ATTORNEY DELMAS' ELOQUENT ARGUMENT.

His Magnificent Appeal in Behalf of a Widow.

SCORING A SPENDTHRIFT

How a Cattle King Obtained Control of His Partner's Property.

THE GREAT MILLER & LUX CASE.

Millions of Dollars and Thousands of Acres of Land in This State Are Involved.

No more wonderful romance has ever been woven by Alexander Dumas, Eugene Sue or Victor Hugo than Attorney D. M. Delmas exploited Wednesday in the courtroom at Redwood City in his masterly argument in the great Miller & Lux case, involving millions of dollars.

Fighting for the widow of Charles Lux, whose all has been jeopardized by a spendthrift relative, Mr. Delmas' eloquence held every one within the hearing of his voice spellbound for hours and clear into the night. Not since the days of Henry Edgerton has any argument in a courtroom had such an effect and when it was over the listeners sat entranced, wrapped in the ramifications of the story just told them and through which the capable barrister had led them step by step.

It was like the perusal of a marvelous tale of wealth and wantonness, interspersed with pathos and sentiment, and couched in such English as is seldom heard in these days in any court.

THE CALL presents herewith the verbatim report of Mr. Delmas' argument:

Mr. Delmas addressed the court as follows:

May it please your Honor, when some future moralist, descanting upon the vanity of riches and the emptiness of human ambition, shall seek in the annals of our jurisprudence an example to enforce his homilies he will find none richer in illustration than that afforded by the proceedings before the court. We have here on the one side a man already nearing the limit of human life still restless in the feverish pursuit of wealth—wealth which affords him no enjoyment; the increase of appetite growing by what it feeds on; the scope of the horizon expanding the higher the ascent; the means by which the pursuit is followed destroying the possibility of enjoying the reward. On the other hand the sad lesson taught of the rapidity with which the prodigality of descendants may in one lavish hour scatter to the winds the hoarded accumulations of years reaped by the patient toil and labor of the ancestor.

But it is not from a moral, but from a legal aspect, that your Honor has to deal with these questions. Moral considerations interest us no further than in so far as they may affect the legal rights of others.

This is a proceeding to remove an executor from office. We admit at the outset that the burden of showing legal cause for that removal is upon us. As well remarked by my learned friend at my left in an argument which, though I had not the pleasure of listening to it, I read with renewed admiration of his ability, his candor, his power of clear, orderly and forcible statement, the testimony is valuable only in so far as it relates to three propositions, which he has thus stated:

The three grounds upon which it is urged a case has been made are these:

First, that the respondent is incompetent to discharge the duties of his office by reason of a want of integrity;

Second, that the respondent is incompetent to execute the duties of his trust by reason of improvidence;

Third, that the respondent and Henry Miller have entered into a conspiracy to cheat and defraud this estate and those interested in it.

The whole field of inquiry is thus clearly outlined. The three propositions upon which this case must turn are thus clearly and succinctly stated. I shall adopt those three propositions as the text of what I have to say, and shall follow, as my learned antagonist has done, the order of the statement.

THE QUESTION OF INTEGRITY.

I will address myself first to the question of lack of integrity. Do we find in the respondent, Potter, that lack of integrity which disqualifies him from executing the duties of this important trust?

Who is Jesse Sheldon Potter? He is the stepson of the deceased Charles Lux, the offspring of his wife by a former marriage. He is the cousin of the present wife of Henry Miller, with whom he spent the hours of his childhood and boyhood, and the nephew of Henry Miller's first wife, who was a sister of his own mother. He has been trained in business as an inmate of Henry Miller's house for eight years when he was a lad and by Henry Miller himself. He naturally glided from there into the employ of this large, wealthy and influential firm, entering as a mere youth and continuing in more or less important capacities up to the present time.

In commenting upon the conduct of Mr. Potter and the actions of Mr. Miller, as I shall do at some length, I shall do so in no offensive sense, void of any personal animosity against these parties, and in the simple discharge of an imperative duty, giving no more pain to either party than the facts of the case abundantly warrant.

I say, then, at the outset, using the epithets borrowed from Henry Miller himself, that for five years before his stepfather's death, Jesse Sheldon Potter was a defaulter and an embezzler; that his defalcations and these embezzlements commenced as early as 1882, starting, as such things generally do, with small amounts, increasing with varying fluctuations as crime or conscience and remorse alternatively had sway, until, at the death of Charles Lux on the 15th of March, 1887, his pilferings had amounted to the large sum of $26,000 and over.

A charge of this gravity is not made without reflection and deliberation and a painstaking and anxious examination of the testimony by which it is supported. That testimony reveals the fact that, during Charles Lux's lifetime, Jesse Sheldon Potter occupied in the firm the very important position of being manager of its slaughter-houses and collector of the thousands and hundreds of thousands of dollars from its customers. Neither Lux nor Miller was a man of letters. On the other hand Potter had received a certain modicum of collegiate education. He, therefore, naturally discharged important duties with reference to the office and the books of account of this firm.

DEFALCATIONS MOST PROMINENT.

It were tedious to go through the very numerous items which constitute these defalcations. There are two, however, which stand out in bold prominence and with marked features before our eyes, and to these two I shall address my remarks.

The first is a collection made in October and November, 1882, from the Occidental and Oriental Steamship Company amounting to thirty-three hundred and odd dollars.

This company was a large customer of the firm of Miller & Lux, its purchases amounting all the way from $1500 to $3000 per month.

The documentary evidence—the books and vouchers—shows beyond question that Potter collected from this corporation through D. D. Stubbs, their secretary, the sum of $3356 57 for meats delivered for the two months of September and October, 1882; that this collection was made in two installments; that the payment was made by Mr. Stubbs in person to Potter himself and was made in coin and not by check; that this coin went into the hands of Potter as the collector of his employers, Miller & Lux: that he has never to this day paid this money over to its owners; that nine years afterward, the matter having lain hidden and dormant during that time, he was charged by Miller with the defalcation and then acknowledged it, giving his promissory note for the amount, with interest from the date of collection to the date of the note, which was the 17th of February, 1891.

If reasoning be the process of ascertaining the unknown from the known we start out with a firm grasp upon this much knowledge. This we know; this much is conceded. These circumstances stand out as beacon lights by which, as mariners, we are to determine our course through the uncertain fluctuations of the sea of testimony which lies before us.

It is admitted by Potter that this money, though collected by him, has not been paid over. He was asked the following questions and gave the following answers:

"Q.—You had collected from the company $3356 57 for meats furnished to their steamers, by you or under your orders? A.—Yes, sir.

"Q.—Had you ever paid that money to Miller & Lux? A.—No, sir. If I had I should not have given the note for it.

"Q.—You had not paid for it? A.—No, sir."

That the facts standing with the group of admitted circumstances that I have stated and read in the light of those circumstances are sufficient, if explained, to base a charge and warrant a verdict of embezzlement against this man cannot be disputed.

BUT ONE EXPLANATION.

What is Potter's explanation? He gives but one. Your Honor will recall that he was first sworn on the 21st day of October of this year to give testimony in this case, and at that time the explanation of his failure to pay this money over to its owners was that he had loaned the bulk of it—$3000—to a man whose name he would not then reveal, and had taken his note, which note had never been paid. He declined to state the nature of the transaction because it was a business transaction.

He said that he had a voucher for this amount, and, when asked what it was, declined to state, on the ground that, to use his own language, "being connected with the business, he is not at liberty to do so." He states "it was a business transaction in connection with the steamer business; a man's note. 'Q.—Whose note? A.—I refuse to state.'"

He goes on to say: "I reported that fact to the office after the money was returned. I told them I had loaned the money, and as soon as I got it I would return it. I told him (Rodolph, the bookkeeper) that I had loaned the money, but did not tell him to whom, nor show him the note."

Asked what has become of that note he says: "The note? I have got it.

"Q.—You still have it? A.—Yes, sir.

