

**TRIAL OF LUCRETIA CHAPMAN:
OTHERWISE CALLED LUCRETIA ESPOS Y
MINA, WHO WAS JOINTLY INDICTED
WITH LINO AMALIA ESPOS Y MINA, FOR
THE MURDER OF WILLIAM CHAPMAN**

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Trial of Lucretia Chapman: Otherwise Called Lucretia Espos Y Mina, Who Was Jointly Indicted with Lino Amalia Espos Y Mina, for the Murder of William Chapman by William E. Du Bois

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WILLIAM E. DU BOIS

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TRIAL,

&c.

At a Court of Oyer and Terminer, and Quarter Sessions of the Peace, holden at Doylestown, in and for the County of Bucks, in the Commonwealth of Pennsylvania, December Sessions, A. D. 1831:

Before the Honourable JOHN FOX, *President*,
Honourable WILLIAM WATTS, } *Associates.*
Honourable WILLIAM LONG, }
Judges of the said Court.

WILLIAM PURDY, Esquire, *Clerk.*

The Court was opened on Monday, December 12th, 1831, at 11 o'clock, A. M., and after some preliminary business, the Grand Jurors were impanelled, and charged by the Court, upon the subject of their duties. The indisposition of the President Judge prevented him from enlarging, with much particularity, upon the nature and definition of the various offences which were expected to come under their notice; of which the highest in the list was Murder.

On Wednesday afternoon, the Grand Jury brought into Court the following bill of

INDICTMENT.

In the Court of Oyer and Terminer, held for the County of Bucks, at December Term, in the year of our Lord, one thousand eight hundred and thirty-one.

Bucks County, *vs.*

The Grand Inquest of the Commonwealth of Pennsylvania inquiring for the body of the County of Bucks, upon their oaths and solemn affirmations, respectively do present, that Lucretia Chapman, late of the County aforesaid, widow, otherwise called Lucretia Espos y Mina, late of the County aforesaid, widow, and Lino Amalia Espos y Mina, late of the County aforesaid, yeoman, otherwise called Celestine Armentarius, late of the County aforesaid, yeoman, otherwise called Amalia Gregoria Zarrier, late of the County aforesaid, yeoman, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, and of their malice aforethought contriving and intending a certain William Chapman to deprive of his life, and him the said William Chapman, feloniously to kill and murder, on the twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-one, and on divers other days and times between the said twentieth day of June in the year last aforesaid, and the twenty-third day of June, in the same year, with force and arms at the County aforesaid, and within the jurisdiction of this Court, did knowingly, wilfully, feloniously, and of their malice aforethought, mix and mingle certain deadly poison, called arsenic, in certain chicken soup, which had been, at divers days and times, during the time aforesaid, prepared for the use of the said William Chapman, to be drunk by him the said William Chapman, (they the said

