interview—a right which would be conceded to him, I imagine, by the universal judgment of mankind, to know what the facts were to which Mr. Craft had alluded to three persons, one of whom at least was a stranger to Mr. Harlan's family, so far as any relationship is concerned—either by marriage or otherwise. When Craft left the Lindner building he went to his father's house, and his father's house is south of that building, on the same street—south of the Woodland Bank. If he went there directly, and if Harlan was looking for him for the purpose of killing him, he had to pass him. He must have adopted a circuitous route to reach his father's house, and he left his friend Nelson behind him in the Lindner building. Twenty minutes later—fifteen or twenty minutes later—Nelson joined Craft at the house of Craft's father. They met there. There was some conversation then, and they parted again. They both went back to the main part of Woodland. Why did they separate? Craft pursued a course diagonally across the college lot, which kept him out of sight of Harlan. He made his way to the Byrns Hotel. Now, as to this testimony of the younger Doolittle, in regard to Sill's having been in sight of Craft, that really is not worthy of any consideration whatever. He does not pretend to say that Sill saw Craft, and Sill was pursuing the ordinary route from his house to his store, and he went to his store. But Craft made his way to the Byrns Hotel, and Nelson went back to the main street of Woodland, and resumed his watch over Harlan. He saw some young men, and finally arrived at what is known as the Craft House, and he was stationed there in such a position that he could see everything that occurred at the Byrns Hotel—that is, everything that occurred on the outside. Now of course it is impossible, as I have stated, in the time at my disposal, to analyze all this testimony, but this gives your Honor an outline of what it was, and I think that it does not show the complicity which has been charged here between Barnes and Harlan. I think when you couple the facts to which I have so briefly referred with the antecedent declarations and threats of Craft; with the time that he got up, and with all the subsequent events of that day, as far as they have been detailed in this record, you will conclude that there is as much testimony in this record to establish the existence of an intention on the part of Craft, who was armed and ready for the purpose, of shooting Harlan, as there is of any intention on the part of Harlan to shoot Craft.

Now this is a very brief sketch of the view which the petitioner's counsel take of what is disclosed by the records in evidence in this case. You see, then, a man who must have been, through his conduct, one of

THE VERY LOWEST OF GOD'S CREATURES

Or he must have been absolutely insane, using the foulest and the vilest language in respect to a decent and an accomplished woman; not limiting himself even to these slanders, but he threatened life. And all this was communicated to her father, who was her natural protector, and to whom, certainly as to a matter affecting her chastity and character before marriage, she had a right to look for support and defense in a legal and not merely in a moral sense. Now will you examine these facts, and, when you couple with them the proposition that at the instant that this affray began there is no testimony to show what Craft did—but you know what his disposition was; you know what his expressed intentions were; you know what his conduct was; you know that he was prepared for homicide; you know the acts of Nelson and himself upon that day; you know the circuitous route which he took; you know the mystery which pervaded all of his movements—I say you have a right to infer, as a strong probability from the record in this case, that the instant Harlan entered that room and looked before him, where he saw nobody, and then turned and saw Craft, that Craft made some motion or some gesture or manifestation, some indication of his intention to carry out that threat which he had previously made. He was ready for that purpose, but he was not quite quick enough to execute it. I think then that your Honor can say, independently of the effect which the attacks on the daughter may be presumed to have had on the mind of the father, in view of this comprehensive analysis—if I may use that expression—of the testimony to show the outline of the probable defense, that there is at least enough to prevent this petitioner from being found guilty of murder in the first degree and sentenced to the penalty of death. If you can so find, then he is absolutely entitled to bail and under any circumstances, in view of the other matters to which reference has been made, your Honor would have a discretion to grant it. The object of bail is to secure the attendance of the defendant at the trial. If that be the object of bail, then in every instance where bail is refused without the positive inhibition of the Constitution or without the slighest danger that the defendant would absent himself at the trial, the refusal becomes a mere instrument of revenge. The State is then engaged in vengence and not in prosecution, when it refuses bail under such circumstances. I say that a great State cannot stoop to revenge. Perhaps it is true that sometimes private parties secure a position where they may