"Q.—Where is it? A.—At my house."

Is that story true? Is that an explanation of the failure to turn over this $3000 to its true owner?

I shall endeavor to show to your Honor, and I feel confident I will be able to prove that there is not one particle of truth in that explanation.

As I have already stated, the amount collected was some $3300. It was not collected in one sum or at one time. It was collected in two amounts—the first, on October 25, 1882, was $844 20; the second, on November 17, 1882, was $2512 37.

It will be noticed, of course, that neither of these sums makes up by itself the full sum of $3000, which he says he loaned to this unknown man. He could not have made that $3000 loan with the first collection, because it amounted to only $800. That was received, as I have stated, on the 25th of October. He must have carried it over from the 25th of October to the 17th of November, and added it to the $2500 which he then collected in order to get $3000 to loan to this unknown stranger. There is no pretense that he loaned that $800 between the 25th of October and the 17th of November. What reason, then, was there for not immediately turning over that money in the ordinary and honest course of business to its true owners? Where did Potter keep that $800 for this period of four weeks? It was coin, not a check. He did not loan it. The explanation of a loan will not fit that case.

DEAD MEN CANNOT SPEAK.

His story about the note, if your Honor please, is inherently untrue. We have a mysterious note, given to a man who must remain unnamed because the transaction is not such as will bear the light of day. This is given when Jesse Potter goes on the stand the first time. His mind upon this subject, so far as the examination was concerned, was virgin of any impression. He could not tell, he did not know that we would question him, or that we knew anything about that transaction. Hence, at that time the name of the payee of the note is refused, although he tells us the note is in his possession at that time; it is at his house; he can produce it. He thinks he is safe against detection because the rampart which he has thrown before him, that this was a business transaction, will be a sufficient protection against further questionings.

He is subsequently undeceived in that proposition, because, before he leaves the stand, we demand, as of right, the production of that note. The counsel who represent him here were, of course, too well versed in law to suppose for a moment that the request could be refused. The rampart which he had built up, of declining to produce it, and of declining soon to give us the name of the payee, vanishes. Upon the reassembling of the court what happens? We are then told that the name of the payee is a Mr. Reynolds. In selecting from the whole mass of people who might have been its payee Mr. Potter is careful to name a man who has been in his grave for three or four years, and who, therefore, could, by no possibility, contradict him.

And what of the note which he had at his house the day before? We are informed that he has hunted for it in his box in the safe of Miller & Lux, and it is not there. The note cannot be produced.

Why did he go that evening to the safe of Miller & Lux to look for that note when the echo of his testimony that the note was at his house had not died within these walls? He had seen the note, he tells us, a year and a half before. He had kept the precious document from 1882 until 1893, a period of eleven and a half years, and, lo, at the very moment of his utmost need it has vanished—it had percolated through the iron walls of the safe of Miller & Lux. It cannot be produced.

His first version, if your Honor please, of this matter, on the 21st of October, is that he had loaned the money to this mysterious man, and that he had told Rodolph, the bookkeeper: "As soon as I get this money back from this man I will turn it in." There can be no question that at that time the exculpation of Potter was placed upon the theory of a loan for which a note, payable at a future time, had been taken, because, your Honor will remember, he swore that he had tried repeatedly to collect that note, but had been unable, and he had kept the note in his possession from 1882 until a year and a half ago—nearly twelve years—as a valuable piece of paper.

His second version of the transaction involves no loan to Reynolds. His defense is thus placed upon the theory of a payment to Reynolds of this sum of money, to be spent by Reynolds for the benefit of the firm, to use a vulgar phrase, "wherever it would do the most good."

Then, it was not a loan. Then, it was not expected that it was to be paid back. Then, the story of an effort to collect it back is not true. It is not true, either, that he ever told Rudolph that he had loaned this man, or any man, this money. Nor is it true that he told Nickel that he had loaned this man any money. And this for two obvious reasons: Rodolph is his own personal and intimate friend. He is the only witness—because the witnesses to Potter's business capacity amount to nothing in this case—he is the only witness, I say, that Potter has summoned in his behalf.

AS SILENT AS THE GRAVE.

The tie between them is so intimate that Rodolph is willing to make himself a petitioner in a proceeding to remove the executor of Potter's mother's will upon the mere casual suggestion of Potter. Rodolph is sworn. Does he say that Potter ever told him it was a loan? Does he say that he ever told him that he had taken a note from Reynolds or from any other man? Does he say that he told him that, when he collected the money back, he would pay it to him? Does he say that he ever saw the note? Does J. LeRoy Nickel, the duplicate and representative of Henry Miller, who sat here in court from the beginning to the end of this trial—does J. LeRoy Nickel go on the stand and say that Potter ever told him that it was a loan, that he ever dreamed it was a loan; that he ever saw this note; that when he charged Jesse Potter with having embezzled this money, Potter exculpated himself upon the ground that he had given the money to a man to be spent for the benefit of the firm? No. Nickel is as silent as the grave, and Rodolph does not dare swear that Potter ever told him anything of the kind.

Then remember, if your Honor please, that this very same Mr. Nickel and Mr. Miller, in the beginning of 1891, confronted Jesse Potter with this defalcation of $3300, charged him with it, and demanded restitution. Potter at that time had Reynolds' note, if he had it all, for he swears he had it as late as 1893. Did he exhibit that note to his employer Miller, or his representative Nickel, or Rodolph the bookkeeper? Did he say "This is my explanation; I did not steal the money. I may have been injudicious in giving it to Reynolds, but I did it in your interest. I may have been wrong, but here is the voucher, here is the paper which exonerates me, at least, of being a thief."

No! Confronted with his defalcation, he admits it. Having in his hands, he says, the means of refuting the charge, he does not produce them. Yet, these were not strangers or enemies. Henry Miller was his relative by marriage twice over, his friend, his preceptor, his mentor. If when Henry Miller charged this man, for whom he says he entertained a fatherly love and solicitude, with the damning evidence of the books, Jesse had said, "Why, there is no wrong in this; here is the evidence of my innocence," would he not have gladly accepted it? Jesse never produced it. Miller never saw it, never heard of it. He sternly demanded from the unfaithful employe the return of the full amount with interest from the date of the collection.

Mr. Potter says further, that at the time that these transactions took place he reported them to Rodolph, the bookkeeper, his friend, and that, to use his own language, "Rodolph marked it down as a credit for them (the Oriental and Occidental Steamship Company) and debited me with it in a memorandum which he put in an envelope."

False, if your Honor please, in both propositions; false, because Rodolph, called upon the stand, is not questioned as to that memorandum; false, because if there was to be a credit given by the bookkeeper to the Occidental and Oriental Steamship Company, who had paid their money in satisfaction of their debt, the proper place to give them credit was on the books, not in a slip of paper placed in an envelope, while they appeared debtors upon the books.

Whatever Jesse Potter might have done with the money, as between the firm of Miller & Lux and the steamship company, the debt was canceled. And if Potter was to be debited with the amount, and it was an honest transaction, why should he not be debited with it upon his account current with the firm of Miller & Lux, for he had a running account then amounting to over $4000?

A MYTHICAL MEMORANDUM.

He says further that that memorandum can be produced. Has it been produced? Fearing that we might demand it, knowing in his mind that it never existed, he subsequently says the memorandum was destroyed on the 17th of February, 1891, when he gave his promissory note in satisfaction of this defalcation.

Who saw that memorandum? Rodolph made it, Potter says. Does Rodolph say he made it? Does he say he even saw it?

It was destroyed at the time the note was given, Potter says. Does Miller say he ever saw it? Does he say it was destroyed?

Nickel demanded the note as the agent of Miller. Did Nickel ever see the memorandum? Did he destroy it or see it destroyed, at the time the note was given?

No eye ever rested upon that memorandum save the eye of Jesse Sheldon Potter's imagination.