Lucretia Chapman, otherwise called Lucretia Espos y Mina, and the said Lino Amalia Espos y Mina, otherwise called Celestine Armentarius, otherwise called Amalia Gregoria Zarrier, then and there well knowing that the said chicken soup with which they, the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, and the said Lino Amalia Espos y Mina, otherwise called Celestine Armentarius, otherwise called Amalia Gregoria Zarrier, did so mix and mingle the said deadly poison as aforesaid, was then and there prepared for the use of the said William Chapman, with intent to be then and there administered to him for his drinking the same,) and the said chicken soup with which the said deadly poison was so mixed as aforesaid, afterwards, to wit, on the said twentieth day of June in the year last aforesaid, and on the said other days and times last mentioned, at the County and within the jurisdiction aforesaid, was delivered to the said William Chapman, to be then and there drunk by him, the said William Chapman, and he the said William Chapman (not knowing the said poison to have been mixed with the said chicken soup) did, afterwards, to wit, on the said twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-one, and on the said other days and times above mentioned, there drink and swallow down into his body several quantities of the said deadly poison so mixed as aforesaid with the said chicken soup, and the said William Chapman of the poison aforesaid and by the operation thereof then and there became sick and greatly distempered in his body, of which said sickness and distemper of body, occasioned by the said drinking, taking, and swallowing down into the body of the said William Chapman of the deadly poison aforesaid, so mixed and mingled in the said chicken soup as aforesaid, he, the said William Chapman, from the said several days and times on which he had so taken, drunk, and swallowed down the same as aforesaid, until the said twenty-third day of June, in the year last aforesaid, at the County aforesaid, and within the jurisdiction aforesaid, did languish, and languishing did live, on which said twenty-third day of June, in the year last aforesaid, at the County, and within the jurisdiction aforesaid, he, the said William Chapman, of the poison aforesaid so taken, drunk and swallowed down as aforesaid, and of the said sickness and distemper occasioned thereby, did die. And so the Inquest aforesaid, upon their oaths and solemn affirmations aforesaid, do say, that the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, and the said Lino Amalia Espos y Mina, otherwise called Celestine Armentarius, otherwise called Amalia Gregoria Zarrier, him, the said William Chapman, then and there in the manner and by the means aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, inquiring as aforesaid, upon their oaths and solemn affirmations aforesaid, do further present that the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, and of her malice aforethought, wickedly contriving and intending the said William Chapman to deprive of his life, and the said William Chapman feloniously to kill and murder, on the twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-one, and on divers other days and times between the said twentieth day of June in the year last aforesaid, and the twenty-third day of June in the same year, with force and arms at the county aforesaid, and within the jurisdiction of this Court, did feloniously, wilfully, and of her malice aforethought, mix and mingle certain deadly poison, called arsenic, in certain chicken soup, which had been at divers days and times, during the time aforesaid, prepared for the use of the said William Chapman, to be drunk by him, the said William Chapman, (she, the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, then and there well knowing that the said chicken soup with which she, the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, did so mix and mingle the said deadly poison as aforesaid, was then and there prepared for the use of the said William Chapman, with intent to be then and there administered to him for his drinking the same,) and the said chicken soup with which the said deadly poison was so mixed as aforesaid, afterwards, to wit, on the said twentieth day of June in the year of our Lord one thousand eight hundred and thirty-one, and on the said other days and times last mentioned at the county and within the jurisdiction aforesaid, was delivered to the said William Chapman, to be then and there drunk by him the said William Chapman, and he, the said William Chapman,