TEMPORARILY MASQUERADE AS A GREAT STATE;

But, after all, behind their contortions, stands the State itself, calm, just and free from all passion and from all resentment. Why is this application for bail so vehemently opposed by three learned counsel, who present their arguments against it? Is it because they believe Harlan would run away? They would not claim that. Then it must be because there is some positive law in their judgment which prohibits his admission to bail. If this difficulty does not exist, and I think I have shown that it does not exist, then they themselves presumptively would desire that he be admitted to bail. Of course this petitioner is not to be punished in advance of conviction, and just force enough to insure the end of his presence at the trial, is to be employed. Habitual criminals, or individuals who betray criminal instincts and commit offenses in violation of our laws for gain or in the execution of nefarious schemes or projects, stand, especially before conviction, in a very different attitude from that of an honored and aged citizen, a good husband, a good father, an industrious and worthy producer, who has made the world better and more prosperous because he lived in it, who, even in resentment at some horrible charge upon his family, inflicts deadly punishment upon the offender. I have read to your Honor the sections of the Penal and Civil Codes in relation to self-defense and the protection of a man's self and of his family, and I say, as a proposition which ought to enter into the consideration of this case, because it is borne up by the law, that an American who would not protect and vindicate his own daughter against a saturated villain or a dangerous lunatic who had attacked her chastity, and had sought to tarnish her good name, and who endeavored to wrest from her that sparkling jewel which concentrates the rays of purity upon the brow of womanhood, would be a disgrace to himself and to his country. He ought never to touch the hand of a decent man, or the soft fingers of a pure and gentle woman. To him, to such a man as that, home, sweet home, the sanctuary of the human heart, the shrine of the holiest affections and sentiments should be forever closed, and he should wander over the earth the trembling ghost of a deathless remorse, and when his baleful breath ceases to mingle with the air, his poisonous dust should be scattered to the wind and oblivion should be his final doom.

THE RIGHT OF PROTECTION AGAINST INSULT,

Against defamation, against violence, is the most fundamental right of which human beings are possessed. It was implanted in man by his Creator. It is a part of all social organizations and all government; it is a part of every charter of human liberty; it is guaranteed in our State Constitution and in the Civil and Penal Codes; it exists even in animals, in serfs, in slaves, in the oppressed of every race and of every nation; it is the sacred right of self-defense, which every writer on law or morals has vindicated in all ages and in all social and political conditions. In the American breast it is an instinct, the surrender of which is impossible. It is so deeply rooted in the nature of every man, and especially in the nature of every man of our race and of our lineage, that it is hard to conceive of one so low, so lost to self-respect, so destitute even of the honor of the beast, who would barter that birthright for any wealth or rank. And this right of self-defense, by law as well as by nature, is not limited to the man himself, but extends to those who are dependent upon him—to his wife, to his children, and even to strangers who are temporarily under his protection. The statutes of our State present this idea in terse and pregnant sentences, glowing with a fire more inextinguishable than that which was guarded by the vestal virgins themselves.

Now I should have desired, if your Honor please, to have referred a little more at length to some of the authorities which were cited on the other side, but I deem it to be unnecessary to pay any further attention to them. I say *first*, that in this case, upon the face of the record and upon the cold law applicable to it, as embodied in the sections of the Penal Code and the authorities which have been read to your Honor, that the proof is not evident and the presumption is not great. I pay no attention to the case in 63 Cal.—the Troia case—because it is wholly inapplicable. There was only one question in that case, with which your Honor certainly must be familiar, and that is the question as to whether the Court upon habeas corpus would look into the credibility of witnesses. That is all there is in that case when it is analyzed. The Ashmead case, which is referred to in the opinion in the Troia case, is commented upon, explained and enlarged in the case from 4th Ashmead, to which I invited your Honor's attention this morning. There can be no doubt, as I take it, that upon this record, exercising the common sense of which even a judicial officer cannot be deprived in the interests of the prosecution, that your Honor has a right, even if it had been shown that the proof was evident and the presumption great, in the exercise of a sound discretion and belief that this defendant would be present at his trial, to admit him to bail. But upon this record, upon the facts which faintly scintillate, it may be, the case which lies behind it, your Honor can see enough to be satisfied in the exercise of the calmest judicial discretion that this is not an instance in which not only any jury would, but in which, according to law, any jury ought, to render a verdict of guilty of murder in the first degree with the penalty annexed of death. I submit the matter to your Honor's consideration.