If this was an honest transaction why did Mr. Potter keep it a secret from 1882 to February, 1891? If he owed this money honestly and intended to pay it why did he not say so? If he did not owe it, and the truth was that he had loaned it for the firm and taken a promissory note why did he not report the truth? Why did he not report to the bookkeeper that the Oriental and Occidental Steamship Company had paid their bill and were entitled to a credit upon the books; that he, acting as the representative of the firm, had made a loan of the money, and had taken a note for the firm, to a man named H. D. Reynolds? Why did he not have cash debited and bills receivable credited with that amount? That would have been the ordinary, the usual, the proper way in which the transaction would have appeared upon the books if it had been an honest transaction. It does not so appear. It is down upon the books as a dishonest transaction. As a dishonest transaction it was treated by Henry Miller. As an ordinary embezzler the man who had misappropriated the money in October, 1882, was, in February, 1891, discovered, caught and compelled to make good the defalcation.

The explanation of this painful episode is so plain, any comparison of the books of account of these two corporations makes it so manifest, that the testimony is crushing and overwhelming.

I have had placed for your Honor's convenience upon this sheet the compared statement of the books of Miller & Lux and of the Oriental and Occidental Steamship Company. A very slight examination of this sheet will show that the peculations of Jesse Potter had commenced as early as January, 1882, had continued down to November, 1882, during which time he collected the moneys from the Oriental and Occidental Steamship Company, and, then, could go no further, and were brought to a stop in November, 1882, because the collecting then was taken from his hands and put into the hands of another.

POTTER PAID THE MONEY.

From this sheet your Honor will perceive this state of facts: January 25, 1882, Miller & Lux sold the Oriental and Occidental Steamship Company for the steamer Belgic $769 74 worth of meat. The books of the Oriental and Occidental Steamship Company show that that money was paid by them to Potter. The company holds and produces the receipt for the amount signed by him on that day in coin, on the 5th of February, 1882. Your Honor will find by turning back to the books of Miller & Lux that Potter did not pay that money to Miller & Lux until the 16th of May, 1882. February 20, 1882, there was sold for the steamer Gaelic $812 84 worth of meat. That money was paid by the company to Jesse Potter in coin on the 12th of April, 1882. They have his receipt of that date. He kept the money until the 16th of May, 1882, and then, and then only, paid it over to the firm. March 15, 1882, there was sold for the Oceanic $791 64 worth of meat. That money was paid by the company to Potter in coin on the 12th of April, 1882. They hold his receipt of that date. He did not pay it over to Miller & Lux until the 29th of June, 1882. And so it goes on, if your Honor please, to the end, showing, beyond question, that the moneys were not paid over by the collector into Miller & Lux at the time they were collected, but that the moneys which were collected, for instance, in March, instead of going to pay the March bills were applied to pay the February or January bills; that the moneys which were collected in June went to pay the April bills; and so he continued two months behind his accounts, until we come down to the bills in question in October and November, 1882, which were applied to pay the August bills. After the 17th of November the collections being taken from him and placed in the hands of Rodolph, the next collections being made by Rodolph, Potter did not have the money to catch up with the past delinquencies and became from that time on a defaulter.

Mr. McEnerney—Now, Mr. Delmas, you will pardon me, but there is not any testimony in this record that the collections were taken away from Mr. Potter at that time.

Mr. Delmas—I beg your pardon. The collections made immediately after the two which I have stated—which are $800 and the $2500—were made by Mr. Rodolph and not by Mr. Potter.

Mr. McEnerney—Yes, sir; during that year; during the next month Mr. Rodolph collected, but Mr. Potter did not cease to collect, and there is no testimony to show it.

Mr. Delmas—There is testimony to show exactly what I state, if your Honor please, that the collections made after November, the next collection which would have been some $3000 and sufficient to catch up with this defalcation, were made by Mr. Rodolph and not by Mr. Potter. There is no testimony that Mr. Potter made any collection afterward. Hence, Potter became delinquent and had no means wherewith to catch up. That is the simple explanation of this whole matter. He had been paying the back bills with moneys collected thereafter, and the moment collecting was taken from him, the back bills remained unpaid.

In other words, if your Honor please, the thirty-three hundred and odd dollars which he collected, $800 on the 25th of October, 1882, and $2500 on the 17th of November, 1882, instead of being applied to the bills which Mr. Stubbs paid, were applied to bills of two or three months previous, which Mr. Stubbs had paid long before, but the money for which Mr. Potter had not turned over, and then when Mr. Potter was deprived of the power of making collections in December, the collections which were made in December could not be applied by him to meet the payments or to meet the bills which he had received payment of in October and November, and therefore these remained on the books unpaid and he was delinquent.

HE WAS AN EMBEZZLER.

Now, let us take the other transaction to which I have referred. I have said that, at the time of Charles Lux's death, Jesse Potter had been, independent of this item, a defaulter and embezzler to the extent of about $23,000.

Under date of January 3, 1891, four years after Charles Lux's death, we find an entry in the books of Miller & Lux in these words: "Jesse S. Potter in account with Miller & Lux. Indebtedness of Jesse S. Potter on 15th March, 1887. Amounts collected from sundries not accounted for, $23,947 06." Mr. Potter is asked upon that subject:

"Q.—Mr. Potter, does that $23,947 06 mean that on the 15th of March, 1887, you had collected for the firm of Miller & Lux that amount of money and not accounted to them for it? A.—Yes, sir.

"Q.—When was it that you collected this $23,947 06? A.—Previous to Mr. Lux's death.

"Q.—How many years previous? A.—A great many years.

"Q.—When did you commence to collect moneys for the firm of Miller & Lux and fail to pay them over to them? A.—It commenced in 1882.

"Q.—And ran down to Mr. Lux's death, a period of five years? A.—Yes, sir, a period of five years.

"Q.—And during that period of five years these sums gradually accumulated to something over $30,000? Yes, sir.

"Q.—You say that that is shown by the books? A.—It is shown by the books; yes, sir."

Now, this defalcation of twenty-three thousand and odd hundred dollars remained a secret until the beginning of 1891, when Potter was confronted with it and acknowledged it. Mr. Miller, then, his relative, his friend, the husband of his cousin, the husband of his aunt in his first marriage, his coexecutor upon the will of Charles Lux, instead of sending him to the penitentiary, as he says he might and perhaps ought to have done, out of tenderness for his mother would not punish him, and contented himself with taking his note for the amount of his defalcation. What motive, what ultimate purpose this harsh and unsentimental man had in doing this act of apparent magnanimity I will show hereafter. It does not belong to this part of my argument.

Before examining, however, into the explanation which Potter gives of these defalcations of $23,000 let us examine into their origin, their progress and their final culmination. As I have stated, Potter ran the business of the slaughter-houses and made sales of meat for cash there paid him. In the ordinary course of business these moneys would have been turned over every day into the strong-box of Miller & Lux, to which they belonged. Instead of doing so Potter began in 1882 to be short in his returns. It commenced at first with a few hundred dollars. It fluctuated, and then reaches at his stepfather's death the very considerable sum of $23,947 06. It remained in this condition, unknown, hidden in the mass of accounts, unsuspected by Henry Miller or by any of his representatives, until 1891, when it was brought to light and Potter confronted with the fact, Potter then acknowledging his liability and giving in restoration his promissory note.

HOW THE MONEY WENT.

What is his explanation? He is asked:

"Q.—What had you done with the moneys after you had collected them? A.—Some of it I had spent for the business.

"Q.—What with the other? A.—I spent it myself.

"Q.—How much had you spent for the business of this $23,947? A.—I could not state the amount of it."

He now claims that much of it was spent for the benefit of the firm. That claim, it was urged, was to no extent recognized by Miller. That no evidence of it was offered to him at that time is manifest from the fact that he demanded and received his note for the full amount to a cent of the defalcation. He is asked:

"Did Mr. Miller insist that you should repay this amount? A.—Certainly.

"Q.—The whole amount? A.—The whole amount.