(not knowing the said poison to have been mixed with the said chicken soup) did afterwards, to wit, on the said twentieth day of June, in the year last aforesaid, and on the said divers other days and times above mentioned, there drink and swallow down into his body several quantities of the said deadly poison so mixed as aforesaid with the said chicken soup, and the said William Chapman, of the poison aforesaid, and by the operation thereof, then and there became sick and greatly distempered in his body, of which said sickness and distemper of body, occasioned by the said drinking, taking, and swallowing down into the body of the said William Chapman of the deadly poison aforesaid, so mixed and mingled in the said chicken soup as aforesaid: he, the said William Chapman, from the said several days and times, on which he had so taken, drunk, and swallowed down the said deadly poison as aforesaid, until the said twenty-third day of June, in the year last aforesaid, at the County aforesaid, and within the jurisdiction aforesaid, did languish, and languishing did live, on which said twenty-third day of June in the year last aforesaid, at the County aforesaid, and within the jurisdiction aforesaid, he, the said William Chapman, of the poison aforesaid so taken, drunk, and swallowed down as aforesaid, and of the said sickness and distemper occasioned thereby, did die. And that the said Lino Amalia Espos y Mina, otherwise called Celestine Armentarius, otherwise called Amalia Gregoria Zarrier, then and there, feloniously, wilfully, and of his malice aforethought, was present, aiding and abetting the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, the felony and murder aforesaid, in manner and form last aforesaid, to do and commit. And so the Inquest aforesaid, upon their oaths and solemn affirmations aforesaid, do say that the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, and the said Lino Amalia Espos y Mina, otherwise called Celestine Armentarius, otherwise called Amalia Gregoria Zarrier, him, the said William Chapman, then and there, in the manner and form last aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, contrary to the form of the Act of Assembly, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, inquiring as aforesaid, upon their oaths and solemn affirmations aforesaid, do further present that the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, and of her malice aforethought, contriving and intending a certain William Chapman to deprive of his life, and the said William Chapman, feloniously, wilfully, and of her malice aforethought, to kill and murder with poison, on the twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-one, and on divers other days and times, between the said twentieth day of June, in the year last aforesaid, and the twenty-third day of June in the same year, with force and arms, at the County aforesaid, and within the jurisdiction of this Court, did knowingly, wilfully, feloniously, and of her malice aforethought, mix and mingle certain deadly poison, called arsenic, in certain chicken soup, which had been at divers days and times, during the time aforesaid, prepared for the use of the said William Chapman, to be drunk by him, the said William Chapman (she, the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, then and there, well knowing that the said chicken soup with which she, the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, did so mix and mingle the said deadly poison as aforesaid, was then and there prepared for the use of the said William Chapman, with intent to be then and there administered to the said William Chapman, for his drinking the same); and that the said William Chapman afterwards, to wit, on the twentieth day of June, in the year last aforesaid, and on the said other days and times last mentioned at the county aforesaid, and within the jurisdiction aforesaid, did take, drink, and swallow down into his body several quantities of the said chicken soup, with which the said arsenic was so mixed and mingled by the said Lucretia Chapman, otherwise called Lucretia Espos y Mina as aforesaid, (he, the said William Chapman, at the time he so took, drunk, and swallowed down into his body the said chicken soup, not knowing there was any arsenic or any other poisonous or hurtful ingredient mixed or mingled with the said chicken soup,) by means whereof he, the said William Chapman, then and there became sick and greatly distempered in his body; and the said William Chapman, of the poison aforesaid so by him taken, drunk and swallowed as aforesaid, and of the sickness occasioned thereby, from the said several days and times on which he, the said William Chapman, had so taken, drunk, and swallowed down the same deadly poison as afore-

said, until the said twenty-third day of June, in the year last aforesaid, at the County and within the jurisdiction aforesaid, did languish, and languishing did live, on which said twenty-third day of June, in the year last aforesaid, at the County and within the jurisdiction aforesaid, he, the said William Chapman, of the poison aforesaid, so by him taken, drank, and swallowed down, and of the sickness and distemper occasioned thereby, did die.

And that the aforesaid Lino Amalia Espos y Mina, otherwise called Celestine Armentarius, otherwise called Amalia Gregoria Zarrier, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, before the said felony and murder committed, to wit, on the said twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-one, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, feloniously, wilfully, and of his malice aforethought, did incite, instigate, stir up, counsel, direct, advise, command, aid, abet, move, and procure her, the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, the felony and murder aforesaid, in manner and form aforesaid, to do and commit. And so the Inquest aforesaid, upon their oaths and solemn affirmations aforesaid, do say, that the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, him, the said William Chapman, then and there, in manner and form last aforesaid, feloniously, wilfully, and of her malice aforethought, did kill and murder, and that he, the said Lino Amalia Espos y Mina, otherwise called Celestine Armentarius, otherwise called Amalia Gregoria Zarrier, feloniously, wilfully, and of his malice aforethought, in manner and form aforesaid, at the County aforesaid, and within the jurisdiction of this Court, her, the said Lucretia Chapman, otherwise called Lucretia Espos y Mina, did aid, abet, counsel, direct, advise, and instigate, the felony and murder aforesaid, in manner and form aforesaid, to commit and perpetrate, contrary to the form of the Act of Assembly, in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

THOMAS ROSS,
Deputy Attorney General.

A True Bill.

CHAS. KNIGHT, Foreman.

The following named gentlemen appeared as Counsel :

For the Commonwealth, Messrs. THOMAS ROSS, Deputy Attorney General, and WILLIAM B. REED.

For the prisoner, Lucretia Chapman, Messrs. DAVID PAUL BROWN, and PETER M'CALL.