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"How does it happen, Bridget, that there are as many feet of gas charged for this month as last, when Mrs. Blossom and myself have been out of town three weeks?" "Sure an' I can't tell, sor, savin' that whin the gintleman came to luk at the mathur there was six fate of coal an' wud a top of it, and he obsarved that I needn't bother wid it; he'd take a luk at the pracaydin' figgers. Maybe he added the six fate of wud and coal, I don't know."—[Harper's Bazar.

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## A PLUCKY SCHOOLMA'AM.

**A Tramp's Adventure with a School-House Heroine.**

"Speakin' of the rural regions," said an old chap at the end of the bar, who had trouble in raising a glass of beer to his mouth with his right arm, "I might be indooced to relate a leetle adventure which happened to me in Indiany."

He was earnestly advised to free his conscience of its burden, says the New York *Sun*, and he continued:

"Well, I had been hangin' around Indianapolis for several weeks, and finally the Police Judge advised me to leave town. I never argy with a Police Judge. When they come right down to fatherly advice, I accept it and git. I left the town inside of two hours, and it didn't take me over three hours to reach a mile post ten miles away. About 4 o'clock in the afternoon, as I was restin' beside the highway, a schoolma'am passed. She was a chipper leetle body, weighing about ninety pounds, and white-faced, and when I sort o' riz up to ax her if she didn't have a bite to eat in her basket, she uttered a womanish yelp and started off on a dead run. I didn't hev my swaller-tail coat and standin' collar on that day, and I guess she took me fur a tramp.

"Now, gents, when a feller is ragged, hungry and out o' rhino, what does he do? He makes a break, in course. I walks along fur about a mile, and when I comes to a farm house with a look of comfort about it, I stops in and asks if a poor man who has lost his whole family in the great Chicago fire can get a bite to eat to brace him up as he journeys towards the settin' sun. The motherly old soul of a farmer's wife would hev out a squar meal fur me, but that leetle schoolma'am was there to prevent. I heard 'em whisperin' together in the next room, and by and by the old lady come back and give me the bounce. A tramp as has belonged to the purfeesh fur fifteen years hadn't orter fire up over sich a trifle as that, but it hit me like a blow below the belt, and I det rained on revenge.

"I went into the orchard and stole some apples, and then laid around to watch. I found out afore dark that the farmer was an old man, and that there was only three o'em in the house. Long 'nuff fore the lights were out I had arranged with myself to break in. There was a chance of plunder, and I intended to scare that leetle schoolma'am out of a year's growth. I don't say as I would hev laid hands on her, but that very thing might hev happened, you know.

"Well, about midnight I begins operations by creepin' up to the back door. It was shut, but not locked, and I crept in, struck a light and found my way to the pantry. There was cold meat, pumpkin pie and bread and butter, and it took me a good half hour to fill up. I might hev gone out then, but I wanted suthin' else. There was nobody sleepin' down stairs, and after pocketin' a watch I crept up stairs into the old folks' bedroom. They was sleepin' as sound as you please, and the moon shinin' in furnished all the light needed. I went through a bureau and got a wallet, and was searchin' the old man's pants, when I heard a step at the door and a voice cried out, 'Surrender, or I'll shoot!'

"It was that leetle schoolma'am. She stood in the door in her night dress, a revolver pointed full at me, and I could see her eyes blaze. I made a rush to seize her, when 'crack! crack!' went the revolver, and one bullet struck me in the right shoulder and another in the side. I went down as if shot through the head, and up jumps the old man and piles on me like a ton of brick. The little schoolma'am went down stairs after a rope, and then helped tie me hand and foot. More'n that, she kept guard over me while the old man rode off for an officer, and every time I fetched a groan she had that revolver ready to shoot.