"Q.—Did you tell Mr. Miller at that time that you had spent a part of this money legitimately for the business of the firm? A.—Not till afterward.

"Q.—Did you have any vouchers at all for any of this twenty-three thousand and odd dollars that you state you spent for the firm? A.—Yes, sir.

"Q.—Where are they? A.—In my desk at Butchertown.

"Q.—When you gave your note for this amount the vouchers which showed you did not owe that sum to the firm were there at Butchertown? A.—Yes, sir.

"Q.—And the vouchers, which would have shown that this amount of $23,000 charged against you was excessive and which would have exonerated you to that extent at least, were there, accessible to you? A.—Yes, sir.

"Q.—In your own desk—a desk to which you had access? A.—Yes, sir.

"Q.—And you did not get them? A.—I did not.

"Q.—Did you produce any of them? A.—I did not."

What! A man is confronted by his employer with being a thief. A transaction which had lain dormant for nearly ten years is unearthed from the books. The damning evidence is cast into his teeth. He has the written proof that he is an innocent man and he does not produce it! And this in dealing not with an enemy, not with a stranger, but with his friend, his employer, his relative, his benefactor.

Where was Butchertown? Was it in some remote, undiscovered part of the world, inaccessible to Jesse Potter? Was the place in which these vouchers were secreted some cavern guarded by fabled dragons prohibiting his entrance? No. Butchertown was at the very threshold of the City of San Francisco, three miles at most from the place where he was charged with these peculations. He was a daily and constant visitor there, for there were the slaughter-houses in which he transacted his business. He had been there on the very day in which these things were charged against him. He would be there, and was there, the very next day.

HE HELD THE VOUCHERS.

These vouchers were in his own desk, his own property, the solemn evidence of his innocence, the means of refuting the charge that had been made against him—and he never went for them, he never produced them, he never breathed a syllable to his employer that he had them or could produce them. Who can believe such a story?

He sees himself, further on, that that explanation will not do. Another one has to be suggested; and what is it? An explanation that makes the first one worse, and which, if there could be any doubt of its utter falsity, removes all possible doubt. After stating that the vouchers were there, and he did not go after them, he is asked: Why? Because, he answers, I intended to bring them up after awhile. What! He was charged with the defalcation. Then, if ever, Jesse Sheldon Potter, was your time, not later! Not yours to plead guilty when you had the means of vindication in your own hands. Not yours, then, to trust to chance of time to produce the proofs which you then had. Did you ever produce these vouchers? You intended to bring them up after awhile, you say. Well, did you ever bring them up? No. They remained in your desk at Butchertown. Yes. How long did they remain there? Until 1892—one whole year. During that year did you bring them up? No. And what has now become, in this your hour of need, when in a court of justice you are openly and publicly charged with this embezzlement—what has now become of the precious evidences of your innocence which you then had? Can you produce them now? No. They, too, are gone! Gone, Jesse Potter, with the Reynolds note, which found its way through the iron and steel-ribbed walls of the safe of Henry Miller. Gone, Jesse Potter, with all hope of your ever establishing your innocence. Gone, Jesse Potter, with your character as an honest man.

The Good Book says somewhere, if you Honor please, if my memory is not at fault, "For he that hath, to him shall be given: and he that hath not, from him shall be taken away, even that which he hath." Jesse Sheldon Potter exemplified but in part the truth of this Biblical quotation. To the vouchers that he says he had no more were given, but the vouchers which he had not even these were taken away.

Now, if your Honor please, what is the explanation of all this? What answer is made to this damning evidence? Why, forsooth, that Charles Lux knew all about the misdoings of his stepson. Charles Lux was a honest man, who bore that reputation in this State in a degree as full and complete as any man that ever lived within its borders. He was a good man. His will shows him to have been a kind-hearted and just man.

Did Charles Lux, the possessor of millions untold, conspire with this boy to peculate in the matter of a few thousand dollars? Did Charles Lux, the trusted partner of Miller, in whose special charge the office and the books were placed, convive with this young man to rob his partner to the extent of a few paltry thousand dollars? Is it believable? If that is not believable, is it possible to imagine for a moment that Charles Lux knew what was going on?

DEFENDING THE DEAD.

Let us not lose ourselves in glittering generalities, which but confuse the mind and make the reason wander. Let us take one specific transaction because if he knew it all he knew the parts, and let us see how that imputed knowledge squares with the facts and with the character of this dead man who is not here to defend himself.

Did Charles Lux know that Potter had collected from the Oriental and Occidental Steamship Company $3300, for which he had given the receipt of Miller & Lux? Did he know that the coin of that company had gone into the hands of his stepson, Jesse Sheldon Potter, in payment of a legitimate bill in the ordinary course of business? Did he know that this customer appeared upon the books in the office as still indebted for the amount? Did he then sanction that mode of doing business? Does any one believe it? Did Charles Lux know that Jesse Sheldon Potter had taken this money and appropriated it to his own use? Did he sanction the withdrawal of the money from the firm? And did he not then direct that a charge should be made against Potter in his current account upon the book of the $3000 which he had thus taken, with his sanction, as a legitimate business transaction? Does any one believe that?

Did Charles Lux know that Potter had taken $3000 of the money of Miller & Lux and had loaned it for purposes of their business to a man named Reynolds, and had taken his promissory note therefor? And did he then not direct that the Oriental and Occidental Steamship Company should receive proper credit for the money they had paid, and that this transaction should be carried into the ordinary account of bills receivable? Does any one believe that? Does any one believe that for a period of five years Charles Lux saw his stepson abstracting at first a couple of hundred dollars, swelling the amount gradually from $500, $800, $2000, $3000, $10,000, $18,000 to $23,000, and did he put no stop to it? Did he give no warning voice? Did he not insist that the books of the firm should show the truth to his other partner?

A COWARDLY ATTACK.

The truth is, if your Honor please, that this is a cruel, unwarranted, unjustifiable—I had almost said cowardly—attack upon the dead. It is the last resort of a bad cause to throw the blame of the crime of the living upon those who, in the cerements of the tomb, are helpless to defend themselves. But there is a man who is not dead. There is a man who knew. There is a man who was familiar with all the facts and circumstances which could shed any light upon that transaction. That man is Henry Miller. What did Henry Miller say of Jesse Sheldon Potter at the time when there was no temptation to swerve his mind from the truth, when he was speaking from his heart, and not with that cunning evasion which has been characteristic of the whole of his testimony here?

What judgment did Henry Miller pronounce upon Jesse Sheldon Potter in 1891, when he compelled him to repay these embezzled moneys by his note? What judgment did Henry Miller pronounce upon Jesse Sheldon Potter in 1893, when he depicted him to Judge Francis E. Spencer of San Jose? What did he say of him then? He said he was a defaulter. He said he had embezzled from the firm from $60,000 to $65,000, and the books would show it in part. He said he was a felon, whom he could have sent to State Prison, only spared him out of tenderness for his mother. That was the judgment of Henry Miller in 1893. What was the judgment of Mr. Miller of Potter in 1894, as expressed to Major Pott? That Jesse Sheldon Potter was a defaulter, an embezzler, and had embezzled collections which he had made for the firm of Miller & Lux; that he could have sent him to the State Prison, but did not, out of consideration for his mother.

Does Mr. Miller deny these conversations? Does he deny that he so stated to the venerable Judge who testified here? Does he deny that he stated so to Major Pott? He does not. Does he deny that he compelled Jesse Sheldon Potter to refund these moneys? He does not. Does he claim that at the time he exacted this repayment any explanation, any palliation of this crime was made or suggested? He does not.

I anticipate that it will be said: Why did Miller, from 1891 to 1893, keep Potter in his employ if he was and he knew him to be an embezzler and a thief? Why does he continue him to-day transacting his business, if he knows him to be such? I will not now answer that proposition at length. I simply wish to note here that I do not overlook it. The purpose which Mr. Henry Miller had in view in thus acting is, I will show hereafter, perfectly manifest.