For the prisoner, Lino Amalia Espos y Mina, Messrs. SAMUEL RUSH, and E. T. M'DOWELL.

On Wednesday afternoon, the prisoners having been brought up, and put to the bar, Mr. RUSH, on the part of Mina, rose and addressed some remarks to the Court, expressive of the embarrassment under which he laboured, in consequence of his client's imperfect knowledge of the English language. He proceeded to state that, although it was with considerable difficulty the indictment had been explained to the prisoner, he was prepared to waive all objections to the immediate arraignment on that ground, provided that, by pleading to the indictment at once, he did not debar himself from the right, on which it might be his duty to insist, to be tried by a jury of which one half should be composed of foreigners (*de medietate lingue*). It was his object therefore to obtain some assurance from the Court, or from the prosecution, that an immediate plea to the indictment should not foreclose that right.

Mr. ROSS, for the Commonwealth, said that, so far from taking any advantage, of the kind referred to, the counsel for the prosecution had concluded, if the application for a jury *de medietate* should be pressed, to accede to it. Without admitting it to be the law, they were disposed to yield, from a wish to extend to the prisoner any advantage which he might suppose such a privilege would afford.

The prisoners were then arraigned by the Deputy Attorney General, and severally pleaded *Not Guilty* to the indictment. Being asked, separately, how they would be tried? They answered, "By God and my country."

Ross. (To Mina.) Are you ready for your trial?

Prisoner. Yes.

In reply to the same question, offered to the other prisoner, Mr. McCall, on her behalf, produced the following affidavit.

Commonwealth,

vs.

Lucretia Chapman, alias Lucretia Espos y Mina,
and Lino Amalia Espos y Mina, alias Celestine
Armentarius, alias Amalia Gregoria Zarrier.

Oyer and Terminer,
Dec. 1831.

Lucretia Chapman, the defendant, being duly sworn according to law, deposes and says, that Benjamin Ash, who, she is informed, and verily believes, is at this time a resident of Flushing, in the state of New York; James Paul Foreman, who resides in the northern part of the state of New Jersey; J. Bishop, whose precise residence this deponent is not acquainted with, but believes to be in Vermont; ——— Cruiser, who resides in the state of New Jersey; J. H. Campbell, Esq., who is at present a member of the Legislature, and at Harrisburg; are all and every of them material witnesses for her in the trial of the above cause; and without whose testimony she cannot proceed to trial: this deponent further says, that every possible exertion has been used by her to obtain the attendance of those witnesses who were within the immediate reach of a subpoena; that she arrived at Doylestown on the 11th instant, after an exhausting ride of five hundred miles: that her counsel, whom she had never conferred with, or had an opportunity of engaging, until the 10th instant, arrived here on the night of the twelfth—that notwithstanding immediate measures were taken, there were great difficulties in procuring an individual to collect testimony and subpoena witnesses; this, however, was at length accomplished, and subpoenas were issued to Philadelphia, and Andalusia, and put into the hands of an officer on the 13th instant: but whether the officer may succeed in the service of all of them or not, must remain doubtful until their return, which cannot be expected before Saturday, the 18th instant. This defendant further states, that in respect to all the witnesses above referred to, as well out of, as in the state, she confidently expects to procure their attendance at the next Session of this Court.

LUCRETIA CHAPMAN.

Sworn and subscribed to, this 14th
day of December, A. D. 1831,
before me, Wm. Purdy, Clerk.

The affidavit having been read, Mr. McCall said, it would not be necessary for him to trouble the Court with many remarks upon the present application for postponement. To urge an immediate trial under such circumstances as were detailed in the affidavit, would be in the highest degree unjust. The absence of a material witness was invariably held to be conclusive ground for the continuance of a cause, due exertion having been used to procure an attendance. If it were necessary to quote authority to this point, he would refer the Court to the case of the Chevalier D'Eon.

The Court said, it was not necessary.