"In conclusion, gents, permit me to remark that the Court give me five years fur that little affair, while the plucky leetle schoolma'am received a public purse of $200. Sometimes I've felt as if it was my dooty to hunt her up and marry her."

## HOSPITALS FOR HORSES.

**American Progress Made in the Veterinarian Science.**

Advancement of sciences of all natures and descriptions has been very rapid during the past twenty-five years, and among them none has made longer strides toward perfection than that which looks to the alleviation of suffering in animals, the healing of wounds caused by accidents, and the curing of such diseases as the dumb creation is heir to. A few years since the number of practicing veterinarians in this city was not only very limited, but the facilities necessary to a proper and thorough dealing with patients was lacking. Such an institution as a horse hospital was entirely unknown, and the opportunity for the students to obtain the practical knowledge necessary for a perfect acquirement of the science were extremely limited.

To-day all these privileges are enjoyed, and hospitals for the cure of sick animals abound. The majority of these are, of course, private establishments, governed by individual veterinarians. In fact, the only one which may be said to partake of the nature of a public institution is the American Veterinary Hospital, on West Fifty-fourth street, which forms the practical department of the American Veterinary College. At this place there is, in addition to the care of private patients, a free dispensary for the cure of animals whose owners have not the means to employ a skilled veterinarian in the treatment of their sick, and the extent of the practice may be judged from the fact that the list of free patients runs up to between 500 to 600 annually of horses alone. In the entire hospital the total number of horses treated is nearly 2,500 annually, and the growth of the art can be well appreciated from the fact that ten years ago the number received in this same hospital was only 710. To what a state the knowledge of diseases and the power to cure has arrived is evidenced that while of the 2,500 treated in a year, upward of a thousand are injured to the extent that surgical operation was necessary, most of which required the use of anæsthetics, the mortality of the whole number was only about one per cent.

The number of these patients constantly under treatment average from twenty to twenty-five, and these are cared for as tenderly as human beings would be under the same circumstances. They are placed in large box-stalls with every requisite for comfort, and all the appurtenances necessary for hospital use. The veterinary college has a class numbering 125 students, and a medical staff of four, of which Prof. A. Leantard, M. D. F. S., is at the head for practical surgical work in the hospital.

A *Sporting World* reporter called at the hospital a day or two since and held a conversation with one of the faculty relative to the progress made in the science of animal surgery during the past twenty-five years. While evidently willing to give his opinion, the medical gentleman, however, requested that his name should not be printed.

"So far as veterinary science is concerned," he said, "its strides in America during a quarter of a century have been marvelous, but it is, I believe, only in its infancy even yet."—[Sporting World.

## PHILOGRAPHY.

**How a Man's Character can be Read by an Investigation of His Hair.**

"It is a fact," said the barber, "that a better idea of character is oftentimes expressed by the beard than by the countenance. The art of reading character by the beard is taught as a science in Paris under the name of 'philography,' and I understand a book is shortly to be published in which the principles of this science will be given in detail. Did you ever notice that people of very violent temper have always close-growing hair? It's a fact that every man having close-growing hair is the owner of a decidedly bad temper. It is easy enough for me to note at a glance how a man's hair grows. Then I know how to handle him. Men of strong temper are generally vigorous, but at the same time they are not always fixed in their opinions. Now the man with coarse hair is rooted to his prejudices. Coarse hair denotes obstinacy. It is not good business policy to oppose a man whose hair is coarse. The eccentric man has always fine hair, and you never yet saw a man of erratic tendencies, who at the same time had a sound mind, that was not refined in his tastes. Fine hair indicates refinement. You may have noticed that men engaged in intellectual or especially in esthetic pursuits, where delicacy is required, have invariably fine, luxuriant hair and beard. The same men, as a class, particularly painters, are always remarkable for their personal peculiarities.