That disposes of what I have to say upon the first of the heads to which the learned counsel has adverted in his argument—the question of lack of integrity, with this exception, that, further on in my argument I will advert to a transaction connected with the leasing of the Las Animas Rancho in March, 1887, within a week after Charles Lux's death, which might belong to this branch of the subject, but which, in order to avoid repetition, I will treat of under that. This transaction, I shall claim, when the facts are stated, was a dishonest transaction of both Mr. Miller and Mr. Potter—a flagrant breach of trust by both, prompted by mercenary motives on both sides.

I now pass on to the second branch of this argument, which relates to improvidence.

JESSE POTTER A FAST LIVER.

Jesse Sheldon Potter, as he has presented himself to us here, appears to be a man of easy disposition. The evidence abundantly proves and the admissions abundantly attest the character of life which he has been leading for the last few years. To put it very mildly, from the year 1882 to the present time Jesse Potter has been a fast liver. The amount of money that he spent over and above his salary between 1882 and 1887, including the defalcations which I have adverted to, including the moneys which he borrowed from Miller & Lux upon his note, and including the moneys which he drew from the firm on current account, amount to $36,000. This, over and above the salary of $300 which he was then receiving, and such benefaction and gratuities as he may have received from a loving mother, whose only child he was, and from his wealthy stepfather.

The cold fact confronts us now that, since the death of his father to the present time, a period of less than nine years, Jesse Sheldon Potter has squandered, in round numbers, $200,000 in debauched pleasures. Who has furnished him this money, for what ulterior purpose was it furnished him, and what purport the man who furnished it had in view I will advert to presently.

Your Honor remembers the questions that were asked of Mr. Potter. We were upon the very boundary of that subject, which had excited some curiosity, and were advancing with the cautious, hesitating and reluctant steps with which a man proceeds who is compelled by inexorable duty to make an investigation into the private life or personal sins and offenses of another. At that time nothing could prevent us from making that examination, because the debauched life of Jesse Potter was averred in our petition, and was denied by the answer. The burden being with us we would have been compelled, however painful the operation, to enter into that forbidding region.

That was the condition of the pleadings then. They were at that time amended, and without further comment it is sufficient for me to refer your Honor to the pleadings as they are now. In the amendments which were filed in this court it is averred under oath:

"That said Potter is and has been since March 15, 1887, incompetent to execute the duties of his trust, and incompetent to act as such executor by reason of his improvidence, and in that behalf these complainants aver that said Potter is and since March 17, 1887, has been, wholly insolvent; that he has since said date received from time to time divers large sums of money from his mother, Miranda W. Lux, now deceased, and divers other large sums of money from Henry Miller, the surviving partner of the firm of Miller & Lux, which firm until the death of said decedent was composed of said Henry Miller and said decedent, and from Henry Miller individually and from other sources; that such sums aggregate over $200,000; that all sums so received except a sum not exceeding $300 a month up to March, 1895, and $500 a month thereafter, have been expended and squandered by said Potter in fast living and on dissolute associates."

SQUANDERED A FORTUNE.

That averment is now admitted to the extent of $175,000. It is admitted that, during this period, while his family has been living on $300 a month, Jesse Sheldon Potter has expended and squandered in fast living and on dissolute associates the sum of $175,000.

It now remains to be determined by the court, upon this charge of improvidence, what is the legal value of the fact that the executor of an estate stands before it, not unguardedly, but deliberately, with full advice of able and devoted counsel, confessing to the court that during the time he has been an incumbent of this office he has squandered—squandered confessedly—$175,000 in fast living, and on dissolute associates.

Now, if your Honor please, this vast amount was not spent in equal or proportionate sums during the various years that go to make up this period. By far the greater part of it has been spent, squandered in this manner, within the last two years, furnished during that period to this man who was thus squandering it by Mr. Henry Miller.

How spent? How squandered? He is asked:

"Q.—You borrowed from the 11th of October, 1893, to the 11th of October of the present year, in two years, from Henry Miller, $62,000? A.—Yes, sir.

"Q.—Again, on October 17 of this year, you borrowed from Henry Miller $11,000? A.—Yes, sir.

"Q.—Is the $11,000 of October 17 of the present year (and these questions were asked him on the 21st of October, but a few days afterward), a few days ago, the last note that you have given Mr. Miller? A.—Yes, sir.

"Q.—Is it the last indebtedness that you have incurred to him? A.—Yes, sir."

The money borrowed then from Henry Miller for two years from the 11th of October, 1893, to the 17th of October, 1895, reaches the enormous amount of $73,000. But that does not give the total amount for these two years. On the 17th of November, 1894, Potter received $30,000, the sum which, in her maternal solicitude, she had provided for him by insuring her life for his benefit. Of this $17,000 went to Henry Miller to repay him in part and $13,000 was spent between the 17th of November, 1894, and the 1st of January, 1895. The money and price of his mother's life was thus spent in six weeks.

We must further add $300 a month, the salary which he received from his mother, from May, 1893, to September, 1894, the date of his mother's death, say, in round numbers, $5000. Add that to the $73,000 from Miller and $13,000 from the mother's life insurance, and it appears that this man, in the two years immediately preceding this proceeding, spent $91,000 in fast living and on dissolute associates. In one single week, just before this contest, he spent $3000 in the same way.

"Q.—Did you spend that $3000 in a week? A.—Yes, sir.

"Q.—In your personal expenses? A.—In my personal expenses; yes, sir.

"Q.—In the way of pleasure? A.—In the way of pleasure, yes, sir."

And in the month of July, 1894, he spent $9000 borrowed from Henry Miller in the same way. Mr. Miller is asked:

"Q.—That makes $9000 in the month of July, 1894? A.—It must be correct, sir.

"Q.—You did not stop to think that was rather a large amount for a man to spend in one month? A.—I thought so, yes, sir."

Thus in two years of idleness this man had squandered in licentious pleasures more than what the vast majority can by a lifetime of painful and honorable toil succeed in accumulating.

COMPLETING THE PICTURE.

But this does not complete the picture, for during the time that he was spending at the rate of $3000 a week and $9000 a month and $45,000 or $50,000 a year for pleasure his wife and child were supported upon $200 or $300 a month, furnished by Mr. Miller as a beggarly charity. He is asked:

"Q.—Can you tell us in what manner you spent these large amounts of money that you borrowed during this period? A.—I spent it for pleasure.

"Q.—The amounts that went to the support of your family are correctly indicated upon these accounts that I have read? A.—Yes, sir.

"Q.—Amounting to some $200 or $300 a month? A.—Yes, sir.

"Q.—And the balance you spent for your pleasure and amusement? A.—Yes, sir."

What kind of pleasure, if your Honor please? Intellectual pursuits?—the love of art—of painting—of statuary—of literature—of beautiful, artistic and ennobling surroundings? No. Pleasures such as are sought and found by men who lead a fast life in the company of dissolute associates.

What was the consequence? It is said that a man can spend his money as he pleases. That is true. I know of no power to prevent a man from spending $3000 in one week or $9000 in one month for pleasure—aye, even though, at the same time, his wife and child are stinted in the necessaries and certainly in the comforts of life. Men may be so constituted; and if they are, the law has no means to prevent the consequences of their recklessness or their injustice.

But between that and saying that it is from men thus acting that a court of justice is to select its ministers to carry out the wishes of the dead and protect the rights of the living there is a wide gulf.

It has been said here: "Grant that Potter did spend $50,000 a year; that was not one-half of the income from his mother's estate." The counsel who make that argument fail to recall that, at the time Mr. Potter was spending this money, his mother was not dead; that the property was still hers, not his; that she might dispose of it by will to whomsoever she pleased; that he had at best but an expectation in her estate.

Is it then come to this, that a man, having an expectation of income to come after the death of one whose life intervenes, gives evidence of providence and fitness to take charge of the affairs of others by borrowing from a stranger the whole of that anticipated income, to be squandered in profligacy—borrowing, too, by giving in pawn to the lender everything he has in the present and all he hopes to have in the future?