The gentleman proceeded to notice the extraordinary excitement to which this case had given rise throughout the community; the eager attention of the dense crowd then present; the prejudice which was supposed to exist against his client;—he asserted with great emphasis her innocence of the charge, and stated her only wish to be, to have an opportunity of removing the cloud of suspicion and surmises that had been raised against her.

Mr. Reed, for the Commonwealth, said, the officers of the prosecution were placed, by this application, in a position of painful embarrassment. They were ready to go to trial, but had no wish to press harshly or unkindly upon the prisoners. A great number of witnesses were in attendance on the part of the Commonwealth—many of whom were brought from a distance, at a great sacrifice of convenience on their part, and at a considerable expense to the County. Many of them were females, unaccustomed to travel in an inclement season, and several were professional gentlemen, whose time was valuable. Under these circumstances, with the risk of losing material witnesses, during so long an interval, the counsel for the Commonwealth could not consent to a postponement until the next Court, though they were disposed to accede to any arrangement that could be made for a Special Court to be held at some early day.

This proposition was accepted by the counsel for the defendants, and the Court named the 9th or the 30th of January, either of which might be agreed upon by the parties.

After an interchange of views by counsel, and it appearing that no arrangement could be settled upon, the case was continued to the next session, commencing on Monday, the thirteenth day of February next.

On Thursday, the Grand Jury being about to be discharged, the Court admonished them that they were forever bound by their oaths, not to reveal what had passed before them as Grand Jurors; and that as it regarded the present case, they should be particularly cautious not to convey any impressions to the minds of the people from evidence which had officially come to their knowledge; leaving their open act, in returning the Bill of Indictment, as the only one from which the public might draw any inference.

Monday, February, 13, 1832.

The February Sessions commenced this day; all the Judges present. Various matters occupied the attention of the Court until near five o'clock in the afternoon, when there being nothing further to delay the progress of the cause, and none of the counsel appearing in court, except Mr. Ross, for the Commonwealth, and Mr. M'Dowell, for the defendant, *Mina*,

Mr. M'Dowell rose and stated to the Court, that he had seen Mr. Brown, who, with the other gentlemen, had just arrived. Mr. Brown had requested him to say to the Court, that they had been delayed by the breaking down of their carriage, on the road to this place, and had been obliged to come a part of the way on foot; and that as soon as it was practicable for them to appear in court, they would do so. The gentleman having expressed his earnest desire that the cause might not be taken up until to-morrow morning, and Mr. Ross offering no objection, the Court adjourned until nine o'clock.

Tuesday, February 14th.

The Court convened pursuant to adjournment, and at half-past nine o'clock, the prisoners were placed at the bar.

Mr. M'Dowell. I address the Court, as one of the counsel for *Mina*. The application which I am about to make, is, however, a mutual one; and can be more properly made now, than at any other time. It is, that the prisoners be tried separately. Our reasons for this application are not idle. We believe, on the part of both, that they cannot with safety or justice, be tried together. It will be necessary, in their defence, for them to attack each other; and the evidence will, to a certain extent, be separate.

There will be a difference in the rights of the respective prisoners in regard to the challenges. We contend that we have the right, on the part of *Mina*, to all of our challenges out of the panel. The application for separate trials is a matter for the discretion of the Court; but the challenges are matter of right. A juror, who would be acceptable to one defendant, might be challenged by the other; and in this way, injustice would be done, if both were to be tried together.

To show the right to a severance, the gentleman cited *1st Chitty's Crim. Law*, 436. *4th Comyn's Dig.* 660. *4th Amer. Dig.* 174. *4th Comyn's Dig.* 701. *1st Peters' Rep.* 118. *7th Smith's Laws*, 731, *Appendix. Trial of Mail Robbers at Philadelphia*, G. C. U. S. (The gentleman read the application of Mr. Biddle on the part of *Porter*, in that case.)

So far as it regards the convenience and the wishes of counsel for the defendants (said Mr. M'D. in conclusion,) there is no motive for delay; but after very mature deliberation, and from the nature of the evidence to be brought forward against the prisoners, we do think it necessary to make this application. We are aware of the inconvenience that it will give the Court.