"The brilliant, sprightly fellow, who, by the way, is almost superficial, has generally a curly beard. If not, his hair is curly. It's easy to bring a smile to the face of a man whose hair is curly. He laughs where colder natures see nothing to laugh at. But that's because his mind is buoyant and not deep enough to penetrate to the bottom of things. There is a good deal of difference between coarse hair and hair that is harsh, though it requires an expert to distinguish it. For example, a man's moustache may be as fine as silk and yet cannot be trained to grow into a graceful curve. That's because the hair is harsh. Now, people whose hair is harsh have amiable but cold natures. They are always ready to listen, but it is difficult to arouse their feelings. In men of this disposition the hair on their heads is generally, in fact, almost always, of a shade darker than their beards. When the beard is full, covering the entire face, the color varies from a dark shade near the roots to red, which colors the end of the hair. These men have very rarely a good memory. They forget easily, and often leave a cane or an overcoat behind them in a barber's shop. They are great procrastinators and are bad at keeping appointments. Think over your acquaintances and see if the man who is habitually slow has not a moustache or beard of a lighter shade than his hair. It's always the case. These are the men who come in late at the theater and get to the station just in time to miss the train. But philography is a science. It takes years of study and observation to acquire it. From long practice and a natural liking for the art I have attained considerable skill in discerning character."—[Household Words.

## ECONOMIC LIVING.

**Practical Hints for Plain People Who Live Within Small Incomes.**

Roast beef is looked upon as a luxury far beyond the frugal purse. This is true when applied to the "porter-house roast" and other choice cuts, but the cheaper pieces can be made very good and tender, even those sold as low as a shilling a pound. Buy not less than two ribs; have the butcher take out all the bones, roll it up tightly, skewer it firmly, and give you a piece of suet to lay upon the meat while roasting. Save the bones. Put a pint of hot water in the pan with the beef, roast quickly the first half hour. This crusts the surface of the meat and retains the juices. Allow fifteen minutes for every pound of beef for roasting. Baste often, for this, with the steam of the water in the pan, makes the meat tender.

Under this treatment the cheaper cuts will prove quite satisfactory. Nor are they too costly for plain people, for every part of the meat can be utilized and served in inviting shape; only the bones are thrown away, after simmering for three hours in two quarts of water. Break them up small, use cold water to extract their juices and sweetness, add one spoonful of salt, and keep closely covered. This is "stock," of which almost an endless variety of plain soups may be made. Add a bunch of "soup vegetables" (cost five cents), chopped, and you have a vegetable soup; or a pint of canned tomatoes, and you have tomato soup; or a spoonful of rice or barley or vermicelli for the different kinds. All are inexpensive. Never use the "stock" the day it is made, but strain out the bones and allow to stand till the next day. Then take off the fat that has risen; this may be used for frying drippings. So almost none of the beef is lost, and a shilling a pound even is not paid without a fair return. But, to go back to the roast, for which a rich brown gravy must be made. Having removed the meat and poured off the fat (for frying drippings also) set the pan on the top of the range and allow the contents to scorch just a little, enough to give a good color; then add one cup of boiling water and thicken with flour and season; serve in a gravy dish. A small beginning only will be made on this roast by two people. Cold roast beef is not to be despised, served with, perhaps, baked beans, which cost but a trifle, and vegetables. Or the meat may be finely chopped, a little gravy added, all covered with cold mashed potato, and baked and browned in an open vegetable dish in the oven; or it may be minced and made with equal parts of mashed potato into balls, like fish-balls, and fried brown on both sides, in drippings. This is a good breakfast dish. It may also be cut up small and warmed in its own gravy and served on toast or without the toast.

Beans are said to contain more nutriment than any other vegetable. The best white ones are only ten cents a quart; half that quantity will fill a two-quart dish when properly cooked, and half a pound of salt pork is ample to flavor it. Wash and look over the beans and put them in cold water, using three quarts to one pint of beans; keep them over the fire three or four hours; set them where the heat will swell and soften them, without boiling, having the pork (