Where is Jesse Sheldon Potter's property to-day? The very house in which his child and wife live is pawned to Miller. Where are the fees and emoluments and commissions which he may be entitled to receive in this proceeding? Pawned to Miller. Where is his expectation as heir in his mother's estate? Pawned to Miller.

THE SLAVE OF HIS MASTER.

Stripped of everything he has—land, home, moneys, expectations, all—he is a very slave in the hands of his master, who has furnished and still furnishes him money and leads him on to ruin, in order that he may the more effectually mold him to his will.

Listen to this testimony: Mr. Miller says that he has loaned Mr. Potter these amounts of money upon security, and concludes: "I loaned him just as much as I expected his security was ample."

"Q.—You loaned him up to the limit of his security? A.—Yes, sir.

"Q.—Do you know, as a result, that the very money which supports his household, his wife and child, is furnished from your office, and has been for months? A.—Probably it is."

The very bread which Potter's child eats to-day is Miller's. The very roof which protects his wife is Miller's. Well might this wretched man exclaim, as did once the deposed monarch of England:

"Our lands, our lives and all are Bolingbroke's!"

Miller knows full well—Potter thoroughly understands that Miller knows full well—in what manner these moneys have been spent. The very magnitude of the amounts is suggestive. No man like Potter could honestly spend these amounts of money during this period. Miller knows how much of these amounts go every month to Jesse's wife and child—two or three hundred dollars. He knows, too, that the thousands go to Jesse, and the manner in which they are spent.

Miller is then asked:

"Q.—You have no idea of how he was spending his money? A.—I have some slight idea.

"Q.—He was not prudent in his habits? A.—Well, if a man spends the amount of money he states he has spent, he can't be very prudent in his habits.

"Q.—You know what the meaning of the word 'improvident' is? A.—Yes, sir, I do.

"Q.—He was improvident in his habits? A.—Yes, sir, to some extent."

Miller's own words under oath in 1894 were that "Potter was throwing himself away."

Throwing himself away—with whose money? Henry Miller's.

Leading a fast life—with whose money? Henry Miller's.

Squandering a fortune upon dissolute associates—with whose money? Henry Miller's.

The most melancholy feature of this picture is that these moneys were furnished to Potter by Miller in spite of the protests, the prayers, the tears of his mother.

She begged Miller not to permit her son to draw any more money from the firm than the $300 a month which she himself was giving him. She deemed that sum ample. She considered that more was only enabling him to lead that life the end of which is ruin.

Would you believe it that, in spite of this mother's protest and prayer, this man continued to furnish these lavish amounts to this wayward and unfortunate victim? You would not believe upon any less assurance than that of Henry Miller himself, would you?

MOTHER AGAINST SON.

The mother said, in substance: "For God's sake, Miller, don't give Jesse any more money. You know how he is employing it. You know what kind of life he is leading. You know what associates he is consorting with. You yourself acknowledge that he is throwing himself away. Help me to redeem him. Let me furnish him money enough to support him, his wife and his child. More he does not need and should not have. Do not give him more to be squandered in the manner that you and I full well know he squanders it."

What answer did Henry Miller make? He said, in substance, to the mother's supplication: "Woman, you are unreasonable. It is unreasonable to limit this man to $300 a month. Let me furnish him rather $3000 a week. Let me furnish him rather $9000 a month. Let me furnish him rather $90,000 in two years. Let me supply him with the means of continuing to lead the life he is leading. Let me take from him in pawn home, lands, commissions, fees, expectations. Let me bind him hand and foot, that he may be my slave and minister to my wishes."

That is the dialogue which, if not spoken by the lips, was spoken by the acts of these parties.

Having now disposed of the first two subdivisions of the argument, I purpose addressing myself now briefly to the third, denominated here by my learned friend that of conspiracy. He correctly states in the main what the charge is, in these words:

"The whole theory of that charge is this: That for five years last past 'Mr. Miller and Mr. Potter have been working to prevent the settlement of this estate and to keep it open, and perhaps to rob it; that the respondent and Henry Miller have entered into a conspiracy to cheat and defraud this estate and those interested in it, which conspiracy includes a plan or scheme to postpone the settlement of this estate and to keep those entitled to the distribution thereof out of what is justly and legally theirs."

I adopt these general outlines of this charge of conspiracy, or rather, I should say, co-operation to do wrong.

In that connection my learned friend very properly says that "in determining whether a conspiracy exists or not, it is well, at the commencement of an investigation, to inquire who the actors in the conspiracy are, what their relations to the situation may be, and what their motives are or may be."

I agree with him that that is the orderly way of presenting this matter, and, following the custom of the dramatic authors who, in the frontispiece of their manuscripts, are accustomed to give, not only the name of the characters, but also some general designation showing the role they are to fill, I will briefly ask, Who is Henry Miller? Who is Jesse Sheldon Potter? What role do they play according to the testimony presented before your Honor?

WHO IS HENRY MILLER?

And, first, who is Henry Miller?

He fills such a place in the history of the development of this State that your Honor might take judicial cognizance who Henry Miller is.

We are authorized to infer that he is a German by birth. He came to this State at an early day, still in the prime of manhood. He is evidently a man of slender education, and, if we may judge from his mode of speech and the letters produced here, even lacking in culture, almost, to the degree of illiteracy; still, undoubtedly a man of marked lines of character—character in which the curious explorer might, perhaps, find standing out in bold relief stubbornness, love of success, and, especially, a morbid dread of being outwitted and overreached. Endowed with wonderful energy and great business ability, he is restless in his purpose to supplement by success the deficiencies of his character, and span with a golden bridge the intellectual and social gulf which separates him from more favored individuals.

It were a curious study of human nature to explore the secret springs of his ambition. These possessions, which, from slender beginnings at an early day, have now expanded until they cover vast areas in three different States and in thirty or forty different counties, the love of which old age cannot abate—do they denote the peasant's love of land, so vividly portrayed by the novelist, Zola, which sometimes carries its victim even into the confines of crime? Is that love the offspring of that emulation of the nobles of his own country whose power and ancestral pride rest upon their landed possessions?

In his own sphere Henry Miller boasts that he has distanced all competitors. It is his special pride that, owing to more perfect organization, the profits of his business are one-fifth larger than those of any other butcher. He aspires at any sacrifice to be the cattle king of the Pacific Coast. The love of rule, a dominant passion in some men, is in him developed to an almost abnormal degree.

We find him at an early day taking as his partner Charles Lux, a man who, endowed with a more conservative temperament, was well fitted to be a balance wheel to the vaulting ambition of his more daring associate. The death of that partner, in 1887, delayed for a while, but for a while only, the accomplishment of Henry Miller's ambition. He paused but for a moment only upon the brink of the grave. He hesitated but for a moment only before the possible legal impediments standing in his way. Then he boldly resolved to plunge and keep on his course, regardless of law, heedless of others' rights, determined to brave down all obstacles. From that time to this, a period now of some nine years, he has never for a minute lost sight of that object.

What mattered it to him that others had legal rights in this property? They were to be treated as intruders—to be cajoled into subserviency or crushed into submission. His partner's ashes were scarce cold, the tears of the mourners were scarce dry upon their cheeks, when he began to contrive and conspire and to win over and make subservient to his purposes the widow and the stepson of his deceased partner. His signature to the petition for the probate of the will of that partner had scarcely been written when he schemed to subject to his control the whole of the partnership property by himself naming and dictating the appointment of its legal representatives. From that time to this he has managed the property regardless of the rights of others, as if he was its sole and absolute master. By what means he has sought to accomplish and has so far succeeded in accomplishing his purpose the present proceeding and his attitude therein sufficiently attest.

WHO IS JESSE POTTER?

