

clusions. With reference to these four witnesses Mr. Kerr says no credibility ought to be attached to them. He says Thomas kept back the question of the vessel being insured at the police court inquiry, which he detailed at the present trial. That is, when he made his statement on which a warrant was issued against Capt. Tower, that nothing appeared in that statement beyond the fact that Tower gave him directions to bore holes in the ship. [His Honor read the information at the police court.] With reference to that I should say the fact of a man not stating everything in a preliminary trial, but giving a fuller statement when the case comes to a final trial, would not affect his credibility. When a prisoner is brought up for a preliminary investigation before a J. P., it is only necessary to go into such facts as will warrant the committal of the prisoner; but when the witnesses are brought before the court to give evidence against the prisoner, when put upon his trial they generally go more fully into it than they had before, when making the information. Mr. Kerr said there was nothing told about the captain telling Thomas the vessel was insured three times her value; but I am not prepared to say that his omitting that statement at the preliminary investigation, which was a very important one, should lead you to disbelieve his testimony here. If you believe that tends to discredit him, you may do so. I have already said the credibility of witnesses is with you and you have to consider whether the witnesses for the prosecution have told the truth or not. Do you think it probable that these four men would come here with the intention of making up this false statement against the prisoner. Is that probable? It might be that those large sums they are receiving from the insurance companies might have warped them; but it does not appear from the evidence of those witnesses that there is any combination between them, because no two of them tell the same thing. Trisinski don't tell what Hall does, nor Hall what Trisinski does, nor Roberts what the rest did. If they came here to combine together, they might have come here and all told the same story. They might have given more damaging testimony than they have. They might have given conversations that the prisoner could not deny; but it does seem that they all do not tell the same story, and that would rather go to satisfy me that they are telling truth, but that is for you to say. I don't know that there is anything more that I can tell you. I think I have told you most all, therefore I will leave the case to you without any further observations. I must say this, though, before concluding my remarks: that when a prisoner cannot tell his own story (although Capt. Tower has had a chance to tell his own story) he is presumed innocent until he is proved guilty beyond a reasonable doubt. If it is only on mere suspicion that you think he is guilty, on that alone you ought to acquit; but if the evidence brings to your mind that he is guilty of the charge, then you should convict him. But if it rests on suspicion, merely, as I said, you would not be justified in convicting him. That is the protection the law throws around prisoners, that they are not considered guilty until their guilt is proved beyond a reasonable doubt. You must be satisfied that this vessel was wilfully destroyed and that he did it with a felonious intent. If you are satisfied that he did it wilfully and maliciously, you would be justified in finding him guilty. When I say "maliciously and wilfully," I mean not negligently, but that you must be satisfied beyond a reasonable doubt that he did it with a wilful and malicious intent. If you believe the testimony of Thomas, then there is no doubt about it; but if you believe that his testimony is not based on facts, you have no right to convict the prisoner. You must look at all the surrounding circumstances, and at all the witnesses have said, and whether Capt. Tower told these witnesses to go before the Naval Court and keep back the fact of the vessel being burnt and concealing the log-book and stating falsely it was lost. You must consider all this. If you take the evidence of Thomas as true, do you think the circumstances tend to corroborate Thomas? The fact of the log being kept back and afterwards being produced; also the burning—do they corroborate Thomas! The next question is on what counts in the indictment do you find him guilty. You are entitled to find on one count and acquit on another. (His Honor read the several counts to the jury.) I had considerable doubt early in the trial whether "intent" could be found if the prisoner had no knowledge of the insurance; but I now think, if the prisoner did maliciously cast away the vessel, you would be justified in finding he did it with intent to defraud the underwriters. You cannot get at a man's intent except by inference. Though he knew of no insurance, the fact of