Judge Fox. We shall not take the convenience of the Court into consideration.

Mr. M'Dowell said, he supposed so, and concluded his observations to the point under argument.

Mr. Ross. The individuals who represent the Commonwealth in the cause now before the Court, are willing to extend to the prisoners every benefit to which they

are properly entitled. But the present application we are compelled to deny and resist.

Whatever may be the law in England on this subject, we contend that no such right has been recognised by the courts of this country; and we further contend, that according to the decisions not only of our own State, but of the Courts of the United States, it is not even discretionary with your honours to say whether the defendants shall be tried separately or not. The mode and manner of trial is to be determined by the Counsel for the Commonwealth; and if, in their opinion, the ends of public justice will be defeated by a severance, they have the right of insisting upon a joint trial. In England, Mr. Ross contended, that a separate trial could not be claimed; and referred to *Sd T. R. 101*, for the opinion of Justice Buller; but the Court would not permit this authority to be read. He also cited *2 Hale, P. C. 173*, where it is laid down that two capital offences may be joined in the same indictment, and tried by the same jury. He contended that under such circumstances the defences must necessarily be different, and that the right of peremptory challenges must be equally affected, as if two joint defendants were put upon trial together; for, the prisoner might wish to have one juror on the trial of one of the capital cases, whom he would wish to challenge on the other. The same principle, he further said, was recognised by the Supreme Court of this State in *5th Serg. & R. 69*, where it was held that two offences for conspiracy might be joined in the same indictment, and tried by the same jury. In the case referred to, the defence was different, and the same objection respecting the right of peremptory challenge existed, as has been raised in the case now under consideration; still the offences were permitted to be joined and tried by the same jury. The question has however been settled by the case of *U. S. vs. Marchand et al.*, *12 Wheaton's Rep.* in which Justice Story delivers the opinion of the Court. In reviewing the law and the cases on this subject, he says, that this right of challenge is not a right to select, but merely the right to reject jurors; and the Supreme Court refused to allow the separate trial. The case of *Wilson*, the mail robber, was the last case in which this point was raised, and goes farther than any case heretofore decided. Judge Baldwin expressly said, that he would not allow the defendants to sever in their trial, even if they should be compelled to attack each other, in case the District Attorney would say, that the ends of public justice would be defeated by such severance. The D. A. did not resist the motion made by the defendants' counsel, and a separate trial took place. Mr. R. contended that this case was decisive of the question; and that it invested the Prosecuting Attorney with the sole power of determining the form and manner of trial. He also argued that it overruled the case of *U. S. vs. Sharp*, *1 Peters 118*, even admitting that the case in *Peters* was an authority in point; although he denied that it was any authority to show that the defendants could claim separate trials. It does not appear from the report of the case, that any objection was made to the motion for a separate trial, or that any argument took place; and the Court, as a matter of course, permitted the severance. So also in the case of *Com. vs. Eliza Anderson et al.* The Attorney General acceded to the motion for a separate trial without argument; and therefore that case was no authority. He referred to the other cases cited by the counsel for the prisoners, and contended that they did not sustain the gentlemen in the position which they had taken; and concluded by saying, that in this case they were willing to allow to each of the defendants their right of challenge, but that if a joint trial were not permitted, the ends of public justice would be defeated.

COURT. Be good enough, Mr. Ross, to put your objection to this application in writing.

The following was drawn up, and filed: "The counsel for the Commonwealth say, that in their opinion, if separate trials be conceded by the Court to the defendants in this case, the ends of public justice will be defeated." (Signed by counsel.)

At the suggestion of the Court, the following affidavit and opinion of counsel on the opposite side, were drawn and filed:

"Commonwealth
vs.
Lucretia Chapman, &c."

"The defendants above named being respectively sworn do say, that to the best of their knowledge and belief, the defence of one of the said defendants will conflict and essentially interfere with the defence and rights of the other; and that they cannot, with that safety which they consider themselves justly entitled to enjoy, proceed