Who, on the other hand, is Jesse Sheldon Potter? Mark, at the outset, how admirably fashioned by accident or nature to subserve the purposes of Henry Miller. He is the stepson of his deceased partner. He is one of the three executors named in that partner's will. He is nearly related to Henry Miller. He is his own pupil, whose character has been molded during his youth, under his own care, in his own house. He is revealed to us as a man fond of pleasure, delighting in the companionship of the depraved and dissolute, having no property of his own and yet needing vast sums to minister to his debauched appetites. The only child of a widowed mother, who idolized to the end her wayward boy; and who, herself, incapacitated by inexperience, the gentleness of her disposition, and the infirmities that bore down upon her, only too gladly surrendered to him the absolute management of her affairs.

Miller saw at once that through him he could manage the mother, and controlling him control the estate of Charles Lux. Potter's improvidence was early made the lever with which to move him. Mark now how completely Miller has ensnared and fettered him—how his very improvidence and dissoluteness have been availed of to bring him into the toils. As early as 1891, when he was being pressed in this court by the German heirs, it became opportune to Henry Miller to hold over the head of Jesse Potter the terror of his misdoings, as they were revealed by the books of the firm. His extravagance was made the means of leading him to borrowing, pledging, mortgaging all he had, until at length, stripped of everything in the world, he stands to-day before his master dependent for the very sustenance of his wife and child upon Miller's bounty.

These being the characters before us, let us examine into the facts constituting a co-operation toward a given intent by them. Let us first examine whether the purpose of Henry Miller be what I have stated it a moment ago.

From the very start, after the death of his partner, Miller assumed the attitude that he, and he alone, was the architect of this vast fortune, the creator of these more than princely possessions. To his genius it was due, in his conception, that the landed holdings of Miller & Lux threw into the shade all inferior possessors of the soil in this State; to his management, and to his alone, that their vast herds, numbered by the hundreds of thousands, roamed over every plain and mountain in three States.

Remember what he told Judge Spencer in 1883, that "his own individual efforts had produced nearly all the partnership property, and in justice it substantially all belonged to him. Mr. Lux had done little or nothing to produce it, that in justice and right he should have it all; that he had worked for it all and that Mr. Lux had sat down there in San Francisco and had done little or nothing toward earning the property, while he had been delving and exposing himself and working on the outside and amassing this fortune."

MRS. LUX HAD DONE NOTHING.

I quote the Judge's own language as given upon the stand. Miller says himself, in his testimony, that not only he, but his wife "Had slaved and worked to serve the farm, while Mrs. Lux had never added a penny to that property. Mrs. Lux had done nothing." He repeats this further on when he states that by night and by day, in sunshine and in storm, without rest and without enjoyment, he had devoted himself entirely to the expansion of the wealth and possessions of this firm.

With these ideas in his mind, it was not a difficult task to persuade himself at the outset that, as he had toiled to accumulate these acquisitions, and as the others had not, they in justice at least belonged to him. He was reminded, of course, that the heirs of his partner had some legal claims, but he wholly repudiated any moral or equitable rights on their part, and early resolved to deal with the property, in absolute ignorance of such rights.

This may seem an exaggerated statement, if your Honor please, to be made in a court of justice, and yet I may quote the very words of Mr. Miller. Asked: "Had you been the absolute owner of this property and intending to enjoy it to its most beneficial extent during your lifetime and transmit it to your own heirs, would you have acted differently in the management from what you have acted since Mr. Lux's death?" he answers: "I have done it with the impartial expectation to make this property valuable for myself alone."

Asked further, "You carried on your business after Mr. Lux's death just the same as you did before?" he answers, "Just the same." Again, "You did not contract it or take any other steps in carrying it on than you did during Mr. Lux's lifetime?" he answers, "No, sir, I did not." And still further: "You carried on the business just as you did in Mr. Lux's lifetime, without any change?" he answers, "That was my intention."

He claimed, and he ultimately made those who listened to him acknowledge, that, under some fancied power granted him in an agreement with his dead partner, he, for seven years, at least, could do just exactly what he pleased with this vast estate. It mattered not who gainsaid that proposition, he held on to it with dogged and characteristic determination in spite of all obstacles.

Your Honor might admonish him of his position as surviving partner and its duties. You did so admonish him with all the authority which belongs to your exalted office, for you told him here in this very court, "I never believed that that will conferred upon Mr. Miller, or that the will could possibly be construed to vest in Mr. Miller the power to reinvest the income of that estate in enlarging it. I think it was the duty of the executors to compel Mr. Miller to cease that work. I don't think that seven years contemplates an enlargement of the estate by any means." He heard, but paid no attention to the admonition. His lawyers, it is true, might at first put in a protest.

HE HEARD BUT DID NOT HEED.

They did admonish him at the very start of the necessary limitations upon his authority. Within a fortnight of his partner's death his own chosen attorneys, Messrs. Mastick, Belcher and Mastick, advised him that he could no longer "buy property without it was absolutely necessary." These are his own words.

On the 29th of March, 1887, fourteen days after Mr. Lux's death, Mr. Miller's secretary, after a conference with these gentlemen, wrote him as follows: "I feel sure that Mr. Mastick understands your position and wants to have everything done so as to interfere as little as possible with your running the business according to your own judgment. He says he told you that any small purchases of land that were necessary to the successful management of the business he believed to be within the meaning of the partnership articles, although that article says not a word about 'buying.' Mr. Mastick thought you ought to be informed about this lest you might make some important purchases that might be objected to by the parties interested in C. Lux's estate and so lead to trouble."

Did he heed the warning? We find him within a fortnight from that admonition purchasing—and this was before his partner's will was probated—for the partnership $55,219 worth of land; justified upon no other tenable proposition than that it was a profitable speculation; and, within less than a month from the death of his partner, he had increased his purchases in the same line to the extent of $62,000.

As to his co-executors, Miranda W. Lux and Jesse Sheldon Potter, they did not join in the admonitions of the court or the warnings of their lawyers. They murmured not, nor complained, nor offered any obstacle. He took care from the start to subject them completely to his power. Hence, with what he did, they were entirely satisfied. So completely, so absolutely passive, were they that, in May, 1892, your Honor was fully warranted in saying, and did say from this bench, "Whatever has been done in this estate * * * has all been done with the approval of Mr. Potter and Mrs. Lux, whatever Miller has done."

Everything had to yield to the iron will of this man. The advice of his lawyers was scouted. The admonition of the court fell as upon barren rocks. The legal duty of the executors was but a rope of sand. He was resolved irrevocably to accomplish his purpose and to retain to the end the control and the power incident to the control of this vast property.

He neutralized your Honor's admonition by making friends and allies of those who might, in the exercise of their office and their duty, have enforced by legal process the justice of those admonitions. He controlled Mrs. Lux through Jesse Potter, her son.

A NOBLE WOMAN.

In saying so I wish it to be distinctly understood that I make no charge, cast no aspersion, utter no complaint of the course pursued by this lady. It was my privilege to see her once, and but once, in May, 1892, in this court. A gentler, more lovable, more noble and generous-minded woman the spacious world cannot again afford. She looked up to Henry Miller as a man incapable of doing wrong. To her he was the embodiment of ability and goodness. She herself had been cared for by the tenderness of her husband and knew nothing about business. Upon this subject I quote Mr. Miller's own words, "Never has she taken any part in the administration of this estate." All her powers were delegated to her son. He acted for her. Miller never consulted her. Everything was done through her son.

