

VITS!—Received them as evidence!!—And as such paraded them in its Report!!! Was this not also for a purpose? Let the many who have thereby been shamefully deceived and induced to view those illegal documents as *bona fide* affidavits make answer.

III. THE NECESSITY FOR INSTITUTING A CHECK AGAINST THE POSSIBILITY OF COMMISSIONERS ASSUMING THE FUNCTIONS OF COUNSEL ON EITHER SIDE, UNNECESSARILY.

The Commissioners, speaking in their Report of the testimony of two witnesses, remark as follows:—

"The only circumstances in all that Fleming and Willard saw calculated to excite suspicion—namely, "the supposed marks on the President's dress, is the "one upon which they are distinctly at issue. If this "difference in their sentiments had reference only to "something irrelevant or collateral to the main "question, it would be of no moment, but it is not "so. And while both witnesses are clear and positive, they fatally differ not only in a material point, "but in the only material point of their whole testimony."

The special pleading involved in the use of the phrase "supposed marks", is rendered flagrantly apparent by the phrase "both witnesses are clear and positive", occurring just five lines below. True, it may be said that both are clear and positive in relation to the marks, yet they fatally differ in their statements respecting their existence, and hence they could only be "supposed." But has this been shown?—Is it possible to show it? Fleming speaks positively—and swears the knee was marked with dust. Willard is equally positive, and says the coat skirt and elbow were marked. Now this is precisely what the Commissioners must have viewed as strongly corroborative details, (as there is no contradiction), proving, as it does, the perfect independence of their testimonies, had they noted the relative position of the witnesses as they approached the recess. Fleming walked in front of Willard and would have a full front view of the party met, while the person of Fleming would naturally conceal the lower portions of that view from Willard; and only the lower, as a somewhat elevated embankment extended some paces from the door of the recess. As the parties who were met, passed the witnesses, the marks on the elbow and skirts were noticed by Willard; who, as there is good reason to believe, might not have seen the marks which Fleming saw, and then in turn the position of Willard would partially obstruct the view of Fleming, and in speaking of these marks to each other subsequently on the same day, each would of course conclude that both spoke of the same marks though the location of them was mentioned by neither at the time; and after this impression had rested on the mind of each for three years, it would be strange indeed, if the understood location of the marks spoken of, had not become identified with the actual facts as expressed circumstances. This divergency touching the parts marked so obviously resulting from the relative position of those who saw them, proving as it does so satisfactorily the statement of both witnesses, that they had never had a mutual rehearsal of the circumstances from the day on which they were first witnessed, instead of being put down by the Commissioners, as it should have been, as greatly strengthening the credibility of the witnesses in their numerous statements so remarkably in harmony, is the only reason assigned by them, for giving the whole of their joint testimony to the winds. This is given simply as a specimen of the manner in which the witnesses are treated whose testimony is adverse. Couper, Cuttell, Langrill, Goady, Fleming, and Willard all share in the de-

rogatory reflections of the Commissioners, while they plead with all the zeal of counsel against them as suspicious, uncandid, or untruthful. In striking contrast with the preceding view stands the following:

Eliza Gordon swears, "I returned at half past eight. As I returned I saw Dr. McCaul. I was at the crossing on Jarvis and Carlton streets. He was within a yard of me. He was coming down from Yorkville. In about ten minutes or a quarter of an hour afterwards I saw him at the nursery door, going into his own dressing room. He keeps his snuff there and I suppose he went in for it. He did not leave the house again that night. He sometimes goes to bed very early. His bed room is adjacent to the dressing room. I saw him go into it shortly afterwards and he did not leave it that night. * * He could not have left his bed room that night without me seeing him. I sleep in the room with the children and keep the door open—it being summer time. I did not go to bed till about ten o'clock. * * * I saw Dr. McCaul pass up and enter his dressing room. After being there a few minutes he went across to his bed room and closed the door."

Mary Anne Milton swears "about nine o'clock, when I went up stairs to settle the rooms, I went to settle Dr. McCaul's room. He was not there. He was walking about in the parlour. * * * I heard him enter the house about nine. He walked out of the hall into the dining room. I think he remained there till I went to his bed room. After leaving the parlour he went to his bed room. The bedroom door was shut when I went to leave water in the room. That was, I think, nearly ten. I am certain of it. When I went up first, near nine o'clock, the door was open. I did not see anything of Eliza Gordon, who was in the nursery, the door of which was shut. It was also shut when I carried up the water. * * * I know Dr. McCaul was in his room, because I heard him shut the door when I was coming up with the water. He went up the front stairs and I the back. I suppose he left the dining room about the same time as I got to the dining room door; but I did not see him in advance of me in the hall. I have not the least doubt about that. It was then about ten o'clock. From the time he came in till he went to bed, I heard him walking all the time. * * * From nine o'clock, when I heard the Doctor's step in the parlour, till I went up with the water was an hour."

Now, had these two witnesses agreed in all the details of their testimony, save in the circumstance that as the Dr. met and passed them in the hall, one of them observed dust on the knee and the other on the shirt and elbow of his apparel, and that while they had mentioned those things to each other in conversation on the same day, and never afterwards, one remained confident that the dust spoken of was that on the knee, and the other that it was the dust on the skirt and elbow; who, if we except the three Commissioners, would ever venture on such grounds to set aside the whole of their evidence? But mark,—Mary Anne Milton can swear that the Dr. came in about nine o'clock,—that from the hall he stepped into the dining room, and thinks he remained there while she was up stairs settling the rooms. She heard him walking all the time, and Eliza Gordon swears that within ten or fifteen minutes after half past eight o'clock, she saw him enter his dressing room up stairs. M. M. swears that it was an hour from the time the Dr. entered the house till she went up with water for his room by the back stair, while he was going up by the front stair, that he then entered his room and she heard him shut the door,