Now, it favored Miller's position that his dead partner had in a moment of blind confidence appointed him one of the executors of his will. His lawyers soon advised him—as must have been manifest to the dullest understanding of layman or lawyer—that the position of surviving partner and of executor of the estate of a deceased partner were absolutely antagonistic, that their duties were hostile and conflicting, and that no man could with honor, however much he might profit, undertake the task of occupying both. Miller paid no attention to the admonition. The position of executor of his dead partner's will gave him an advantage, and what mattered it that a sense of delicacy, of propriety or of justice would have made a high-minded man spurn the advantage? It was nothing to Henry Miller. He seized upon the advantage and made the most of it. His position was clearly outlined by his own counsel, Mr. Eugene R. Garber, upon the accounting, where he said:

"So far as the first seven years subsequent to the death of Mr. Lux is concerned, under and by virtue of the contract between them, and under the advice of counsel, there was no occasion for him to contract the business. And, moreover, Mr. Lux was there, and Mr. Potter was there, and Mrs. Lux under the will of Charles Lux could have objected to Miller's going on, and there never was any objection." And so, in conformity with that, in the accounting suit which was brought by Miller's own attorneys, Messrs. Mastick, Belcher & Mastick, against him in paragraph 11 of the complaint it is averred:

"That the said defendant (Henry Miller) has not taken any steps whatever to liquidate the business of said copartnership or to wind up or settle its affairs, but on the contrary, has ever since the death of the said Charles Lux continued to carry on the business of the said copartnership in all respects as if the said Charles Lux were still living and as if said copartnership were still subsisting, and has used the greater portion of the profits and proceeds of said business in the purchase of large quantities of land and personal property, and has by such purchases greatly increased the amount of land and of cattle and other personal property held by said copartnership." This is not my language. It is the language of Messrs. Mastick, Belcher & Mastick, Mr. Miller's own attorneys.

REVERSING THE SITUATION.

The results of this policy and of this management have responded to the wildest imaginations. At Charles Lux's death, March 15, 1887, Henry Miller owed the firm of Miller & Lux $82,000, while Charles Lux owed it nothing. Through his management since that time the position is reversed. The firm of Miller & Lux now owes Henry Miller $500,000; and the estate and heirs of Charles Lux (including Jesse Potter as an heir in his mother's right) are brought in debt to the firm $531,000. The position of the parties in nine years of Miller's management has changed somewhat.

Furthermore, the copartnership agreement between Miller & Lux, which is incorporated into and made a part of the will of Charles Lux, provides (I quote the exact language):

"So much of the rents, issues and profits and proceeds of sales which may be necessary for the support of the family of the deceased shall be paid monthly to such family or its proper representative."

Has Henry Miller ever complied with this wise and beneficent and humane provision? Never. Receiving millions of profits, making tens of millions of sales since the death of his deceased partner, never has he paid to his widow one cent of such profits or sales. I speak literally, if your Honor please, and not metaphorically. She never has received a cent from this vast estate, to one-fourth of which, amounting to three, four, five or more millions, she was entitled. She never has received a cent. She has had to borrow money to live on. The very family allowance which your Honor and your Honor's predecessor, in accordance with the humanity of the law, made for her support to this lady, who was entitled to receive from two to three hundred thousand dollars of profits per annum, she had to borrow from Henry Miller, and he has charged her interest on it to this very day. He tried to hold her exactly where he held Jesse Potter and his wife and child, making them all feel that they were dependent upon him. Theoretically they might be the owners of millions, but they had to beg their bread from Henry Miller.

What has become, then, of the vast income of this estate? It has been used and appropriated by Miller to further his own vain desire to become the autocrat of the cattle market of this coast. He has gone on regardless of the provisions of the partnership agreement, heedless of your Honor's admonitions, in spite of all dictates of propriety and justice, investing, and expanding, until now he can boast that he has one-third more cattle than when Charles Lux died, twice as many sheep, and he has three times as many horses and four times as many hogs.

He has invested in land and permanent improvements of land alone the enormous sum of $2,150,000 out of the profits of this business. And this while the brothers and sisters of Charles Lux, the beneficiaries under his will, were going empty-handed to their graves, never having received 1 penny of the vast fortune which belonged to them. All this while the widow of his dead partner was compelled to borrow the means upon which she lived.

MILLER FOUND EXCUSES.

Of course, for pursuing schemes thus abhorrent to all justice and propriety, some plausible excuse had to be found. It is only when a man becomes absolutely depraved, when conscience is absolutely dead in his bosom, that from the depth of his degradation and despair he exclaims, as did Manfred:

" * * * I have ceased
To justify my deeds unto myself—
The last infirmity of evil."

So Miller found excuses, and what were they? First, his dead partner and his wife, it seems, had not been sufficiently appreciative of his vast services in their behalf. "It seems to me," he says, with childish petulance, "I was treated like a beast of burden. The moment the beast of burden is not serviceable, his good qualities are forgotten. It appeared to me very strongly that way. I have spent every day of this time, I haven't had a day to myself. Through inability I lost about four or five days during that time, and then I seen the ungrateful position I was placed under." I have already read to your Honor the passage in which he states that his wife had toiled and slaved while Mrs. Lux had never worked.

It has another justification, and it comes in in connection with the Las Animas lease, to which I alluded this morning.

That was a nefarious transaction, as I will show. It was the result of an agreement which he entered into with the coexecutors of his partner's will through Mr Potter, one week after his partner's death, before there was any legal representative appointed, before his will had been probated, so arranged that it resulted in Miller's receiving as rental for certain lands which he held in the Las Animas Rancho twice the rental that he had received during his partner's life, and the other side received for the rental of the Burri Burri Rancho about one-third more than Miller himself valued it.

Mr. Miller is asked why this was done; why, within a week after his partner's death, he had entered into this agreement so vastly to his advantage, and what is his justification—for he does justify the act?

Michael Reese, it seems, had appointed Charles Lux the executor of his will.

The estate of Michael Reese was vast. Upon the final distribution the court allowed the executor the compensation fixed by law. Years afterwards Charles Lux died. After his death, because it had never occurred to his mind to divide his commissions with Henry Miller, Henry Miller, after having allowed years to roll on, making no complaint, proffering no claim, now, when his partner was in his grave, equalized matters by entering into a plot with his stepson to defraud his estate.

Besides, he finds some justification in the contempt that he feels for Mrs. Lux. Yes. Not content with despoiling her, not content with depriving her of her own, he turns upon her and overwhelms her with objurgation and contempt. He says:

"Mrs. Lux has never added a penny to that property. My wife has slaved and worked to serve the firm; Mrs. Lux has done nothing, and for that woman"—I have shame to say it—"I have only contempt" (looking at her with contempt). The gentle lady that we have seen here in court, the long-suffering, uncomplaining and afflicted mother of this wayward son, is looked upon with contempt by him who has made her closing years full of sorrow! He will not call her Mrs. Lux; he calls her Mrs. Potter, as if he deemed her unworthy to bear the name of her dead husband.

Now note, if your Honor please, how prompt, after he had made up his mind, this man was to act in the line which he had marked out for himself.

THE LAS ANIMAS LEASE.

I advert to the transaction of the Las Animas lease, to which I have already referred. The matter stands thus: Mr. Potter acted throughout for Mrs. Lux, she being well aware that he was to attend to the business for her, for Miller says (I quote his own language:)

"Mrs. Lux and I had no business conversations at all; I dealt with her representative; I have done no transaction with Mrs. Lux, she always did it through some one else; she would not give me a chance to talk business." In this condition of affairs, and while Mrs. Lux was still plunged in grief, within one week after Charles Lux's death, within less than five days from the time he was put under the sod—Miller, in conjunction with Potter, acting for himself and as the representative of his mother, as I have shown, entered into an agreement that the firm of Miller & Lux should pay a cash rent of $5 an acre for the Burri Burri Rancho, belonging to the estate of Charles Lux, which, according to Miller's own testimony, was about $1.50 per acre more than it was worth (the whole rent amounting to $9000 or $10,000), in consideration of Miller's being allowed to charge the firm a cash rent of $45,395 95 for the lands he owned in the Las Animas Rancho, which was double the rent that he had been accustomed to charge during Charles Lux's lifetime. In other words, Miller was willing that the estate should collect about one-third more rent upon an amount of $10,000, providing he was allowed to collect one-half more rent than was just upon an amount of $45,000.

That nefarious transaction, which to-day, nine years having elapsed, amounts to a profit to Miller

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